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RESEARCH ARTICLE



Beyond borders: unravelling the territorial scope of consumer protection laws in India

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ABSTRACT

The Consumer Protection Act 2019 (“CPA 2019”) is India’s principal consumer protection law. However, the rise of international consumer contracts has made consumer dispute resolution complex. This complexity is exacerbated by standard-term contracts prioritizing corporate interests over consumer rights. While CPA 2019 provides mechanisms for consumer redress, its extraterritorial application remains ambiguous because of the absence of clear conflict-of-law rules. This article assesses CPA 2019’s reach, authority to invalidate exploitative dispute resolution clauses, and potential to supplant foreign law. It advocates for strengthening Indian conflict-of-law rules to align with international standards established in other jurisdictions. This would enhance the uniformity and predictability of consumer protection in India, improve safeguards, and reduce the risk of consumer exploitation.

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1. Introduction

Consumer disputes are rising globally, and India is no exception. Since the enactment of the Consumer Protection Act 1986 (“CPA 1986”), the Supreme Court of India (“Supreme Court”) has handled approximately 13,601 cases.¹ Of these 11,390 cases were filed after 2010,² with disputes concerning defective goods, deficient services, and unfair practices being the most common.

As state participation in international trade increases, so does the complexity of resolving consumer disputes, particularly when determining which country’s law should govern a dispute. International contracts include choice-of-court and choice-of-law clauses, allowing parties to select the jurisdiction and law for resolving their dispute.³ While such clauses enhance certainty and reduce transaction costs, they may disadvantage consumers – especially in standard-term contracts between parties with unequal bargaining power. The “weaker” party is compelled to accept the terms imposed by the “stronger” party.⁴ In several industries, the widespread adoption of pre-drafted or

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¹The data was collected by examining the cases reported by the Supreme Court <www.scconline.com> accessed 5 May 2024. The numbers are approximate.

²ibid.

³Alex Mills, *Party Autonomy in Private International Law* (Cambridge University Press 2018) 31–35, 314–357.

⁴Giesela Rühl, ‘Consumer Protection in Choice of Law’ (2011) 44(3) *Cornell International Law Journal* 569, 572; MP Ram Mohan, ‘Indian Law on Standard Form Contracts’ (2020) 62 *Journal of the Indian Law Institute* 413, 414.

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standard-term contracts operating on a take-it-or-leave-it basis invariably enables organizations to exploit their dominant bargaining positions to impose advantageous terms. The insurance, finance, and telecommunications sectors are prominent examples.⁵ While standard-term contracts enhance efficiency, they contain terms difficult to negotiate or amend, forcing consumers to accept the terms to obtain the goods or services.⁶ In particular, the rise of e-commerce has revealed the weaknesses of such contracts, making consumers vulnerable to abuses by vendors who insert disproportionate or unfair stipulations, such as onerous arbitration clauses, automatic renewals, or unilateral changes.⁷ Consumer exploitation remains a concern in contracts with foreign elements, where sellers or service providers overseas choose courts and laws favouring them.

The *Uber v Heller* and *Karpik v Carnival PLC* (“*Ruby Princess case*”) cases, respectively, before the Canadian Supreme Court and the Australian High Court, illustrate the challenges that international consumer contracts pose.⁸ How should courts approach consumer contracts with foreign entities and clauses prohibiting class action lawsuits that expose consumers to higher costs than if collective action were allowed – particularly when the law of the court’s jurisdiction does not deem such clauses illegal? Exploitative dispute resolution clauses raise questions about how courts should interpret them in cases involving vulnerable parties, such as consumers. Courts must determine whether national consumer protection laws are mandatory and integral to public policy, irrespective of contractual clauses.

While India’s consumer protection laws have seen advancements, they have not addressed challenges posed by contracts with foreign elements. This contrasts with laws in the European Union (“EU”),⁹ Switzerland,¹⁰ Russia,¹¹ and Turkey,¹² as well as common law jurisdictions such as the United Kingdom (“UK”),¹³ Australia,¹⁴ and South Africa.¹⁵ CPA 2019 has undergone reforms, introducing strong measures regarding product liability, unfair contracts, and protection against exploitative practices. However, a gap remains: the treatment of choice-of-court and choice-of-law clauses in international consumer contracts. This gap exposes Indian consumers to exploitation and highlights the need to modernize India’s consumer protection laws. This is essential to navigate globalized commerce and enhance consumer protection for Indian citizens engaged in international transactions.

