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LAW COMMISSION OF INDIA

103rd REPORT

ON

UNFAIR TERMS IN CONTRACT

May, 1984.

Justice K. K. Mathew

D.O. No. F. 2(15)/83-L.C.

Dated : 28th July, 1984.

My dear Minister,

I am forwarding herewith the One hundred and Third Report of the Law Commission on "Unfair Terms in Contract". The subject was taken up by the Law Commission on its own.

The Commission is indebted to Shri Vepa P. Sarathi, Part-time Member, and Shri A. K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

Sd/-

K. K. MATHEW

Shri Jagannath Kaushal,
Minister of Law, Justice and Company Affairs,
NEW DELHI.

Encl : 103rd Report.

84-L/B(N)350MofLJ&CA—1

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CHAPTER 1

STANDARD FORM CONTRACTS AND THEIR NATURE

Origin of Standard Contracts

1.1 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 standardised products. Such standardisation leads to standardised dealings with customers, that is, to standardised contracts with customers. They are found in all areas where operations are on a large scale. In the case of such large scale organisations, 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 standardised 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 organisation and the individual. The advantages of such contracts are economy and certainty. As Kessler puts it,[1] "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".

Their true nature

1.2 These standardised 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 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 large print, but the qualifications are buried in small print. The individual's 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.

CHAPTER 2

THE PROBLEM ARISING FROM SUCH CONTRACTS

Possibility of misuse of standard forms

2.1 Apart from the fact that the abstract legal 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

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[1](1943) Columbia Law Review 629 : Contracts of adhesion—some thoughts about freedom of contract.

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 a 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 court; and (d) because every one else does it. These favourable terms are often in 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 organisation'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 enterprises introduce similar exclusion clauses in their standard form contracts, and because the individual has no option to go elsewhere, 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 organisation to exploit the helplessness of the individual and impose on him clauses which may, and often do, go to the extent of exempting the organisation from all liability under the contract.

Illustrative cases (Carriers)

2.2 By way of illustration of the problem outlined above, a few cases relating to carriers may be cited.

The Madras High Court[1] 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.

2.3 The Assam High Court[2] has held: the liability of the internal carrier by air, which is not governed by the Indian Carriage by Air Act, 1934, or by the Carriers Act, 1865, is governed by the English Common Law and not by the Indian Contract Act. Under the English Common Law, the carrier's liability is not that of a 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 King's enemies or to some inherent vice in the thing itself. The Common Law, however, 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 and indeed the party could claim exemption even if the loss was caused on account of 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. Howsoever amazing a contract of this kind may

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1. *Indian Airlines Corporation* v. *Jothaji Maniram AIR 1959* Madras 285.

2. *Rukmanand* v. *Airways (India) Ltd.* AIR 1960 . Assam 71.

appear to be, yet that seems to be the state of law as recognised by the Common Law of England and adopted by Courts in India. The clause in a contract of carriage by air giving complete immunity to the carrier from liability could not be impugned on the ground that it was hit by section 23, Contract Act, because, according to the High Court, the Contract Act had no application to the case nor could it be said to be opposed to public policy.

2.4 The Calcutta High Court[1] had to deal with a case of a passenger travelling by air inside India. The plane crashed causing death of the passenger, and his widow sued for damages. The air ticket exempted the carrier from liability on account of negligence of the carrier or of the pilot or of other staff. There was evidence that the conditions exempting the carrier were duly brought to the notice of the passenger and that he had every opportunity to know them. The High Court held : The Privy Council[2] 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, that is, by the Common Law of England governing rights and liabilities of such Common carriers. It is not affected by the Indian Contract Act of 1872. Therefore, no question of testing the validity of the exemption clause with reference to section 23 of the Indian Contract Act at all arises. It is a case, where the carrier said that he was prepared to take the passenger by air provided the passenger exempted him from liability due to negligence. The exemption clause in the contract was good and valid and was a complete bar to the plaintiff's claim. The Indian Carriage by Air Act, 1934, was not made applicable because the requisite notification applying the Act had not been issued.

