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JUDICIAL APPROACH ON ADHESION AGREEMENTS IN INDIA- A LEGAL PREVIEW

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ABSTRACT

Adhesion agreements has become part and parcel of common man's everyday life transactions and commercial transactions. The essential feature of contract 'Consensus ad idem' meaning Meeting of minds has been reduced to mere adherence of contracts. The lacunae of legislations governing the unfair trade practices of adhesion agreements provide a pivotal role to the judiciary in providing remedy on onerous adhesion agreements. The doctrine of Unfairness and Unconscionability plays a vital part in the judicial decisions. This paper makes normative analysis on the Judicial approach on adhesion agreements in India on comparing the judicial approach on adhesion agreements in the Globalised countries like U.K. and U.S.

Key Words: Adhesion agreements; Judicial approach; Unfairness: Unconscionability.

INTRODUCTION

Adhesion agreements has become part and parcel of common man's everyday life transactions and commercial transactions. The adhesion agreements have occupied nearly all commercial sectors due to mass industrialization and huge consumer population. In Adhesion agreements, weaker parties have to adhere to the drafting of dominant parties[2] with no other option than to take it or leave it option. The 'Consensus ad idem' meaning Meeting of minds has been the essential feature of legal enforcement of contracts in earlier days. [3]The modern contracts with the advent of adhesion contracts have restricted the consent of the consumers to click of button or mere signature. The recommendations of 199th Law Commission report[4] reveals the lacunae of legislations governing the unfair trade practices of adhesion agreements. In this situation, the role of judiciary is essential to determine the nature of adhesion agreements. This paper

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[2] Mo Zhang "Contractual Choice of Law in Contracts of Adhesion and Party Autonomy,"41 Akron Law Rev.124(2008) issue 1, Article 1. Available at: http://ideaexchange.uakron.edu/akronlawreview/vol41/iss1/1
[3] Colleen McCullough, "Unconscionability as a Coherent Legal Concept."164(3) Univ.PA.Law Rev 779–825(2016) Available at www.jstor.org/stable/24753048. Accessed on Nov. 28,2020 at.p.780
[4] Law Commission of India,199th Report on Unfair (Procedural & Substantive) Terms in Contract under the chairmanship of Justice. M. Jagannadha Rao (August31,2006).

analyses the Judicial approach on adhesion agreements in India based on doctrines of Unfairness and Unconscionability and comparing with judicial approach on adhesion agreements in the Globalised countries like U.K. and U.S.

BACKGROUND OF ADHESION AGREEMENTS

[5]During the Middle Ages, ritualistic procedures are considered to be essential for formation of contract. [6]In sixteenth century, the development of free enterprises system led to the formation of adhesion agreements in order to safeguard the exchange of goods and services in corporate market. After the Industrial revolution, the mass production and collective services introduced pre-printed adhesion agreements. The term" Contract of Adhesion" was first coined by the French Civilian Raymond Saleilles on a discussion of party autonomy under German Civil Code[7][8]In 19th century, Professor Albert Ehrenzweig analysed the freedom of contract in adhesion agreements the lacunae of freedom in conflict of Laws in adhesion agreements.

According to the Black's Law Dictionary, Adhesion Contracts are defined as 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 terms[9].The contract can be viewed as adhesive if it fits into any one type of assent mentioned below[10] as

i) take it or leave it transaction with dominating parties unwilling to bargain
ii) Transactions without expectancy of bargaining
iii) Ignorance of few material terms with reasonable expectation

