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## THE INDIAN JUDICIARY AND THE DOCTRINE OF UNCONSCIONABILITY

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### ABSTRACT

The doctrine of unconscionability has become an important safeguard in contract law, especially in contexts where parties do not negotiate on equal footing. In India, this doctrine has developed almost entirely through judicial interpretation, since the Indian Contract Act, 1872 does not explicitly address unconscionable agreements. As a result, courts have played a central role in shaping how unfairness in contracts is identified and addressed. This paper explores that evolution, beginning with the doctrine's historical foundations in English common law, where courts intervened to strike down bargains that were excessively harsh or approaches, many of which now rely on clear statutory provisions.

In contrast, India's approach is largely judge – made. Through landmark decisions – most notably *Central Inland Water Transport Crop. V. Brojo Nath Ganguly* – judiciary expanded traditional contract principles to protect parties facing economies distress, lack of bargaining power, or an absence of meaningful consent. This paper examines how the contract was formed, and substantive elements, such as the fairness to the terms themselves. The study also highlights the growing influence of constitutional values, especially the principles of fairness, equality, and dignity under Articles 14 and 21, in shaping modern interpretations of contractual fairness.

A comparative review of jurisdiction such as the United States, United Kingdom, European Union and civil law systems reveals that India lacks the legislative clarity these regions provide. While Judicial creativity has filled some gaps, the absence of a statutory frameworks continues to produce inconsistent outcomes.

This paper argues that India would benefit from codifying the doctrine, adopting a structured dual – test approach, and strengthens protections in consumer and digital contracts. Clearer legal standard would ensure consistency contractual practices.

## INTRODUCTION

Contract forms an integral part of our day-to-day life whether we realize it or not, we enter into numerous contracts every year – from simple everyday transactions to legal agreements. The heart of every contract is “CONSENT”. Without genuine consent a contract may either be void and voidable depending on the circumstances<sup>1</sup>.

Consent essentially means giving each party the freedom to make an informed and voluntary decision regarding the agreement. For acceptance to be valid, it must be a real meeting of minds – an assent that is free and genuine.

When consent is not given and is obtained through coercion, undue influence, fraud or misrepresentation, the agreement becomes voidable at the option of the party whose consent has been compromised. The concept of free consent directly relates to the DOCTRINE OF UNCONSCIONABLE CONTRACT. Even when an agreement appears valid on paper, it may, in reality, be the result of unequal bargaining power, exploitation or unfair advantage taken by one party over another<sup>2</sup>.

Unconscionable contract refers to an agreement that is so one sided, harsh or oppressive that it shocks the conscience of the court. These contracts are fundamentally unfair to the one of the parties, usually because of unequal bargaining power, lack of meaningful choice or the exploitation of vulnerability<sup>3</sup>. In simple words, it's a kind of “TAKE IT OR LEAVE IT” agreement where one party has no real choice and ends up agreeing to terms that no reasonable person would ever accept voluntarily.

In legal terms, an unconscionability is that no person in their mind would enter this contract and no honest and fair person would accept. This contract often arises in situations where one party owing factors such as poverty, illiteracy, ignorance or distress is compelled to accept

terms dictated by a more powerful party. The element of genuine consent, which is fundamental to any valid contract, becomes questionable<sup>4</sup>. The doctrine of unconscionability empowers courts to ensure fairness in contractual dealings. This principle serves as a safeguard as a safeguard against the misuse of freedom of contract and ensure that contracts are entered into

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<sup>1</sup> iPleaders Blog, *Law of Contracts Notes* – “The agreement should not explicitly be declared to be void”

<sup>2</sup> Nivedita Arora, *Contract Unconscionability in India*, iPleaders Blog

<sup>3</sup> Ananya Sharma, A Critical Analysis of Unconscionable Contracts, 4 Indian J.L. & Legal Rsch. 1 (Issue 5, 2022).

<sup>4</sup> Garner, B. A. (2011, Ed. 9) 'Unconscionable contract or term', Black 's Law Dictionary, West Publishing Company.

with fairness, reasonableness and mutual respect for both parties interest.

Unconscionable contracts thus represent an important intersection between contract law and principles of equity.

## STATEMENT OF THE PROBLEM

While the Indian Contract Act, 1872, emphasizes the importance of free consent and fairness, it does not expressly define or regulate unconscionable agreements. There is no specific law or statutory provision in India that directly codifies the concept of unconscionable contracts. As a result, the interpretations and enforcement of such agreements have been left largely to the discretion of the judiciary.