2.5 The Rajasthan High Court[3] has held : Wherever, on the face of the goods ticket, words to the effect "For conditions see the 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 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 conditions to the person concerned. If, however, the 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 has 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 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 did not know English, he would have the ticket read by someone else knowing English who would come to know that it was subject to the 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 all these means or not. If he does not, he must bear the consequences of his carelessness.

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1. *Indian Airlies Corporation v. Madhuri Chaudhury* AIR 1965 Cal 252.
2. *Irrawadi Flotilla Co. v. Bugwan Dass* (1981) LR 18 IA 121.
3. *Singhal Transport v. Jasaram* AIR 1968 Raj 89.

problem.

2.6 The crucial question from our point of view is this : assuming that he knew the conditions, if he wanted to change them, could he negotiate and do so ? If he cannot, what does it matter, and how are the Courts to come to his rescue ?

CHAPTER 3

INADEQUACY OF THE PRESENT INDIAN STATUTE LAW

Section 23 Contract Act held not applicable.

3.1 As early as 1909, Shankaran Nair, J.[1] in his dissenting judgment expressed the opinion that section 23 of the Contract Act hits such exemption clauses; but this view has been rejected by the High Courts in later decisions, already referred to.[2]

Illustrative cases where relief was given by Courts to the weaker party

3.2 There are a few cases where the Courts have valiantly tried to come to the rescue of the weaker party. But the legal basis of such decisions is elusive. For example, the Madras High Court[3] held that a clause in a 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 unconscionable. The judgment of the High Court was confirmed by the Supreme Court[4] on a different ground. The Supreme Court did not pronounce on the validity of the clause in the contract.

In another case of the Madras High Court[5], the laundry receipt of the appellant contained the condition that in the event of loss of or damage to the article given for washing, the customer would be entitled to claim only 50 per cent of the market price or value of the article. The respondent's new saree was lost. The court gave relief to the customer, holding that the condition would place a premium upon dishonesty inasmuch as it would enable the cleaner to purchase new garments at 50 per cent of the price and that would not be in public interest.

So also, in a case from Karnataka[6] a condition that only 8 times the cost of cleaning the garment would be payable in case of loss was held to be unreasonable. In a case of a contract for supply of kerosene by the defendant to the plaintiff, the contract reserved 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.[7] In another case from Madras,[8] the petitioner won a prize in a raffle on a ticket purchased by him but could not collect the prize money within three months, due to the negligence of his bankers. The respondent claimed that the money lapsed to the State under a rule which was made part of the contract. The High Court held that if the terms of a contract are so unconscionable and if one of the terms is *in terrorem* and without any consideration known to law, it would be against public policy

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1. *Shaikh Mohd. Ravuther* b. *B.I.S.N. Co.* (1909) ILR 32 Mad 95.
2. Paragraph 2·3 and 2·4. *supra.*
3. *H. Thathaih. v. Union of India.* AIR 1957 Mad 82.
4. AIR 1966 SC 1724.
5. *Lily White v. R. Munuswamy.* AIR 1966 Mad 13.
6. *H Siddalingappa v. S. Natrasia* AIR 1970 Mys. 154
7. *International Oil Co. v. Indian Oil Company.* AIR 1969 Mad 4.
8. *Ramulu v. Director, Tamil Nadu Raffles.* (1972) 2 MLJ 237.

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. For some reason, courts in India are reluctant to extend the heads of public policy, feeling themselves bound by English decisions. It must, at the same time, be admitted that a free extension of the heads of public policy according to the individual notions of the judges is equally fraught with danger. What, then is the remedy of the consumer, or has he no remedy at all? The decisions, where relief was given to the consumer are based on the observations in judgements of the English Courts, but do not seem to be based on any legal principle of Indian law. The decisions rest on (a) unconscionable nature of the term; (b) unfairness of the term; (c) the term not being in public interest; and (d) the term being opposed to public policy.

Inadequacy of the Contract Act to meet the situation.

3.3 The entire basis of a contract, that it was freely and voluntarily entered into by parties with equal bargaining power, completely falls to the ground when it is practically impossible for one of the parties not to accept the offered terms. In order to render freedom of contract a reality and particularly of one whose bargaining power is less than that of the other party to the contract, various measures like labour legislation, money-lending laws and rent Acts have been enacted, but 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 16(3).