[11]Digitally, the Wrap Agreements like Shrink-wrap and Click-wrap agreements resemble Adhesion agreements in these following characteristics. They are

i) No meaningful negotiation among parties

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[5] Philip Bridwell, "The Philosophical Dimensions of the Doctrine of Unconscionability." 70 *U. Chi. L. Rev.* 1513 (2003) at pg.1516
[6] Friedrich Kessler, "The Contracts of Adhesion--Some Thoughts about Freedom of Contract Role of Compulsion in Economic Transactions," 43 Colum. L. Rev. 629-642 (1943).
[7] In De La Declaration De Volonte art 133at 229 (1901)
[8] Albert Ehrenzweig, "Adhesion Contracts in Conflict of Laws", 53 Colum. L. Rev. 1090, (1953).
[9] Bryan A. Garner Black's Law Dictionary,9th Edition at p.368 (West Publishers, June 2009)
[10] Richard L. Barnes, "Rediscovering Subjectivity in Contracts: Adhesion and Unconscionability", 66 La. L. Rev.127 (2005), Available at: https://digitalcommons.law.lsu.edu/lalrev/vol66/iss1/7
[11] Supra.Note.1 at P.126 Zhang, Mo (2008) "Contractual Choice of Law in Contracts of Adhesion

ii) The read only format merely provide Take it or Leave it without Pick & choose option.

iii) The assent of weaker party remains absent or ambiguous.

iv) unpredictable legal consequences

v) Shrink-wrap agreements are characterised by Money Now and Terms later deals[12]

In ProCD, Inc. v. Zeidenburg[13] the Court of Appeals for the Seventh Circuit upheld a "shrink-wrap" license agreement against the buyer on the ground that the contract may be formed when the buyer used the software after having an opportunity to read the license at leisure.

ADHESION AGREEMENTS AS PSEUDO CONTRACTS

[14] In latter half of 19th century, the classical Law of Contracts evolved with legal doctrine governing contracts. The expression "laesio ultra dimidium vel enormis" in Roman law [15]means 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. The Roman law measures onerous in adhesion contracts based on the economic injury. According to the section 10[16] of the Indian Contract Act,1872, the essential requirements of the valid contracts are Offer, Acceptance, Capacity of Parties, Free consent, Lawful consideration and Lawful Object. The Freedom of contract and Equal bargaining Powers are considered to be imperative and indispensable factors of the Valid Contract. As illustration, [17]the highway robber waylaying the stage coach and on asking passengers to choose between valuables or lives, they have no other choice than to give valuables and it cannot be meant to be bargaining.

The modern contract Law is mainly centered around Freedom of contract due to the adoption of adhesion agreements in many commercial sectors. The adhesion agreements are termed as

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[12] Roger Bern," Terms Later" Contracting: Bad Economics, Bad Morals, and A Bad Idea for a Uniform Law, Judge Easterbrook Notwithstanding", 12 J. L. & POL'Y 641-648 (2004)

[13] 86 F. 3d 1447 (7th.Cir. 1996). ProCD, Inc. v. Zeidenberg and the Enforceability of 'Shrink-wrap" Software Licenses, 31 LOY. L.A. L. REV. 325- 339 (1998).

[14] Richard Stone, *The modern law of contract* 3. (Psychology Press, Cavendish Publishing Limited, London WC1X 9PX, United Kingdom,5th edn.,2005). ISBN 1-85941-667-5

[15] U.S. Legal Definition Available at: [Laesio Ultra Dimidium Vel Enormi Law and Legal Definition | USLegal, Inc. (Visited on Nov.20,2020)]

[16] Indian Contract Act,1872(Act No.9 of 1872) s. 10 states What agreements are contracts —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

[17] Joseph M. Perillo, Corbin on Contracts § 28.2, at 39 (rev. ed. 2002); Richard L. Barnes, Rediscovering Subjectivity in Contracts: Adhesion and Unconscionability, 66 La. L. Rev. 124 (2005)

Pseudo Contracts as they lack freedom of contract and equal bargaining. [18]In the nineteenth-century, philosophically freedom of contract is based on consensus or will theory and economically based on Laissez faire principle. Mere dominance in bargaining position was not considered in determining freedom of contract. [19] As per the English Law, the good faith and fair dealing are foundation of freedom of contract which is determined by analysing whether the unconscionable conduct in formation of contract affect the validity of contract.[20] Any factor showing lack of consent is fatal to the validity of contract. [21]The courts began to determine freedom of contract on scope of clauses in contracts by their incorporation and construction in contracts. The unconscionability nature is mainly determined based on substantive unfairness.