This absence of a clear statutory framework has led to inconsistencies in judicial interpretation and uncertainty in the applications of the doctrine of unconscionability.

## RESEARCH QUESTIONS

This gap in legislature raises critical questions:

- Q1) How have Indian courts evolved the Doctrine of Unconscionability through case law?
- Q2) What standards or how to determine when a contract becomes unconscionable?
- Q3) How is the Indian Judiciary giving judgements on this type of contracts?

## RESEARCH OBJECTIVES

- 1) To analyze judicial interpretations and trends in India regarding unconscionable contract, focusing on key judgements that have shaped the doctrine over time.
- 2) To examine the concept of unconscionable contracts within the framework of the Indian Contract Act, 1872 and understand its relationship with the principle of free consent.
- 3) To identify the factors that courts consider to determine whether a contract or its items are unconscionable contract
- 4) To compare Indian Judicial approaches with other common law states

## METHODOLOGY

This research adopts a DOCTRINAL, ANALYTICAL method of legal research primarily based on the “DOCTRINE OF UNCONSCIONABILITY” and on the analysis of existing

laws, Judicial decisions and scholarly writings.

## HISTORY OF UNCONSCIONABLE CONTRACT

The concept of unconscionable contract has deep roots in English Common Law traced back to the 16<sup>th</sup> Century. It emerged as an equitable doctrine developed by the COURT OF CHANCERY to protect weaker parties from exploitation by those with superior bargaining power. The principle was grounded fairness, ensuring that the contracts were not enforced if their terms were so one – sided as to ‘shock the conscience’ of the court<sup>5</sup>.

The doctrine later influenced AMERICAN JURISPRUDENCE, where it gained statutory recognition under Section 2 – 302 of the Uniform Commercial Code (UCC) in the mid-20<sup>th</sup> century<sup>6</sup>. In the United States, courts began to apply the concept more during the 1960s and 1970s, especially in consumer contract and standard form agreement that were presented on a “take it or leave it” basis. The US approach distinguished between procedural unconscionability and substantive unconscionability<sup>7</sup>.

In India, the doctrine of unconscionability developed through judicial interpretation, not legislative amendment. Although the Indian contract Act 1872 does not expressly mention unconscionable contracts, Indian court began acknowledging the issues of inequality of bargaining power as early as the 1960s.

The doctrine firmly recognized the CENTRAL INLAND WATER TRANSPORT CORPORATION LTD. v. BROJO NATH GANGULY (1986) 3 SCC 156<sup>8</sup>, where the Supreme Court held that a contract term imposed by a dominant party on a weaker one, without real negotiation, could be declared void as being opposed to public policy.

The evolution of unconscionable contracts in India thus reflects a shift from a rigid adherence to freedom of contract towards a more balance approach emphasizing equity and fairness. The doctrine continues to develop as a judge made principle.

## DETERMINATION

Since the Indian Contract Act, 1872 does not expressly define or regulate unconscionable

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<sup>5</sup> Adv. Aayushi Selot & Adv. Pranjal Shukla, Beyond the Fine Print: A Critical Examination of Unconscionable Contracts, *J. Emerging Technologies & Innovative Research (JETIR)* Vol. 11, Issue 5 (May 2024).

<sup>6</sup> Earl of Chesterfield v. Janssen, (1750) 28 Eng. Rep. 82 (Ch).

<sup>7</sup> Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965)

<sup>8</sup> Brojo Nath Ganguly v. Central Inland Water Transport Corp. & Ors., C.O. No. 3312(W) of 1987 (Cal. H.C., Jan. 28, 1988), Casemine.

contracts, Indian courts have evolved the doctrine through interpretation. To decide the contract is unconscionable, court generally conduct a two – stage analysis<sup>9</sup> :-

### **Examination of Procedural Unconscionability**

This focuses on how the contract is made. The court consider –

- (I) Inequality of bargaining power – if one party has significant greater power, economic, social or intellectual and the other party had no meaningful choice.
- (II) Lack of negotiation or consent – when the weaker party had to accept a “take it or leave it” contract without the real freedom to bargain.
- (III) Absence of informed consent – if terms were hidden in fine print written in complex language or not properly disclosed.