3.4. Section 16(3) of the Contract Act provides that, where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced to be unconscionable, the burden of providing that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. But this sub-section has been interpreted[1] as meaning that both the elements of dominant position and the unconscionable nature of the contract will have to be established, before the contract can be said to be brought about by undue influence. This decision, though given so long ago, has not been departed from, with the result that section 16(3) is not of much relevance in the present context.

Section 23.

3.5. Section 23 of the Contract Act which provides that the consideration or object of an agreement is lawful, unless the court regards it as immoral, or opposed to public policy, is not of much use in meeting the present situation, because courts have held that the heads of public policy cannot be extended to a new ground in general, with certain exceptions, and that the term of a contract exempting one party from all liability is not opposed to public policy.

Section 28.

3.6. Section 28, of the Contract Act which deals with the time for enforcement of rights under a contract, is concerned with a special situation, and the Law Commission has dealt with this aspect in a separate report.[2]

Section 74.

3.7. Section 74 only deals with a quantum of damages and has no bearing upon the validity of a contract which exempts the liability of one of the parties. The only other section which requires consideration is section 151, which

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[1]. *Poosathurai* v. *Kannappa Chettair* (1919) I.L.R. 43 Mad. 546 (P.C).

[2]. Law Commission of India, 97 th Report.

certainly imposes liability upon the bailee for loss or damage to the goods delivered to him, but Courts have consistently taken the view that the obligation under this section can be contracted out.

Net Result.

3.8. The net result is that the Indian Contract Act, as it stands today, cannot come to the protection of the consumer when dealing with big business. Further, the *ad-hoc* solutions given by courts in response to their innate sense of justice without reference to a proper yardstick in the form of a specific provision of statute law or known legal principle of law only produce uncertainty and ambiguity

CHAPTER 4

EXPERIENCE IN OTHER COUNTRIES

How the problem is dealt with in the U.K.

4.1. In the United Kingdom various legal principles based upon the fundamental concept enunciated by Denning LJ[1] that 'there is the vigilance of the common law which while allowing freedom of contract watches to see that it is not abused', have been utilized. These principles are (a) that there should be reasonable notice to the other party of the conditions; (b) that the notice should be contemporaneous with the contract; (c) that there should be no fundamental breach of the contract; (d) that the contract would be strictly construed as against the bigger organisation and in favour of the weaker party and (e) that the terms of a contract should not be unreasonable on the face of it. Courts have resorted to what are known as *contra proferentem* rule, the 'four corner', rule, the *Gibaud* rule, and the important stratagem of the doctrine of fundamental breach. The *contra proferentem* rule amounts to this; that a person who, relying on an exclusion clause, seeks to avoid a liability, can do so only by reference to words which clearly and unequivocally apply to the circumstances of the case. Under this rule, if one party to the contract is not only under a duty of care, but is also subject to some form of strict liability, a clause excluding liability will cover only the latter, unless the language manifestly covers both types of obligations. In the *Gibaud* case[2], the plaintiff left his bicycle at the defendants' station and received a ticket containing a clause exempting the defendants from liability. The bicycle was not put in the cloak-room, but was left in the booking hall from where it was stolen. The Court of Appeal held : The defendants were protected. If the contract had been to keep the bicycle *necessarily* in the cloak-room, the defendants would be outside the 'four corners' of the contract and not be protected by the exemption clause, which would only protect them while performing the contractual obligation, and not the obligation as bailee. As regards the doctrine of fundamental breach, it was propounded by Denning L.J.[3] as follows :

> 'It is now settled that exempting clauses of this kind, no matter how widely they are expressed, only avail the party when he is carrying out his contract in its essential respects. He is not allowed to use them as a cover for misconduct or indifference or to enable him to turn a blind eye to his obligations. They do not avail him when he is guilty of a breach which goes to the root of the contract. It is necessary to look at the contract apart from the exampting clauses and see what are the terms, express or implied, which impose an obligation on the party. If he has been guilty of a breach of those in a respect which goes to the very root of the contract, he cannot rely on the exempting clauses.'

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1. *John Lee & son. v. Railway Executive.* (1949) 2 All Eng. Rep. 581.
2. *Gibaud v. Great Eastern Railway* (1921) 2 KB 426.
3. *Karsales v. Wallis* (1956) 2 All E.R. 866.