JUDICIAL APPROACH IN U.K. & U.S.

[22]In United Kingdom, Principle of Construction is employed to determine the lack of assent due to failure of proper notice and consideration giving rise to doctrine of Fundamental breach. The reasonableness of clause is determined by reasonable notice of clause with reasonable time like See back in tickets refer to reasonable notice as in Parker v. South Eastern Railway[23]. In Lloyds Bank Ltd. v. Bundy[24], inequality of the bargaining power was enunciated by Lord Denning M.R. as when the bargaining power is grievously impaired by reasons of desires, needs, ignorance or infirmity. Lord Diplock outlined the theory of unreasonableness or unfairness of bargain in A. Schroeder Music Publishing Co. Ltd. V. Macaulay [25].The case dealt with a contract between the song writer and publisher with standard form of contract restraining the trade of the song writer. As per the contract, Schroeder has right to terminate or assign the contract without providing those rights to Macaulay. As it is unequal in bargaining, the contract was held to be of unconscionable bargain. In photo Production Ltd. v. Securicor Transport Ltd.,[26] a case before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions. The decision appears to proceed on the ground that the parties were businessmen

[18] Joseph Chitty, Vol.1 *Chitty on contracts: General principles* 21 Para 1-028 ,029 (Sweet & Maxwell, Thomson Reuters Ltd.,31st edn.,2012)., ISBN 9780414047990
[19] Id. at p.31, Para 1-039.
[20] Michael Furmston, Cheshire, Fifoot and Furmston's Law of Contract (Oxford University Press,16th edn.,) Print Publication Date: Aug 2012 Print ISBN-13: 9780199568345 Published online: Jun 2013 DOI: 10.1093/he/9780199568345.001.0001
[21] Supra.Note.13 at p.220-
[22]Ramaseshan V, “Adhesion contracts and the Indian law of contract”, XVII (2) JILI :237-56 1975 at. p.240
[23] (1877) 2 CPD 416.
[24] 1973(3) All E.R. 757
[25] 1974(1) W. L.R.1308.
[26] [1980] UKHL 2; [1980] A.C. 827

and did not possess unequal bargaining power. The House of Lords did not in that case reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position In Watford Electronics Ltd v. Sanderson CFL Limited[27] it was held that the limitation clause has to be analysed for reasonableness based on exclusion of liability and assurance of the dominant party to remove the difficulties in software installation. Under statutory regulations, the Consumer Credit Act 1974 deal with extortionate credit bargain, the Unfair Contract Terms Act 1977 primarily concerns about clauses limiting liability and the Unfair Terms in Consumer Contracts Regulations 1977 apply to consumer contracts without affected by bad bargain.

In U.S. [28]Restatement of the Law —Second and the Uniform Commercial Code mainly governs unconscionable bargain in adhesion agreements. In Reinstatement of the Law —Second by the American Law Institute, § 208 states that if a contract or term is unconscionable at the time of making of contract, the court may refuse to enforce or may enforce the remainder of contract without the unconscionable term or limit the application of unconscionable term to avoid unconscionable result. According to the section 2-302 of Uniform Commercial Code,1952, the adhesion contracts are not unconscionable per se and the claim of unconscionability can be raised on the more standardised agreements with lesser bargaining power to a party. In Henningsen v. Bloomfield Motors Inc.,[29], the U.S. Supreme court held that as Limited Liability clause in the back of purchase contract is of six-point type and never brought to the attention of purchasers, it is devoid of public policy. Hence it is held that defendant Motor company is liable for the injury caused to plaintiffs by defect in steering mechanism of car.

