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One Click, No Choice: Standard Form Contracts and the Myth of Consent in Indian Law

ORIGINAL ARTICLE



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Abstract

In a rapidly digitizing world, standard form contracts (SFCs) have become the default framework governing the majority of commercial and consumer relationships. From opening a bank account to subscribing to OTT platforms, these pre-drafted, non-negotiable agreements are omnipresent. While the Indian Contract Act, 1872 enshrines the principle of “free consent” as fundamental to the validity of a contract, the reality of SFCs reveals a stark disjunction between legal theory and practical enforcement. This paper critically examines the illusion of consent in standard form contracts within the Indian legal framework. It highlights how the imbalance of bargaining power and absence of negotiation renders such consent more a formality than a meaningful legal act. The doctrine of unconscionability and public policy, as invoked in landmark judgments like Central Inland Water

Transport Corporation v. Brojo Nath Ganguly and LIC v. Consumer Education & Research Centre, is explored to demonstrate the judiciary’s attempt to infuse equity into rigid contractual norms. Further, the paper investigates the inadequacy of statutory safeguards under the Indian Contract Act and the Consumer Protection Act, 2019 in effectively regulating unfair terms, especially in the age of digital transactions and AI-generated agreements. A comparative analysis with UK, US, and EU laws reveals India’s lag in codifying protections against exploitative contractual clauses. By exposing the myth of informed consent in click-wrap and browse-wrap agreements, this research underscores the urgent need for reform. It proposes a rights-based regulatory approach that balances the efficiency of SFCs with the fundamental principles of justice and consumer autonomy. Ultimately, the paper argues that true contractual consent must go beyond the ceremonial “I Agree”, it must reflect awareness, understanding, and choice.

Key Words

Standard Form Contract, Indian Contract Law, Unfair Terms, Consumer Protection, E-contracts, Unconscionability.

“In the contract of the future, speed must serve justice, not silence it.”

Introduction

Contractual relationships form the backbone of modern civil and commercial life. The principle of *pacta sunt servanda*, agreements must be kept, finds embodiment in the Indian Contract Act, 1872, which lays down the foundation of enforceable private agreements. At the heart of every valid contract lies the doctrine of free consent (Section 14), a requirement that ensures parties voluntarily agree to mutual obligations after understanding the terms. However, in practice, this classical theory of contractual autonomy has been significantly diluted, particularly in the context of Standard Form Contracts (SFCs).

Standard Form Contracts are pre-drafted agreements formulated by one party, typically a corporation or service provider, and offered to the other on a “take-it-or-leave-it” basis. Whether it is applying for a loan, booking a railway ticket on IRCTC, installing a mobile application, or subscribing to digital platforms like Netflix or Amazon, the consumer is routinely subjected to contractual terms that are neither negotiable nor transparent. The element of “choice”, a prerequisite for true consent, is effectively absent.

What is more alarming is the illusory nature of consent embedded in these digital interactions. In most cases, users “agree” to lengthy, complex, and one-sided terms without reading or understanding them, driven either by habit, urgency, or sheer necessity. The classic notion of a meeting of minds (*consensus ad idem*) is replaced by a mechanical click. The user’s consent becomes more symbolic than substantive, raising serious questions about the legitimacy and fairness of such contracts.

While Indian courts have, in a few landmark cases, attempted to mitigate this imbalance by invoking doctrines such as unconscionability and public policy (e.g., *LIC v. Consumer Education & Research Centre*, *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*), there remains no clear legislative framework that addresses the structural unfairness inherent in standard form contracts. The Consumer Protection Act, 2019, though progressive in many aspects, does not adequately confront the realities of modern digital contracting, especially with the emergence of AI-generated contracts, cross-border e-commerce, and automated click-wrap agreements.

This paper begins by dissecting the concept and structure of standard form contracts, followed by an analysis of judicial interpretations and legislative gaps. It further contrasts the Indian position with global frameworks such as the UK’s Unfair Contract Terms Act (1977) and the EU Consumer Rights Directive, drawing attention to India’s relative legal inertia in this sphere. The paper concludes by proposing a multi-pronged reform model that includes statutory changes, regulatory oversight, and the development of a rights-based approach to protect the contractual autonomy and dignity of consumers.