But this view has received a severe blow in the House of Lords.[1] It has been said by Lord Reid that there is no indication, 'that the courts are to consider whether the exemption is fair in all the circumstances or is harsh and unconscionable or whether it was freely agreed by the customer....it appears to me that its solution should be left to Parliament' (emphasis supplied); and Lord. Wilberforce explained that if fundamental or total breach means a departure from the contract, the question will arise how great a departure, and if it means supply of a different thing, the question will be how different. The Hon'ble Mr. Justice Scarman had stated[2],

> "....for example, in the law of contract it is necessary to consider whether the law should be based upon the principle of freedom of contract or on, some other principle, e.g., that the law will enforce only those bargains that are fair—a principle which would, in the interests of good faith in mutual dealings, impose some restrictions upon contractual freedom. A particular illustration of the need to reach a conclusion on this social question is to be found in the law reform problem that arises over the rights to vendors and hire-purchase-finance companies to contract out of their common law and statutory liabilities. It is well-known that hire-purchase finance companies, warehousemen, and suppliers of goods and services, often make use of standard forms of contract which contain clauses exempting or limiting suppliers' liability...."

Unfair Contract Terms Act 1977 and its provisions.

4.2. The principles on which English Courts have acted have been criticised[3] as follows:—

> "First, since they all rest on the admission that the clauses in question are permissible in purpose and content, they invite the draftsman to recur to the attack. Give him time, and he will make the grade. Second, since they do not face the issue, they fail to accumulate either experience or authority in the needed direction; that of marking out for any given type of transaction what the minimum decencies are which a court will insist upon as essential to an enforceable bargain of a given type, or as being inherent in a bargain of that type. Third, since they purport to construe and do not really construe, nor are intended to, but are instead tools of intentional and creative misconstruction, they seriously embarrass later efforts at true construction, later efforts to get at the true meaning of those wholly legitimate contracts and clauses which call for their meaning to be got at instead of avoided. The net effect is unnecessary confusion and unpredictability, together with inadequate remedy, and evil persisting that calls for remedy ....."

Thus, all these attempts have not been found to be of much use and therefore, in 1977, the British Parliament passed the Unfair Contract Terms Act[4]. The Act probides a statutory definition of the term 'negligence' which is applicable both to tort and breach of contract cases. Under the Act, negligence means, (a) breach of any obligation, arising from the express or implied terms of a contract, to

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1. *Suisse Atlantique Societe d' Agreement Maritime SA* v. *M.V. Rotterdamasche. Kalen Centrale* (1966) 2 All ER 61.
2. Law Reform; the Lindsay Memorial Lectures delivered at the University of Keele, Nov. 1967, p. 29.
3. Prof. Llewellyn, 52 Har, L. Rev. 700.
4. The Unfair Contract Terms Act, 1977.

take reasonable care or exercise reasonable skill in the performance of the contract (b) breach of any common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty); or (c) breach of the common duty of care imposed by the Occupier's Liability Act, 1957. The Act also provides that any clause in a contract which excludes or restricts liability for death or personal injury resulting from negligence shall be absolutely void. In regard to other types of loss, not being death or physical injury, any restriction or excluding clause shall also be void unless it satisfies the requirement of reasonableness. The reasonableness would depend upon the unfairness of the terms in the light of the circumstances which ought to have been either known to or be in the contemplation of the parties. The Act also provides that a person who deals with the consumer on standard terms will not be allowed to claim the protection of any clause restricting or excluding liability if he himself commits breach. Nor can he claim a substantially different performance from that which the consumer or customer reasonably expected from the contract as equivalent to performance.

How the problem is dealt with in the U.S.

4.3. The position in United States is stated in section 575 of the Restatement of Law of Contracts thus[1]: (1) A bargain for exemption from liability for the consequences of a wilful breach of duty is illegal, and a bargain for exemption from liability or the consequences of negligence is illegal if:

(a) the parties are employer and employee and the bargain relates to negligent injury of the employee in the course of employment, or

(b) One of the parties is charged with a duty of public service, and the bargain relates to negligence in the performance of any part of its duty to the public, for which it has received or been promised compensation.