[30]Inspite of the dominance of the principle of pacta sunt servanda (contracts are to be kept) Consensual theory on free consent is accepted with strict proof. in Villa Milano Homeowners Association v. Il Davorge[31], the Condominium project developer made declaration of covenants and a clause on page 66 of the filing required the purchaser of a condominium unit to arbitrate complaints for damages arising from design defects. The purchaser was not given opportunity to negotiate any of the terms including the arbitration provision. The court held the filing as a unilateral attempt by developer to preclude or limit any right of action of purchaser

[27] [2001] EWCA Civ 317
[28] Restatement (Second) of Contracts (1981). § 208 at page 107
[29] 1960 161 A.2d.69
[30]John R. Peden in 'The Law of Unjust Contracts'2829 (Butterworths publications, Sydney 1982,) 1
[31] 102 Cal. Rptr. 2d 1 (Cal. Ct. App. 2000).

was a shock to the conscience and thus unconscionable. [32]The 1960s to 1970s U.S. judicial decisions show the initial recognition of Adhesion agreements and the 1980s to 1990s witnessed occasional usage of the doctrine. The average of 1.67 contract arbitration cases between 1980s and 2001 have raised to average of 7.1 cases between 2001 to 2012 and most recently contract invalidation by unconscionable doctrine has raised to twelve times.

In Cook's Pest Control v. Robert & Margo Rebar[33], Margo Rebar and her husband Robert entered into a one-year Termite control agreement with Cook's Pest Control, with arbitration provision denying the right to sue. On renewal, Mrs Rebar submitted to modify arbitration provision. The Supreme court of Alabama held that as the renewal is accepted, the addendum prevails over the original contract and Rebar has right to sue on fraud and negligence of Cook's Pest Control. This shows that awareness of consumers can protect against the unconscionable nature of adhesion agreements.

JUDICIAL APPROACH IN INDIA

In India there is lacunae of legislations governing unfairness in adhesion agreements though it is impliedly mentioned under [34]Undue influence and [35]Misrepresentation of Indian Contract as per the recommendations of 199th Law Commission Report. The definition of unfair contracts under [36]the Consumer Protection Act,2019 under s.2(46) also lacks the explanation of unfairness and unconscionable nature of contracts. The judicial approach of adhesion agreements in India are analysed under doctrine of Unfairness and Unconscionability.

Doctrine of Unfairness

The doctrine of Unfairness or Reasonableness is mainly based on public policy In Central Inland Water Transport Corporation Ltd & Anr. v. Brojo Nath Ganguly & Anr.[37], the appellant company owned by the Government of India made scheme of arrangement with Rivers Steam Navigation Company Limited relating to employing existing staffs of latter company or paying compensation. The petitioners are terminated under Rule 9(i) of the Service Rules dealing with termination of employees other than misdemeanour with three months' salary and without

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[32] Supra.Note.2 at p.786
[33] Cook's Pest Control v. Rebar, 852 So. 2d 730 (Ala. 2002).
[34] Indian Contract Act,1872 (Act No.9 of 1872) s.16.
[35] Id.at s.18.
[36] The Consumer Protection Act,2019, (Act 34 of 2019), s.2(46)
[37] 1986 AIR 1571 1986 SCR (2) 278 1986 SCC (3) 156 1986 SCALE (1)799

assigning reason under the Rule 9(ii). The Supreme court held that the [38]Employee contracts are mostly standard form of contracts drafted by party with superior bargaining power. [39]An unconscionable bargain was held as it would, therefore, be one which is irreconcilable with what is right or reasonable. Considering it to be Undue influence may result in voidable contracts resulting in multiplicity of litigations. The court held Rule 9(i) as Henry VIII clause giving the corporation arbitrary power is against public policy and hence void. In Brojonath case, doctrine of Reasonableness of terms is decided based upon the right or reason intended to secure socio-economic justice and conform to mandate of equality under Article 14. The doctrine is not applicable for contracts with equal bargaining power and of commercial transactions.