In an era where contractual consent is reduced to a single digital gesture, the challenge before Indian law is to restore the substance behind the signature, ensuring that every agreement is not only valid, but also just and equitable.

Nature and Features of Standard Form Contracts

Standard Form Contracts (SFCs), also known as adhesion contracts, are pre-drafted agreements formulated unilaterally by one party (usually a powerful commercial entity) and presented to the other party (usually a consumer or service user) without scope for negotiation. These contracts have become the norm in modern commerce due to their administrative simplicity and transactional speed, but their structural nature often places the accepting party in a subordinate position.

Key Characteristics

1. **Pre-drafted Documents:** These contracts are designed in advance and used repeatedly for a large number of consumers or clients. The party offering the contract does not tailor the terms for each individual, making the process fast and efficient but inherently rigid.

2. **Absence of Negotiation:** The accepting party, usually a consumer or weaker individual, is not given any meaningful opportunity to negotiate the terms. It is essentially a “take it or leave it” proposition. Even if the user objects to a clause, the service cannot be availed without accepting it in totality.

One-Sided Clauses: These contracts are often embedded with boilerplate clauses that heavily favour the drafting party:

- **Exclusion of liability:** “We are not responsible for any loss or damage...”
- **Unilateral arbitration clauses:** Forcing the consumer to accept dispute resolution at a place and under rules set by the company.
- **Penalty clauses:** Disproportionate penalty for delay or breach by the user, but very limited accountability on the company’s side.

Examples

- **Bank account opening forms:** RBI-compliant contracts where hidden service fees or binding arbitration clauses exist.
- **IRCTC ticket booking terms:** Waivers of liability, refund rules subject to fine print.
- **Netflix/Amazon terms of service:** Click-wrap agreements with auto-renewal clauses, cross-border data sharing.
- **App store license agreements (Google/Apple):** Digital rights management clauses, binding users to U.S. laws.

Why Are SFCs Used?

The rising use of SFCs is driven by:

- **Efficiency:** Drafting custom contracts for millions of users is economically unfeasible.
- **Speed:** SFCs accelerate transaction completion (e.g., booking tickets in 30 seconds).
- **Standardization:** Uniform rules for all users simplify compliance and reduce ambiguity.

However, this efficiency often comes at the cost of fairness, where users are bound by terms they neither understand nor have the power to alter.

The Illusion of Consent: Legal and Psychological Critique

The concept of consent is central to Indian contract law. Section 13 of the Indian Contract Act defines consent as two or more persons agreeing upon the same thing in the same sense (consensus ad idem). Section 14 further qualifies that for consent to be “free,” it must not be caused by coercion, undue influence, fraud, misrepresentation, or mistake. In theory, this ensures voluntary and informed agreement. But in the world of Standard Form Contracts, this ideal collapses.

The Legal Illusion

- Although users “agree” to terms by clicking an acceptance button or signing a form, this act rarely reflects informed and voluntary consent. In most cases:
- The user is unaware of the detailed clauses.
- No real negotiation is possible.
- The only alternative is to abandon the transaction entirely, which is not feasible for essential services.

This undermines the spirit of Section 14, rendering “free consent” a legal fiction in many modern contractual settings.

The Psychological Trap: A Behavioral Law & Economics View

Modern contract theory increasingly borrows from psychology and behavioral economics to understand why consumers agree to harsh or unfair terms. Several key phenomena explain this:

1. **Choice Fatigue:** With endless apps, websites, and platforms requiring agreement to terms, users experience cognitive overload. Instead of reading dense legal text, they prioritize convenience and speed, leading to blind consent.
2. **Click-wrap & Browse-wrap Agreements:**
 - **Click-wrap:** User actively clicks “I agree” without reading (e.g., Netflix, Facebook).
 - **Browse-wrap:** Terms are linked on the page, and continued use implies acceptance (e.g., many news websites, YouTube). Both models presume consent based on passive or symbolic action, not genuine understanding.