⁵Ram Mohan (n 4).

⁶*ibid.*

⁷Robert Hillman, ‘Consumer Internet Standard Form Contracts in India: A Proposal’ (2017) 29(1) National Law School of India Review 70, 71–72.

⁸*Uber v Heller* 2020 SCC 16; *Ruby Princess* [2023] HCA 39. For a detailed discussion, see Michael Douglas, ‘Australia’s statist orthodoxy: High Court confirms the extraterritorial scope of the Australian Consumer Law in the Ruby Princess COVID-cruise case’ (*Conflict of Laws*, 6 December 2023) <<https://conflictoflaws.net/2023/australias-statist-orthodoxy-high-court-confirms-the-extraterritorial-scope-of-the-australian-consumer-law-in-the-ruby-princess-covid-cruise-case/>> accessed 1 March 2025.

⁹Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (“Brussels Ibis 2012”), arts 17–19; Regulation (EC) 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (“Rome I Regulations 2008”), art 6(1).

¹⁰Swiss Federal Act on Private International Law 1987 (“Swiss PIL 1987”), arts 114 and 120.

¹¹Civil Code of the Russian Federation 2022 (“CCRF 2022”), art 1212(1).

¹²Turkish Code on Private International Law and International Civil Procedure 2007 (“Turkish PIL 2007”), art 26(1).

¹³Consumer Protection from Unfair Trading Regulations 2008 (UK), part 4A; Consumer Rights Act 2015 (UK), part 1.

¹⁴Australian Consumer Law 2010 (“ACL 2010”), Chapter 3; Competition and Consumer Act 2010 (Australia), Schedule 2.

¹⁵See generally, Richard Oppong, *Private International Law in Commonwealth Africa* (Cambridge University Press 2019) 138–141.

In light of this context, this article explores the extraterritorial effect of India's consumer protection law and its implications for Indian consumers engaged in litigation, especially in the absence of a comparable structure in India's conflict-of-law rules. It examines the need to recognize CPA 2019 provisions regarding unfair contracts, unfair trade practices, and misleading advertisements as overriding mandatory norms and essential components of Indian public policy. These provisions, it contends, should apply to all contracts involving Indian consumers, regardless of the chosen court or law. The article further explores the potential for these provisions to invalidate the choice-of-court and choice-of-law clauses that contravene the principles established by CPA 2019.

This article is divided into five sections. [Section 2](#) discusses the objectives of India's consumer protection law and explores mechanisms for governing unfair contract terms. It highlights that while these laws are designed for international application, their effectiveness is weakened in international disputes due to the prevalence of choice-of-court and choice-of-law clauses favouring foreign jurisdictions. The section also examines how Indian courts treat standard-term contracts, evaluating their willingness to invalidate unconscionable or unfair clauses. [Section 3](#) explores the applicability of CPA 2019 to contracts containing choice-of-court and choice-of-law clauses, analysing whether it can offer additional protection or replace the chosen law. With no clear precedents establishing CPA 2019 as overriding mandatory norms, [section 3](#) offers guidance on navigating international consumer contracts with unfair terms, focusing on regulating choice-of-court and choice-of-law clauses based on general principles. Recognizing the uncertainties in India's consumer protection legislative framework, [section 4](#) examines practices from other jurisdictions, including the EU, UK, Australia, and BRICS nations such as Russia and China.¹⁶ It provides insights that could help India refine its conflict-of-law rules governing consumer disputes. The article concludes with final observations in [section 5](#).

2. Towards equity and fairness: India's legal framework for consumer protection

2.1. Balancing consumer protection and autonomy in the age of mass contracting and sustainable development

In the age of globalization, there is a tension between freedom of contract and protecting consumers from exploitation. Contract law grants parties the autonomy to determine terms, timing, and dispute resolution mechanisms without government interference. However, this autonomy must be balanced against the risk of exploitation, manifested through exclusion clauses, where one party seeks to evade liability under the guise of contractual freedom. In nations like India, where poverty and illiteracy are rampant, the increasing use of exclusion clauses – especially in standard-term contracts – has made consumer protection law increasingly crucial in ensuring adequate protection against exploitation.¹⁷ Exclusion clauses present complex challenges in contracts between parties

¹⁶BRICS is an acronym for a group of countries comprising Brazil, Russia, India, China, and South Africa.