In LIC of India & Anr. v. Consumer Education & Research Centre & Ors[40]the claim of the respondents for convertible term insurance policies under table 58 was turned down by LIC. The Gujarat High court held that the eligibility of policy based on first class lives under Table 58 are neither unjust nor arbitrary and further held that the applicability of plan only for persons from Government, Quasi-Government Organisation or reputed commercial firms with leave eligibility is unconstitutional. The Supreme court considered that an unfair and untenable or irrational clause in a contract is also unjust amenable to judicial review.

In a recent case of Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan[41] 2019 and Pioneer Urban Land & Infrastructure Ltd. Vs. Geetu Gidwani Verma & Anr[42], The purchaser of apartment entered Agreement of Buyer with the Arya Project Builders. As per the clause. As per Clause 11.2 of the Agreement, the Appellant – Builder has to apply for the Occupancy Certificate within 39(Thirty-nine) months from the date of excavation, with a grace period of 180 days. But the builder failed to apply and offered possession after inordinate delay of 3 years. Meanwhile the purchaser made an alternative accommodation due to inordinate delay by the builder. The Flat Purchaser sought stay of the cancellation of the allotment as a collateral, till his claim for refund was adjudicated by the National Commission. [43]As per Clause 6.4 (ii) of the Apartment Buyer's Agreement, the Appellant Builder could charge Interest @18% p.a. for delayed payments but as per Clause 11.5 (iv) of the Agreement, Flat

[38] Supra. Note. 36 at Para 2.5.
[39] Shorter Oxford English Dictionary, Vol.II, 3rd Edition, page 2288,
[40] 1995 AIR 1811 1995 SCC (5) 482 JT 1995 (4) 366 1995 SCALE (3)627
[41] [2019] INSC 409 (2 April 2019) Civil Appeal No. 12238 OF 2018
[42] [2019] INSC 409 (2 April 2019) Civil Appeal No.1677 OF 2019
[43] Ibid.pg.16, para 6.4.

Purchaser was entitled to Interest @9% p.a. only in case of delay. Clause 6.4 (iii) of the Agreement entitles the Appellant – Builder to cancel the allotment and terminate the Agreement, if any instalment remains in arrears for more than 30(Thirty) days but as per Clause 11.5 of the Agreement, if the Appellant – Builder fails to deliver possession of the apartment within the stipulated period, the Respondent – Flat Purchaser has to wait for a period of 12 (Twelve)months after the end of the grace period, before serving a Termination Notice of 90 days on the Appellant These clauses reveals it to be one-sided contract and the Supreme court held it to be of agreement with unfair contractual terms and ordered for refund of amount within 3 months[44].

Doctrine of Unconscionability

[45]The doctrine of Unconscionability dates back to seventeenth century in courts of equity availed in lieu of contention of Public policy.[46]The Professor Leff on describing about unconscionability has noted that "[W]hat may permissibly make the judges' pulses race or their cheeks redden, as so to justify the destruction of a particular provision, is, one would suppose, what the judge ought to have been told by the statute" and Prof.Leff concluded that the meaning of unconscionable is pejorative.[47] A contractual term is said to be unconscionable if it undermines the integrity of the contracting system or enabling statute. Unconscionable terms of the contract are those contracts with stronger party dominating weaker party. [48]As it does not come under purview of any provisos in the Indian Contract Act, 1872 the courts have interpreted the unconscionability in different forms of the statutes, to make the condition justifiable towards the weaker society.

In Ferro Alloys Corpn. Ltd v. A.P. State Electricity Board & Ors[49] the Andhra Pradesh State Electricity Board, under Section 49(1) of the Electricity Supply Act,1948, the consumers mandatory deposit of three months and Clause in General Terms and Conditions providing for non- payment of interest on Consumption Deposit was contended to be void. According to