Real-Life Example

- A Netflix user signs up for a monthly subscription. The terms include:
- Auto-renewal every 30 days.
- Arbitration clause under California law.
- Clause stating “terms may be updated without notice.” Did the user read or understand these? Highly unlikely. Yet, legally, the user is “bound”, creating a clear gap between legal consent and actual consent.

Judicial Approach in India

The Indian judiciary has played a pivotal role in moderating the harshness of Standard Form Contracts (SFCs) by invoking doctrines such as public policy and unconscionability, primarily under Section 23 of the Indian Contract Act, 1872. While Indian courts have made important interventions in several cases, the overall approach remains inconsistent and lacking codified guidelines.

Landmark Cases

1. LIC v. Consumer Education and Research Centre (1995)

Facts: Life Insurance Corporation included clauses in their standard policy that excluded liability for employees working in hazardous industries.

Held: The Supreme Court held that such exclusionary clauses were arbitrary, discriminatory, and violative of Article 21 (Right to Life).

Impact: Court struck down the clause for being unfair and against public interest, highlighting that in welfare contracts, parties don’t bargain from equal positions.

Quote: “Contracts must not be unconscionable, oppressive or against public policy, especially when dealing with essential services.”

2. Central Inland Water Transport Corp. v. Brojo Nath Ganguly (1986)

Facts: An employment contract contained a clause allowing unilateral termination without reason.

Held: Supreme Court declared the clause void under Section 23 as it was against public policy and unconscionable.

Significance: Recognized the imbalance of power in standard employment contracts, setting a precedent for challenging oppressive terms.

Doctrine used: Unconscionable contract and public policy.

3. Shrikant v. Corporation Bank (2004)

Facts: The bank tried to enforce a clause for arbitrary recovery of dues from a loan borrower.

Held: Bombay High Court struck down the clause as unfair, noting that the borrower had no option to negotiate, and the clause amounted to exploitation.

Relevance: Court protected the borrower under principles of natural justice and fairness, even within a private contract.

Judicial Doctrines Applied

1. **Unconscionability:** Courts identify a clause as unconscionable when there's an unfair bargaining advantage, especially where the consumer has no power to reject or amend terms. The doctrine allows courts to protect weaker parties from grossly unfair contractual terms.
2. **Public Policy (Section 23, ICA):** Courts have read "public policy" expansively to include fairness, natural justice, and protection of dignity and rights in contracts. However, the term is not clearly defined, and application often depends on the judicial discretion of the bench.

Critics of Judicial Approach

- **Positive:** Courts have acknowledged inequality of bargaining power and intervened in key cases.
- **Negative:** There's no consistency many SFCs still go unchallenged. Example: Same arbitration clauses upheld in one case and rejected in another.
- No codified doctrine like in the UK (Unfair Terms Regulations) or EU (Consumer Rights Directive).

Statutory Framework and Protections in India

While several Indian statutes offer indirect safeguards against unfair contracts, India lacks a dedicated, unified law that deals specifically with unfair contract terms in standard form contracts.

A. Indian Contract Act, 1872

- Section 10: Requires free consent for valid contracts.
- Sections 14–19: Define and regulate consent, coercion, undue influence, fraud, misrepresentation, and mistake.
- Section 23: Declares agreements void if they are opposed to public policy or immoral/unlawful.

Limitations

- The Act was drafted in the 19th century and does not address modern contract practices, like digital contracts or unequal economic power dynamics.
- Lacks a provision to strike down "unfair terms" unless they violate public policy which is vague and case-specific.

B. Consumer Protection Act, 2019

The CPA 2019 introduced several progressive features, including:

1. Section 2(47): Definition of Unfair Trade Practices.
2. Product and Service Liability: Service providers can be held liable for unfair terms or defective services.
3. E-filing of complaints: Recognizing online consumers and e-contracts.
4. Consumer Dispute Redressal Forums with mediation as a mode of resolution.

However

The law targets unfair practices, not unfair contract terms explicitly.

No provision to declare specific contractual clauses void unless they result in defective service or misleading information.

C. Information Technology Act, 2000

- Recognizes electronic contracts (Section 10-A).