¹⁷MP Ram Mohan and Anmol Jain, 'Exclusion Clauses under the Indian Contract Law: A Need to Account for Unreasonableness' (2020) 13(4) NUJS Law Review 593.

possessing unequal bargaining power, such as those involving consumers. Since they voluntarily concluded, legal systems, including India's, where legal principles generally construe such clauses as valid and enforceable.¹⁸ Despite the exploitative nature of such clauses, absent elements of coercion, misrepresentation, or undue influence, consumers are often likely to find themselves remediless before Indian courts.¹⁹ Preserving the rights of the weaker party in consumer contracts with foreign elements presents a multitude of challenges, requiring a comprehensive analysis of the contractual rights of all parties involved.

Ideally, consumer protection should be the central focus of any modern legal system, alleviating poverty and promoting equitable access to justice while fostering economic growth. The correlation between robust consumer protection law and economic development is undeniable.²⁰ Aligning such laws with international practices ensures clarity and predictability, balancing consumer and corporate rights. It can incentivize corporations to innovate, fuel development, and encourage consumers to engage in global trade. Among the 17 Sustainable Development Goals established by the United Nations,²¹ nine relate to consumer protection, highlighting its role in reducing poverty, fostering growth, and diminishing inequalities, thereby improving access to justice.²²

2.2. Empowering billions: India's endeavour to protect consumer rights

As in most of the world, the need to protect Indian consumers rose with the expansion of e-commerce and residents travelling abroad.²³ The enactment of the CPA 1986 marked a pivotal moment in establishing consumer rights in India,²⁴ followed by legal advancements in the years since. With the evolution of the digital landscape, the Information Technology Act 2000 ("ITA 2000") introduced a framework to safeguard consumer rights in online transactions.²⁵ The Consumer Protection Act 2019 ("CPA 2019") expanded the scope of accountability for exploitative practices, including unfair trade practices, misleading advertisements, and unfair contracts, while also establishing the Central Consumer Protection Authority ("CCPA").²⁶

The Consumer Protection (Consumer Disputes Redressal Commissions) Rules 2020 set guidelines for complaint submission, hearing protocols, and avenues for appeals,

¹⁸Saloni Khanderia, 'The Ambivalent Notion of "Fundamental Breach" in Indian Law of Contract: Towards a New Paradigm' (2022) 43(2) *Liverpool Law Review* 391, 401, referring to the Supreme Court's decision in *Maharashtra State Electricity Distribution Company Ltd v Datar Switchgear Ltd and Ors* (2018) 3 SCC 133.

¹⁹Indian Contract Act 1872 ("ICA 1872"), s 10.

²⁰See World Bank Group, *Good Practices for Financial Consumer Protection* (2017) ix <<https://www.worldbank.org/en/topic/financialinclusion/brief/2017-good-practices-for-financial-consumer-protection>> accessed 20 April 2023; Martin W Hesselink, 'Contract Theory and EU Contract Law' in Christian Twigg-Flesner et al (eds), *Research Handbook on EU Consumer and Contract Law* (Edward Elgar Publishing 2019) 508.

²¹Practical Action, *Sustainable Development Goals* (2019) <<https://practicalaction.org/learning/sustainable-development-goals/>> accessed 21 April 2024.

²²*ibid*, Sustainable Development Goals 1–3, 8–10, 12, 16, and 17.

²³Indian consumer protection law applies to all consumers residing in the country. In the context of foreign-related contracts, the Supreme Court, in *Yogesh Bharadwaj v State of UP* (1990) 3 SCC 355 [11], has defined "resident" as an individual's voluntary and lawful intention to dwell in a place for a certain duration, regardless of whether they intend to stay permanently. This status remains unaffected by international travel. Domicile refers to a person's intention to reside in a country permanently. While individuals can reside in multiple locations, they can claim domicile in only one. For corporations, residence is determined by their place of incorporation.

²⁴JN Barowalia, *Commentary on the Consumer Protection Act* (7th edn, LexisNexis 2021) 3–4.