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[44] Supra.Note.41 at pg.22.
[45] Amy J. Schmitz, "Embracing Unconscionability's Safety Net Function", 58 Ala. L. Rev. 80-82 (2006).
[46] Arthur Allen Leff, "Unconscionability and the Code – The Emperor's New Clause", 115 U. PA. L. REV. 485-487 (1967).
[47] Paul Bennett Marrow, Squeezing Subjectivity from the Doctrine of Unconscionability, 53 Clev. St. L. Rev. 188 (2005-2006).
[48] Rishabh Srivastava and Angad Ahuja. "Unconscionable Contracts: A Critical Analysis of Indian Legal System." 7 Indian JL & Just.231 (2016).
[49] 1993 AIR 2005 1993 SCR (3) 199 1993 SCC Supl. (4) 136 JT 1993 (3) 82 1993 SCALE (2)593 Available at:.www.liiofindia.org.

Farnsworth, the precursor of unconsciousness is that if the contract is so unfair as to "shock the conscience of the court,' it would not be enforced in equity. The Supreme court held that the Conditions and the terms of supply providing for non- payment of interest is not so unconscionable as to shock the conscience of the Court and hence held to be valid

In Assistant General Manager State Bank of India V. Radhey Shyam Pandey[50], in a Voluntary Retirement Scheme (VRS) evolved by Indian Bank Association, SBI adopted this scheme of granting VRS to employee with service of 15(Fifteen) years with benefits. The Deputy General Manager clarified it to be not more than 20(Twenty) years without any amendment. SBI refused the benefits as the appellant claimed the scheme in his super annuation age with service of 19(Nineteen)years 9(Nine)months. The court held that once accepted and approved by SBI, SBI cannot estop after the retirement of Employee and it will be violative of Article 14,19(1)(g) and 21 of the Constitution of India. The Supreme court also held that while construing a contract, the language and surrounding circumstances of the overall scheme, memorandum and letters are to be read conjointly. In Administrative Law mere unreasonableness is enough to set aside a contract while unconscionable relates to private law.

<u>RESULT & DISCUSSION</u>

[51]According to Wertheimer concept, the freedom of contract is determined through statistical base-line on reasonable expectation of future objectivity of contract, phenomenological base-line on view-point of parties and moral base-line on moral expectations. The coinciding nature of three base-lines may determine freedom of contract. [52]The sanctity of contract evolves from sacred principle to shibboleth with limits of fraud, coercion, misrepresentation and undue influence as obstacles to free consent. The modern contract theory is mainly focused on freedom of contract and unequal bargaining power. The doctrine of unconscionability is under sui generis approach determined based on facts and circumstances of case[53].[54]The procedural unconscionability arises from activities of parties during negotiation and the substantive unconscionability arises from operation of terms in agreement. [55]Comparing to procedural

[50] [2020] Insc 223 (2 March 2020) Civil Appeal No.2463 of 2015.
[51] Michael J. Trebilcock, *The limits of freedom of contract*,79-80 (Harvard University Press, Cambridge, England, 1st paperback Edition 1997) ISBN 0-674-53430-1.
[52] Supra.Note.21 at p.239.
[53] Supra. Note 46 at p.190.
[54] Id.at 193.
[55]Srivastava, Rishabh, and Angad Ahuja. "Unconscionable Contracts: A Critical Analysis of Indian Legal System." 7 Indian JL & Just. 242 (2016).

unconscionability, the substantive unconscionability is less deliberated by Courts of Law.[56]Traditionally and according to Two-pronged analysis, both the procedural and substantive unconscionability have to be proved for declaring contract to be void. Now the Two- pronged analysis is made with sliding scale method balancing the lesser nature of either procedural or substantive unconscionability. Reasonable person's lack of knowledge and harm on third parties fulfils the legal concept of unconscionability[57] and jural concept based on reasonable expectation.

The judicial approach shows that English courts in U.K. mainly adopt doctrine of Unfairness deciding freedom of contract and in U.S. the doctrine of unconscionability with unequal bargaining is taken as main factor to decide the validity of adhesion agreements. The judicial approach in India considers unequal bargaining power as main factor accompanied with unreasonable or unfair contract terms as evident from Brojonath case. The unconscionability is determined based on the contract terms that shook the conscience of court as held in Ferro Alloys Corporation Ltd case law and the Supreme Court also suggested to look into procedural unconscionability on verifying substantial unconscionability.