(2) A bargain by a common carrier or other person charged with the duty of public service limiting to a reasonable agreed valuation of the amount of damages recoverable for injury to property by a non-wilful breach of duty is lawful.

Uniform Commercial Code. s. 2.302.

4.4. Section 2.302 of the Uniform Commercial Code of the United States also provides[2], (i) If the Court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract or it may enforce the remainder of the contract without the unconscionable clause or it may so limit the application of any unconscionable clause as to aviod any unconscionable result.

(ii) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect, to aid the court in making the determination.

How the problem is dealt with in Israel.

4.5. In Israel, under the Standard Contracts Law[3], there is a provision for administrative control of such standard forms of contract. There is an administrative board consisting of representatives of Industry and Commerce. This Board decides upon the validity of exemption clauses which are to be included

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1. Section 575, Restatatement, Contracts.

2. Section 2·302, Uniform Commercial Code

3 66 Columbia Law Review, 1340; (1965) 14 The International & Comparative Law Quarterly, 1410.

in standard forms. In doing so, the Board takes into account the prejudice to a consumer and unfair advantage to the supplier. The Board is empowered to receive evidence and if it approves a particular clause, the court cannot invalidate it for a particular period.

Control not feasible. 4.6. Such an administrative control may not be feasible in our society.

CHAPTER 5

SUGGESTIONS AND COMMENTS RECEIVED ON THE WORKING PAPER

Suggestions invited. 5.1. In response to the Law Commission's invitation to the public for comments on the proposal to insert a provision in the Indian Contract Act, 1872,— on the lines suggested in Chapter 6—the following comments have been received[1].

Suggestions received. 5.2. The Register, High Court (Appellate Side) Bombay, the Legal Remembrancer and Secretary, Government of Haryana, one High Court, one judge of a High Court, and the Law Department, Government of Orissa have agreed with the proposal. Four High Courts have no comments to offer. One judge of a High Court has stated that the word 'unconscionable' has acquired a definite meaning in the law of contracts. The Law and Judiciary Department, Government of Maharashtra has, while agreeing with the proposal, suggested a more elaborate provision on the lines of the English law.

Commission's views 5.3. We have taken note of the above suggestions, for which we are thankful. We, however, felt it is better to go step by step and so have not thought of an elaborate enactment on the lines of the English law. The Commission has also noticed the amendments suggested in the Monopolies Restrictive Trade Practices (Amendment) Bill, (No. 37 of 1983) introduced in the Rajya Sabha on December 22, 1983. Those amendments relate to Unfair Trade Practices and the proposed amendments are to be introduced as sections 36A to 36D in the Monopolies Restrictive Trade Practices Act, 1969. The scope of these amendments is different from the recommendation we are making.

CHAPTER 6

RECOMMENDATION OF THE COMMISSION

The recommendaion. 6.1. The only step that can be taken in our country to remedy the evil is to enact a provision in the Indian Contract Act, 1872, which will combine the advantages of the English Unfair Terms Act[2] and Section 2.302 of the Uniform Commercial Code of the United States[3].

Provisions of the recommended enactment. 6.2. The Law Commission therefore recommends the amendment of the Indian Contract Act, 1872, by inserting the following new Chapter and section:—

"CHAPTER IV-A

Section 67A : (1) Where the Court, on the terms of the contract or on the evidence adduced by the parties, comes to the conclusion that the contract or any part of it is unconscionable, it may refuse to enforce the contract or the part that it holds to be unconscionable.

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1 Law Commission File No. F. 2(15)/83-LO. (s. Nos. 3(R) ro 12(R).

2. Paragraph 4·2, *supra.*

3 Paragraph 4·4., *supra.*

(2) Without prejudice to the generality of the provisions of this section, a contract or part of it is deemed to be unconscionable if it exempts any party thereto from—(a) the liability for wilful breach of the contract, or (b) the consequences of negligence".

(K. K. MATHEW)
Chairman

(J. P. CHATURVEDI)
Member

(DR. M. B. RAO)
Member

(P. M. BAKSHI)
Part-time Member

(VEPA P. SARATHI)
Part-Time Member

(A. K. SRINIVASAMURTHY)
Member-Secretary

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4-11-85

Dated:

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