²⁵ITA 2000, s 17.

²⁶CPA 2019, ss 2(28), 2(46), 2(47), and 21.

thereby strengthening the procedural framework. The Consumer Protection (E-Commerce) Rules 2020 (“E-Commerce Rules 2020”) enhanced transparency, facilitated grievance redressal, and promoted fair trade practices. This dual framework establishes a comprehensive regulatory landscape: the ITA 2000 oversees the overarching elements of digital transactions and data protection, and the E-Commerce Rules 2020 focus on the intricacies of online consumer interactions, thereby fostering a more precise strategy for consumer protection in the digital era. Collectively, these laws illustrate India’s acknowledgement of the distinct challenges presented by e-commerce and its dedication to evolving consumer protection laws for the digital age.²⁷

In 2022, the CCPA introduced guidelines to combat misleading advertisements in sensitive sectors such as surrogacy, alcohol, tobacco, and children’s products.²⁸ The CPA 2019, ITA 2000, and various Rules collectively constitute a framework of consumer protection regulations, with the ICA 1872 as its backbone. This framework protects consumers from exploitation through undue influence, misrepresentation, fraud, coercion, and other similar forms of suppression.²⁹ A comprehensive procedural framework enables consumers to file complaints with Consumer Commissions and initiate class-action lawsuits through a three-tier quasi-judicial system comprising District, State, and National Consumer Disputes Redressal Commissions.³⁰ Each operates within its pecuniary jurisdictions, functioning in coordination with the CCPA.³¹ Despite these frameworks, consumer protection law in India remains underdeveloped. Its key limitation is its restricted extraterritorial scope.

2.3. Navigating regulatory boundaries: extraterritoriality and choice-of-law implications in Indian consumer protection

In contrast to the UK and Australia,³² where consumer protection law covers all business activities within their jurisdictions, CPA 2019 lacks extraterritorial scope (except for e-commerce transactions).³³ This leaves Indian consumers vulnerable to exploitation in international transactions. In e-commerce, the E-Commerce Rules 2020 obligate all foreign and domestic entities to adhere to Indian consumer protection laws. While CPA 2019 outlines general rules for consumer contracts, it lacks specific provisions that clearly articulate “extraterritorial jurisdiction”. However, its definitions of consumers, goods, services, and e-commerce – along with rules to prevent unfair trade practices in the digital marketplace – suggest that foreign entities whose offerings are accessible to or who engage with Indian consumers may be held liable.³⁴ In particular, the broad definition of “consumer” ensures that all individuals who purchase goods or use services, whether in physical

²⁷See generally, Manav Kirtikumar Thakkar, ‘An Analytical Study of E-Contracts: With Special Reference to E-Commerce’ (2022) 4 Indian Journal of Law & Legal Research 1, 8–9; Patricia Buckley and Sabrina Montes, ‘The Promise and Challenge of Ecommerce’ (2000) 1(2) Georgetown Journal of International Affairs 29, 35.

²⁸The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022.

²⁹ICA 1872, s 10.

³⁰CPA 2019, ss 28, 38, 42, 39, 53, and 67.

³¹*ibid* s 91.

³²Consumer Protection from Unfair Trading Regulations 2008 (UK), part 4A; Consumer Rights Act 2015 (UK), part 1; ACL 2010, Chapter 3.

³³Consumer Protection (E-Commerce) Rules 2000, Rule 4.

³⁴CPA 2019, ss 2(7), 2(16), 2(21), 2(43), and 2(47); Consumer Protection (E-Commerce) Rules 2000, Rules 4 and 5.

stores or online platforms, are protected.³⁵ This protection extends to juristic or artificial legal entities, such as corporations registered under the Companies Act 2013, provided they purchase goods or use services for personal use, excluding resale or commercial purposes.³⁶ CPA 2019 also safeguards individuals who purchase goods or use services and those who benefit from such transactions. In contrast to the EU and China,³⁷ where the term “consumer” is restricted to individuals, India adopts a broader definition.³⁸