- Provides validity to digital signatures, click-wrap agreements, and online consent mechanisms.

Limitations

- It validates e-contracts but does not regulate their fairness.
- No safeguards against automated, AI-generated or algorithmic contract drafting, which is increasingly common.

Comparative Perspective

Country Legal Framework for Unfair Terms:

- India-No dedicated law; scattered provisions across ICA, CPA, IT Act
- UK-Unfair Terms in Consumer Contracts Regulations (1999)
- EU-Consumer Rights Directive (2011/83/EU)
- USA-Uniform Commercial Code (UCC) + FTC Guidelines
- Australia-Australian Consumer Law – prohibits unfair contract terms in SFCs

Emerging Issues with Standard Form Contracts (SFCs) in the Digital Era

The digital revolution has drastically changed how contracts are formed, delivered, and accepted. From streaming platforms to fintech apps, most services today operate through Standard Form E-Contracts, which, although efficient, raise serious concerns around informed consent, jurisdictional ambiguity, algorithmic drafting, and linguistic exclusion. These issues challenge the very foundation of contractual fairness, autonomy, and access to justice.

A. Types of E-Contracts and Their Legal Implications

1. Click-wrap Agreements

The user must click “I Agree” to proceed typical for OTT apps like Netflix or Hotstar.

Legally valid under the Information Technology Act, 2000 (Section 10-A), but users rarely read them.

2. Browse-wrap Agreements

Merely using the website is taken as implied consent.

Common on platforms like YouTube, news portals, or e-commerce sites.

Problematic because terms aren’t shown upfront, and users may not even know what they’ve agreed to.

3. Shrink-wrap Agreements

Found in software or device packaging terms are enclosed within the product, binding once the user opens or installs the product.

Practically obsolete in India, but still relevant for imported digital goods.

Legal Challenge: These models treat consent as a mechanical act, ignoring whether the user had real understanding or choice contradicting the idea of free consent under Section 14 of the Indian Contract Act, 1872.

B. Hidden Terms in Everyday Apps and Services

Every time a user installs an app, subscribes to an OTT platform, or orders food, they enter into an SFC.

Hidden Terms Include

- Auto-renewals without reminder.
- Data sharing across platforms.
- Restrictive refund policies.
- Arbitration in foreign jurisdictions.

Example

- Swiggy's terms exclude liability for wrong/delayed delivery.
- Netflix's terms state governing law as California, USA not Indian law.
- **Problem:** Users don't get opportunity, ability, or legal awareness to challenge such clauses.

C. AI-Generated Contracts: New Legal Frontier

With AI increasingly used to draft contracts, including SFCs, new legal questions emerge:

1. Autonomous Drafting

- Companies use AI to generate contracts en masse.
- If AI inserts biased or unfair terms, who is accountable the developer, the deployer, or the AI itself?

2. Lack of Human Oversight

AI may unknowingly violate public policy or introduce anti-consumer clauses, especially in micro-lending, digital insurance, and BNPL (Buy Now, Pay Later) sectors.

3. Absence of Regulation

- No Indian law currently regulates AI in contract creation.
- No liability regime exists for flawed algorithmic decisions in contract drafting.

Critical Point: Law must evolve to consider algorithmic accountability e.g., like the EU's AI Act or draft bills in the US on algorithmic fairness.

D. Cross-Border Jurisdiction and Enforcement

Many global platforms operate in India but have terms governed by foreign laws:

Example: Netflix, Apple, and Facebook include California jurisdiction.

Amazon uses Washington State law.

Implication for Indian Consumers

They may not afford to challenge these platforms in foreign courts.

Indian courts may find it hard to enforce or interpret clauses based on foreign legal principles.

Legal Dilemma: Is such a clause void under Section 23 (public policy) or enforceable due to user "consent"?

E. Language Barrier and Exclusion

India is a multilingual society, yet most e-contracts are drafted only in English, which excludes:

1. Rural users
2. First-time digital users
3. Elderly citizens

Example: A person using IRCTC in Hindi is redirected to terms only available in English.