### **Examination of substantive unconscionability**

The court analyze what the contract says. The court consider –

- (I) unfair or one-sided terms – clauses that unduly benefit one party impose heavy burden on the other, or shock the conscience of the court.
- (II) Disproportionate consideration – where one-party gains much more than the other for unequal exchange value.

The Indian courts often use a dual test similar to that in the United States and the UK. Both need not always be present, but a strong showing of one can compensate for a weaker showing of the other. This approach ensures that the freedom of contract is preserved while also preventing abuse of dominance.

### **CROSS JURISDICTION ANALYSIS**

- i. United States – established through Uniform Common Code under section 2 – 302. Court generally requires to do dual test to ensure the unconscionability of the contract<sup>10</sup>.
- ii. United Kingdom – The common law doctrine is very narrow. Protection is primarily statutory. Consumer Rights Act 2015 and Unfair Contract Terms Act, 1977 focuses on the

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<sup>9</sup> Deepti Gopimohan, *Unconscionable Contracts: How to Identify and Avoid Them*, MyDock365 Blog (Aug. 2025)

<sup>10</sup> R. J. Hunter Jr., *Unconscionability Revisited: A Comparative Approach*, 68 N.D. L. Rev. 293 (1992)

unconscionability of the contract<sup>11</sup>.

iii. European Union – Based on the Unfair Contract Terms Directive 93/13/EEC, which requires member states to ensure that unfair terms in consumer contract is not binding. Applies strictly on consumer contracts. Emphasizes the lack of individual negotiation and the concept of significant imbalance and good faith<sup>12</sup>.

iv. Civil law system (i.e., France Germany) – Civil law system often rely on the overarching principle of good faith to invalidate abusive clauses, rather than a single doctrine of unconscionability. Doctrine of Lesion address gross inadequacy of value and statutory consumer protections mirror to EU directive<sup>13</sup>.

## LEGAL ASPECT

While the Indian contract Act, 1872 does not expressly recognize or define unconscionable contracts, the legal foundation for controlling unfair or oppressive bargains is embedded within the act itself – particularly in its provisions concerning free consent, undue influence and public policy. Over the years, the Indian courts have interpreted these provisions expansively developing a doctrine of unconscionability grounded in equality, justice and good conscience.

### Statutory Framework

Section 13,14,16 and 23 of the Indian Contract Act 1872 collectively aim to ensure that contracts are entered into freely and fairly, without any exploitation of weaker parties or abuse of dominant parties<sup>14</sup>.

### SECTION 13 – CONSENT

*“Two or more person are said to consent when they agree upon the same thing in the same sense”*

Consent forms the basis of any valid contract. It ensures that parties understand and voluntarily agree to the terms. In unconscionable contract the weaker party merely complies due to lack of bargain power. When there is no free consent and informed, the very foundation of a contract collapses, rendering it voidable at the instance of an aggrieved party.

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<sup>11</sup> Dharmita Prasad & Pallavi Mishra, *Unconscionability of E-contracts: A Comparative Study of India, the United Kingdom, and the United States*, 43 Liverpool L. Rev. 339 (2022),

<sup>12</sup> Dharmita Prasad & Pallavi Mishra, *Unconscionability of E-contracts: A Comparative Study of India, the United Kingdom, and the United States*, 43 Liverpool L. Rev. 339 (2022),

<sup>13</sup> “Unconscionable Contract: A Comparative Study of the...” (SciSpace)

<sup>14</sup> Nivedita Arora, Contract Unconscionability in India, iPleaders Blog (Oct. 30, 2017)

## SECTION 14 – FREE CONSENT

*“Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake”*

Section 14 reinforces that a valid contract requires voluntary and genuine assent. When free consent is tainted by unfair conduct or pressure, the agreement becomes voidable. Unconscionable contracts often fall within the scope, as they result from economic distress, exploitation rather than mutual understanding.

## SECTION 16 – UNDUE INFLUENCE

*“A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other”*

This section most closely aligns with the concept of unconscionability. It recognizes that certain relationships inherently involving inequality of power such as employer – employee, guardian – ward or lender – borrower – where one party may be dominant the will of other.

The court have used section 16 to strike down contracts that appear unjust one sided or oppressive even if no explicit coercion is proven.

## SECTION 23 – PUBLIC POLICY

*“The consideration or object of an agreement is lawful, unless... the court regards it as immoral, or opposed to public policy.”*

This section allows court to declare an agreement void if it contravenes principles of fairness, morality or justice. Through judicial interpretation the idea of public policy has come to include equity, good conscience and protection of weaker section. Contracts containing unconscionable terms are often struck down as being contrary to public policy because they offend the spirit of fairness and reasonableness inherent in law.