Irrespective of the extraterritorial reach of India’s consumer protection laws, the lack of specific conflict-of-law rules may allow foreign entities to exploit legal uncertainties. Such entities incorporate dispute resolution clauses, such as choice-of-law or choice-of-court clauses, in their contracts to circumvent Indian consumer protection laws. The present principles of Indian private international law impose a blanket obligation on Indian courts to uphold choice-of-court clauses, including those in consumer contracts.³⁹ In domestic cases, the Indian judiciary has taken a tight fist approach to standard-term contracts, recognizing them as one-sided.⁴⁰ However, the absence of precedent addressing choice-of-court clauses in consumer contracts with a foreign element suggests that such clauses are likely to be upheld, except in cases where the proceedings are vexatious, oppressive, or violate Indian public policy.⁴¹ Given the power imbalance in consumer contracts, it is crucial to establish clear, well-defined conflict-of-law rules tailored to consumer disputes with a foreign element.

Similarly, in disputes involving foreign entities, the applicability of Indian law predominantly hinges on choice-of-law clauses in the contract – allowing stronger parties to circumvent Indian consumer protection laws and select foreign laws that favour them.⁴² This issue was central to the *Ruby Princess* case before the Australian High Court.⁴³ The case arose from a cruise contract that imposed Californian law on guests in case of a dispute despite the contract’s ties to Australia: the cruise departed from and returned to Australia with Australian guests. It also barred guests from pursuing class action lawsuits,⁴⁴ forcing them to bear excessive costs when seeking legal recourse against the cruise company for damages incurred due to the COVID-19 pandemic.⁴⁵ Unlike Californian law, which allows companies to restrict class action lawsuits in consumer contracts, ACL 2010 deems such terms unfair and void when included in standard-term contracts.⁴⁶

³⁵CPA 2019, s 2(7).

³⁶ibid s 2(d); Barowalia (n 24).

³⁷Brussels Ibis 2012, art 17; Rome I Regulations 2008, art 6; Zhen Chen, ‘Consumer Jurisdiction and Choice of Law Rules in European and Chinese Private International Law’ (2023) 1(1) Chinese Journal of Transnational Law 1, 3, referring to the Law of the People’s Republic of China on Protecting Consumers’ Rights and Interests 1993, art 2.

³⁸Barowalia (n 24).

³⁹*Modi Entertainment Network and Another v WSG Cricket PTE Ltd* (2003) 4 SCC 341 (“*Modi Entertainment*”).

⁴⁰*Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly* (1986) 2 SCR 278 [76] (“*Central Inland*”); *LIC of India v Consumer Education and Research Centre* (1995) 5 SCC 482; *Jacob Punnen v United India Insurance Co* (2022) 3 SCC 655; *Experion Developers Private Limited v Sushma Ashok Shiroor* (2022) SCC OnLine SC 416; *Texco Marketing (P) Ltd v Tata General Insurance Co Ltd* (2022) 15 SCC 286 reversing *Tata AIG General Insurance co Ltd v Texco Mktg (P) Ltd* (2018) SCC OnLine NCDRC 1648.

⁴¹*Modi Entertainment* (n 39) [24].

⁴²*National Thermal Power Corporation v Singer Corporation* (1992) 3 SCC 551 [14] (“*NTPC*”).

⁴³*Ruby Princess* (n 9); Douglas (n 9).

⁴⁴*Ruby Princess* (n 9).

⁴⁵ibid.

⁴⁶Douglas (n 9), referring to ACL 2010, s 23.

In purely domestic matters, where no party has ties to a foreign country, Indian courts have similarly regarded standard-term consumer contracts with considerable scepticism. Due to their inherently one-sided nature, these contracts are deemed unfair and invalidated.⁴⁷ However, in contracts with foreign entities, such as in the *Ruby Princess* case,⁴⁸ the lack of explicit conflict of law rules governing consumer contracts – akin to those established in several other legal systems,⁴⁹ including the EU and UK⁵⁰—places significant emphasis on the extraterritorial reach of regulations. This raises critical questions regarding whether these laws are deemed mandatory and whether they empower national consumer protection courts to invalidate the application of the chosen foreign law.

2.4. Beyond doubt: parameters to apply Indian consumer protection law in disputes with foreign entities

Unlike domestic cases, courts cannot apply national laws as part of their *lex fori* (the law of the forum) unless conflict-of-law rules dictate their application. Under Indian law, consumer disputes are considered non-arbitrable and must be resolved through litigation.⁵¹ Thus, while parties may choose to arbitrate consumer disputes in a foreign jurisdiction, the enforceability of the arbitration award may be challenged on public policy grounds.⁵² Consequently, any disagreements between Indian residents and consumers must be resolved through litigation.