The unconscionability can be decided by Parol Evidence rule determined based on acts prior negotiations if the adhesion contracts are integrated or partially integrated. The second Restatement also allows admission of evidence prior negotiation if writing of agreement does not constitute to be final expression of intention of parties[58]. According to Black's Law Dictionary[59] " The basic test of "unconscionability" of contract is whether under circumstances existing at time of making of contract and in light of general commercial background and commercial needs of particular trade or case, clauses involved are so one-sided as to oppressor unfairly surprise party". [60]The Will theory of Contract also plays an essential role to understand the problem of unconscionability as it helps to find choice of positive and negative freedom

[61]The main provisos can be parties preparing to live up to agreement and not in conflict of public policy. [62]It is the need of the day that our legislatures and policy makers have to go

[56] Supra.Note.2 at, p.782
[57] Id.at p.815.
[58] Id.at. p.822.
[59] Bryan A. Garner, Black's Law Dictionary (Fifth Edition) at page 1367
[60] Bridwell, Philip. "The Philosophical Dimensions of the Doctrine of Unconscionability." *U. Chi. L. Rev.* 70 (2003): 1513.p.1515-16
[61] Supra.Note.46 at p..223
[62] Supra.Note.54 at 245

ahead and make a concrete law on it. [63]In light of famous Aristotle's famous dichotomy, the contract rules should be understood in terms of corrective justice based on reasons on interpersonal relations restoring to original position rather than distributive justice and according to Kantian terms the limit in freedom must be general and congruous. The classic doctrine which protected the objective theory of contract is that of the duty to read and understand.'[64]. The oppressive clauses come to the sight only on arising of disputes. [65]Although consumers read, they have no other option than to find service elsewhere if any term is found to be unfavourable. The Coherence concept based on legal concept and jural concept will make the court to decide on law of unconscionability[66]. Firms can adopt simple readable contracts[67]. The relationship between Standard form of contracts, consumer protection and unequal bargaining though intertwine, remains distinct. The analysis of paper is limited to doctrine of unfairness and unconscionability in Indian judicial approach and the comparative analysis is also limited to the analysis in U.S. and U.K. leaving the gap of analysis of judicial approach on adhesion agreements in other Globalised countries.

CONCLUSION

The Judicial approach on adhesion agreements in India is mainly based Doctrine of Unfairness and Unconscionability with inequality in bargaining power as main factor to be established. The legislative enactments in determining the factors governing Unfairness and Unconscionability will give the hope and belief for every man to approach the Court of Law. The degree of unconscionability shall be determined based on procedural and substantive unconscionability with balancing sliding scale method for gaining remedy over unfair adhesion agreements. The freedom of contract may be decided on the consumer's knowledge, understandability and reasonable expectation. The Legislative measures on Freedom of contract and unconscionability will smoothen the judicial functioning on adhesion agreements and may decide the parameters of fairness of adhesion contracts.

[63] Martín Hevia, Vol.101, *Reasonableness and Responsibility: A Theory of Contract Law*, ch.2.1, p.11 (Springer Science & Business Media, Netherlands,2012) ISBN:9789400746053, 9400746059.
[64] Dugan v. R.J. Corman R.R. Co., 344 F.3d 662, 667-68 (7th Cir. 2003); Supra.Note.2 at p.129
[65] Sierra David Sterkin, "Challenging Adhesion Contracts in California: A Consumer's Guide", 34 Golden Gate U. L. Rev.287 (2004)
[66] David A. Hoffman "Relational Contracts of Adhesion." 85(6) U Chi L Rev 1395-1462, 2018. *JSTOR*, www.jstor.org/stable/26497652. Accessed 28 Nov. 2020.
[67] Supra Note.19 at P.29 Cheshire, Fifoot and Furmston's Law of Contract.