Legal Question

- Can consent be considered informed when the user doesn't understand the language?
- Does this violate Article 14 (Right to Equality) or Article 21 (Right to Life with Dignity)?

Suggestion: There should be a legal mandate for multilingual digital contracts to ensure inclusivity.

International Perspective on Standard Form Contracts

In response to the increasing use and abuse of Standard Form Contracts (SFCs), various jurisdictions across the world have enacted specific and progressive legislation to ensure fairness, transparency, and accountability. Unlike India, where the protection against unfair contract terms is scattered across general

statutes and judicial discretion, many countries have dedicated laws and doctrines empowering courts and regulators to strike down unfair clauses, even in the absence of explicit consumer complaints.

A. United Kingdom – Unfair Contract Terms Act, 1977 (UCTA)

The UCTA is a cornerstone of consumer protection in the UK. It regulates unfair terms in both consumer and commercial contracts, with a special focus on exclusion clauses.

Key Features

Section 2(1): Prohibits exclusion of liability for death or personal injury resulting from negligence.

Reasonableness Test (Section 11)

Courts assess whether a term is “fair and reasonable” considering the bargaining power and knowledge of parties.

Burden of Proof is on the party seeking to enforce the term.

Example: A gym cannot include a clause that absolves it of responsibility if faulty equipment injures a customer.

B. European Union – Consumer Rights Directive, 2011/83/EU

The EU Consumer Rights Directive represents a modern, consumer-centric approach to contractual fairness.

Key Provisions

Right to withdraw from online purchases within 14 days without reason.

Mandates clear, comprehensible, and accessible language in all terms.

Pre-contractual information disclosure sellers must inform consumers of rights, pricing, terms, and return policies in advance.

Significance: The directive empowers consumers not only to reject unfair terms but also to avoid exploitative contracts altogether.

C. United States – Uniform Commercial Code (UCC) and Restatement (Second) of Contracts

The US takes a mixed federal-state approach, but several principles emerge from common law and statutory frameworks.

1. Uniform Commercial Code (UCC)

Governs sales, leases, and commercial transactions.

UCC § 2-302: Courts may refuse to enforce a contract or clause that is “unconscionable at the time it was made.”

2. Restatement (Second) of Contracts (Common Law)

1. Recognizes the concept of “procedural and substantive unconscionability”.

2. Emphasizes good faith, fair dealing, and freedom from undue surprise.

Example: A hidden arbitration clause in a mobile service contract may be struck down as procedurally unconscionable if the customer had no knowledge or option to reject it.

Learnings for India: Time for Contract Law 2.0

Based on global practices, the following reforms could bring India’s contract law regime in line with global best practices:

1. Transparency Requirements

➤ Contracts, especially e-contracts, must be required to present material clauses (e.g., dispute resolution, auto-renewal, liability limits) up front in bold and plain language.

Inspired by: EU & UK disclosure rules.

Example: Netflix India must highlight its foreign jurisdiction clause in a pop-up or separate consent box.

2. Plain Language Mandates:

- Legalese should be replaced with consumer-understandable language.
- Contracts should be available in regional languages to ensure meaningful consent.

Inspired by: UK's Plain English Campaign and U.S. state-level "plain language" laws (like in New York's General Obligations Law § 5-702).

Example: A farmer signing an online crop insurance policy should understand it without needing legal training.

3. Power to Strike Down Unfair Terms (Ex-Officio)

Indian consumer forums and civil courts should be empowered to:

- Invalidate unfair clauses suo motu (even if the consumer doesn't formally challenge them).
- Penalize corporations for systematic use of such clauses.

Inspired by: UCC (U.S.) and UCTA (UK).

Example: A telecom clause allowing price change without notice can be voided even if the consumer didn't notice or sue.

4. Dedicated Legislation

India must consider enacting a comprehensive "Fair Contracts Act" or introducing specific chapters in the Consumer Protection Act dealing with:

- E-contracts.
- Standard form contracts.
- AI-generated clauses.
- Jurisdictional fairness.