Despite being a federal state, India does not follow the approach of other legal systems, such as the United States of America or Australia, where each State has its own conflict-of-law rules. Instead, courts across India must adhere to a uniform set of principles to determine the law governing the consumer dispute involving a foreign element. Beyond disputes involving foreign entities *based* in India, there are three scenarios where India's national consumer protection law would apply to international disputes.

First, when the parties expressly or implicitly agree that such law will govern their contract.⁵³ For example, a choice-of-court clause favouring Indian courts, combined with the contract's conclusion and execution in India, may indicate an implicit selection of Indian law.⁵⁴ Nevertheless, India's conflict-of-law rules lack explicit provisions

⁴⁷ *Central Inland* (n 40); *LIC of India v Consumer Education and Research Centre* (n 40); *Jacob Punnen v United India Insurance Co* (n 40); *Experion Developers Private Limited v Sushma Ashok Shiroor* (n 40); *Texco Marketing (P) Ltd v Tata General Insurance Co Ltd* reversing *Tata AIG General Insurance Co Ltd v Texco Mktg (P) Ltd* (n 40).

⁴⁸ *Ruby Princess* (n 9).

⁴⁹ See the discussion in section 4.1 below.

⁵⁰ Brussels Ibis 2012, arts 17–19; Rome I Regulations 2008, art 6; Consumer Rights Act 2015 (UK), part 2, which allows challenges to unfair terms in foreign-related consumer contracts with UK residents. This includes terms that impose an unfair burden on consumers, such as those requiring disputes adjudicated in a foreign court or governed by a foreign law, thereby depriving consumers of the protections afforded under UK law. While the Rome I Regulations 2008 establish the principles to determine the applicable law – favouring the law of the consumer's habitual residence – the Consumer Rights Act 2015 defines the rights regarding consumer contracts involving UK residents. Under the Rome I Regulations 2008, a consumer retains the protections available under their habitual residence country's law, even if the contract applies a foreign law, provided the business targets consumers within that jurisdiction.

⁵¹ *Emaar MGF Land Ltd v Aftab Singh* (2019) 12 SCC 751; *M Hemlata devi v B Udayasri* (2024) 4 SCC 255. These cases confirm the non-arbitrability of consumer disputes in India.

⁵² Arbitration and Conciliation Amendment Act 2015, ss 34(2)(b) and 48(2)(b).

⁵³ *NTPC* (n 42) [14], authorizing party autonomy in the choice-of-law in international civil and commercial disputes before Indian courts.

⁵⁴ *Modi Entertainment* (n 39) [16].

pertaining to consumer contracts with foreign elements, setting them apart from those in many other jurisdictions. The principle of party autonomy, which governs international civil and commercial contracts, applies to consumer contracts involving foreign elements.⁵⁵ As a result, parties engaged in international civil and commercial contracts, including those that pertain to consumers, can choose the governing law, regardless of its connection to any particular country. However, this also allows a foreign entity to bypass Indian consumer protection law by subjecting a contract to a foreign law. A consumer's consent to the foreign law, as evidenced by their signature on the contract, including those formed under standard-terms, constitutes an exercise of choice-of-law. Indian courts are obligated to uphold this choice unless it is proven that the contract was made without *bona fide* intentions, is unlawful, or violates Indian public policy.⁵⁶

Second, without a choice-of-law clause, national consumer protection law will continue to be enforced in international situations if the contract is closely linked to India.⁵⁷ However, India's conflict-of-law rules generally grant courts flexibility in objectively determining the "proper law" when the parties have not chosen one. As a result, consumer contracts with foreign entities are likely to be found closely linked to India when the:

- (1) Consumer resides in India,
- (2) Contract is formed and performed in India,
- (3) Contract is written in an Indian language, or
- (4) Payment is made in Indian currency.⁵⁸

In such cases, Indian courts will apply national law as the "proper law of the contract" as it forms the contract's "centre of gravity".⁵⁹ Conversely, when national law is not found to be substantially connected to the contract – for example, if the contract is formed and performed abroad, requires payment in a foreign currency, or is drafted in a language familiar to that nation – the court must adjudicate the dispute according to the law of the country identified through its conflict-of-law rules.