## CASE LAWS<sup>15</sup>

### Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (1986) 3 SCC

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<sup>15</sup> Shubhankar Sharan, *When Autonomy Manifests in Inequality: The Supreme Court’s Misstep on Unconscionability*, 4th Yr., Gujarat Nat’l L. Univ., Gandhinagar, Aug. 21, 2024, Indian J. of Arbitration Law Blog

**156<sup>16</sup>**

This case is considered as the cornerstone of the doctrine of unconscionable contracts in India. The doctrine of unconscionability was formally recognised in Indian Law. It marked a shift from the classical contract law (freedom of contract) to modern principles of fairness and equity. The case expanded the meaning of public policy to include unconscionable and oppressive contracts. It laid the foundation for later ruling in cases like *LIC of India v. Consumer Education and Research Gate* (1995) etc.

#### **LIC India v. Consumer Education and Research Centre (1995) 5 SCC 482**

The Supreme court held that unfair, unreasonable and unconscionable terms in standard form of contract violates Article 21 of the Indian Constitution and are opposed to public policy under section 23 of the Indian Contract Act 1872. The court extend the doctrine from the private employment contracts to consumer and welfare contracts, emphasizing constitution fairness.

#### **ONGC Ltd v. Saw Pipes Ltd (2003) 5 SCC 705**

The supreme court held that a contract term contrary to justice, equity and good conscience would be void under section 23 of Indian Contract Act 1872 as being against public policy. This judgement extended the principle of unconscionable to commercial contracts not just employment or consumer agreements marking a boarding of judicial intervention in contract law.

#### **Hindustan Times. V. State of UP {2003(1)} SCC 591**

The court reiterated that the state cannot impose arbitrary contractual conditions, even in government contracts. The public authority must act fairly and reasonably, ensuring that the terms are not one sided. The doctrine of unconscionability also applies to state contracts under the principle of administrative fairness.

#### **Delhi Transport Corporation v. D.T.C. Mazdoor Congress (1991) AIR 101, SCC (1) 600**

The court invalidating a clause that allowed the employer to terminate employees without giving reason. It ruled that such clauses are unfair and violative in natural justice.

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<sup>16</sup> Central Inland Water Transport Corporation Ltd. & Anr. v. Brojo Nath Ganguly & Anr., (Civil Appeal Nos. 4412 & 4413 of 1985) 1986 AIR (SC) 1571, 1986 SCR (2) 278 (India)

## RECOMMENDATION

1. Since Indian Law does not clearly define unconscionable terms, it would be useful to include a specific provision – similar to UCC Section 2 – 302 or the EU’s unfair terms directive – within the Indian Contract Act ,1872. This would reduce uncertainty and help courts apply the doctrine more uniformly.
2. Courts already procedural and substantive unconscionability in practice, but a clear articulation of this two – step test would make judicial reasoning more consistent and predictable.
3. Many unfair terms arise because important clause is hidden in fine print or drafted in complex language. Introduction disclosure requirements – especially for employment, consumer and online contracts – would prevent parties from being misled or pressured into agreeing to oppressive terms.
4. With the rapid growth of e – commerce and online platforms, consumer agreement often contains terms that users do not fully understand or cannot negotiate. Adding specific protections for digital contracts under the Consumer Protection Act would align India with global standard.
5. Mediation and Arbitration forums could be encouraged to review contracts for harsh or oppressive clauses at an early stage, reducing disputes and preventing lengthy litigation.
6. Any reform should pay special attention to groups that are most at risk such as low income workers, small businesses, and individual with limited educational or financial resources – because they are the ones who most frequently contract terms.

## CONCLUSION

The Doctrine of Unconscionable contracts serves as a vital safeguard against the misuse of contractual freedom. While the Indian Contract Act 1872 upholds the principle that parties are free to determine their own terms, this freedom cannot be absolute. When one party exploits its superior position.

Indian Judiciary through a series of landmark judgement such as Central Inland Water Transport Corporation v. Brojo Nath Ganguly has progressively recognised and strengthened the doctrine of unconscionability. This judicial trend reflects an evolving understanding that

equity and public policy must guide contractual relationships ensuring that law does not become a tool for oppression.