Recommendations: Reforming the Legal Framework for Standard Form Contracts in India

Having explored the structural flaws in the formation, enforcement, and fairness of Standard Form Contracts (SFCs) in India especially in the digital context it becomes evident that piecemeal remedies and scattered laws are insufficient. The time has come to initiate a comprehensive legal, institutional, and technological reform. The following recommendations are proposed with the aim of ensuring that consent becomes real, terms become fair, and justice becomes accessible.

1. Enact a Model Law on Unfair Terms in Consumer Contracts

India must take a legislative leap by enacting a dedicated law, similar to the UK's Unfair Contract Terms Act (1977) or the EU's Unfair Terms Directive, to directly address the issue of exploitative clauses in standard form contracts.

Key Provisions of Proposed Law

- Define "unfair terms" (e.g., clauses that limit liability, restrict legal recourse, or allow unilateral changes).
- Empower courts and authorities to strike down or sever such clauses.
- Apply to both offline and online contracts, and to private and public service providers.
- Place burden of proof on corporations to justify reasonableness.
- **Name Suggestion:** Fair Consumer Contract Terms Act (FCCTA), 2025

2. Mandate Pre-Contract Disclosure in Local Languages

One of the most pressing issues is that users do not understand what they are consenting to. This issue is worsened by India's linguistic diversity.

What should be done

- Require all digital and physical SFCs to summarize key terms (e.g., liability, auto-renewal, jurisdiction, refunds) in plain, regional languages.
- Mandate a "pre-signature summary page" before consent is obtained like a digital "term sheet".
Example: IRCTC, LIC, banks, e-wallets must highlight core terms in Hindi, Tamil, Bengali, etc. before proceeding.

3. Government Oversight of Public Sector SFCs

Public services such as banking, transport, insurance, railways, telecom often use rigid SFCs without consumer-friendly clauses. State should lead by example.

Proposal

- Government should set up a Contract Oversight Authority to:
- Audit public sector SFCs.
- Check for compliance with fairness norms.
- Recommend changes based on user complaints and data.
Example: SBI's loan forms, IRCTC's T&Cs, and LIC's policies must be reviewed regularly.

4. Establish Fast-Track Consumer Courts for Contractual Disputes

SFCs disproportionately affect low-income, non-litigious consumers, and the regular court system is too slow for relief.

What can be done

Create special benches or mobile units within Consumer Disputes Redressal Commissions.
Focus solely on contract-based grievances with summary procedure (like Rent Tribunals or MACT).
Resolve issues in 30–60 days.
Example: A Zomato user facing unfair no-refund policy should get redress within a month, not a year.

5. Use Technology to Empower Consumers

Legal empowerment in the 21st century must use tech as a tool for justice.

Tech-based Innovations

- **Clause-highlighting AI plugins:** Auto-flag clauses in apps/websites which are unfair or need special attention (like how Gmail flags spam).
- Government apps that scan documents and highlight risky terms.
- Legal literacy chatbots integrated with digital India platforms.
- "Fairness Score" for popular apps or platforms based on contract review.
Before installing a fintech app, user sees: "Terms rated as LOW on fairness. Read refund policy."

Join Global Fair Contracts Movement

Collaborate with international organisations like Consumers International, UNCTAD, and OECD to:

- Share best practices.
- Train Indian drafters, regulators, and judiciary.
- Adopt model guidelines for multinational corporations operating in India.

Conclusion

Standard Form Contracts (SFCs) have become the unavoidable backbone of modern commerce fueling everything from banking to online shopping, from railway bookings to OTT subscriptions. In an age of rapid transactions and instant clicks, the demand for speed and uniformity has overshadowed the essential ingredient of free and informed consent.

However, convenience must not come at the cost of contractual fairness. The unchecked rise of one-sided terms, hidden clauses, and unread agreements has turned “consent” into a legal fiction, eroding the very soul of contract law. Especially in a diverse and digitally expanding country like India, this creates a growing divide between legal theory and consumer reality.

It is time the Indian legal system takes decisive steps not to eliminate SFCs but to ensure they align with principles of equity, transparency, and accessibility. By drawing inspiration from global best practices, leveraging technology, and crafting progressive legislation, India can build a future where efficiency is not achieved at the expense of justice.

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