Third, national courts would be empowered to extend the protections conferred under Indian consumer protection law *if* they are deemed mandatory or otherwise constitute a crucial aspect of Indian public policy.⁶⁰ While the first two scenarios have clear applications, this scenario is complex. It requires an analysis of several factors and criteria generally considered by Indian courts to ascertain the compulsory nature of Indian law in international contracts. No cases have explicitly recognized overriding mandatory norms as exceptions to parties' choice of law. However, scholarly writings clarify that choice-of-law clauses violating compulsory provisions are inherently seen as lacking *bona fide* intentions.⁶¹ This is because a choice is considered *bona fide* when made in good faith,

⁵⁵Saloni Khanderia, 'The Law of Obligations: India' in Stellina Jolly and Saloni Khanderia (eds), *Private International Law in BRICS: Convergence, Divergence and Reciprocal Lessons* (Hart Publishing 2024) 324.

⁵⁶*NTPC* (n 42) [14].

⁵⁷*ibid.*

⁵⁸*ibid* [17].

⁵⁹Stellina Jolly and Saloni Khanderia, *Indian Private International Law: Studies in Private International Law – Asia* (Hart Publishing 2021) 208–209, referring to localization theory.

⁶⁰*NTPC* (n 42) [14].

⁶¹Jolly and Khanderia (n 59) 202–204.

and a choice-of-law clause that results in the evasion of the compulsory provisions of domestic law will inevitably be construed as made in bad faith if it violates the forum's overriding mandatory norms.⁶² Without rules similar to those in the UK,⁶³ the presence of *bona fide* intention in the selection of foreign law largely hinges on whether the various provisions of Indian consumer protection law are interpreted as overriding mandatory norms or compulsory provisions.

At other times, a choice-of-law clause purporting to authorize an illegal act will eventually be disregarded for violating public policy. The ICA 1872 recognizes the concept of public policy but does not provide a precise and explicit definition.⁶⁴ In international commercial arbitration, contractual obligations contradicting principles of justice, moral integrity, or deeply entrenched traditions are recognized.⁶⁵ On the contrary, determining violations of Indian public policy in litigation is more challenging, as it relies heavily on the subjective interpretation shaped by prior judicial decisions. In litigation, the concept of public policy is widely recognized as a principle guiding judicial legislation or interpretation, rooted in the contemporary needs of society.⁶⁶ However, identifying "the current needs of society" is complex. Courts have consistently affirmed the validity of contracts, provided they do not overtly violate Indian public policy, necessitating evidence of unequivocal detriment to the societal interest.⁶⁷ However, in *PASL Wind Solutions v GE Power Conversion India*, the Supreme Court underscored the importance of constitutional mandates in assessing violations of Indian public policy, ensuring the protection of individual freedoms alongside the needs of society.⁶⁸

In contrast to public policy, the criteria for identifying overriding mandatory norms are unclear, as they are embedded within the *bona fide* exception. Such norms typically connote legislative directives that require courts to apply certain provisions regardless of a choice-of-law clause.⁶⁹ The directed provision is intended to invalidate and take precedence over foreign laws that would be identified as the applicable law.⁷⁰ Compliance with such provisions is mandatory and must be distinguished from the law identified as applicable under the adjudicating court's conflict-of-law rules.⁷¹

Like public policy, overriding mandatory norms protect public and private interests. For example, Indian law prohibiting contracts in restraint of trade upholds public policy and directs courts to apply Indian law when the chosen foreign law contradicts it.⁷² Thus, courts can replace the chosen law with *lex fori* provisions that align with public policy or overriding mandatory norms while allowing the chosen law to govern other aspects of the contract. The distinction lies in their objectives: the public policy exception predominantly aims to prevent harm to the needs of society and uphold moral standards, while

⁶²*ibid.*

⁶³*ibid.*

⁶⁴ICA 1872, s 23.

⁶⁵*Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644 [53]; *Murliadhar Aggarwal v State of UP* (1974) 2 SCC 472 [30]; *PASL Wind Solutions v GE Power Conversion India* (2021) 7 SCC 1 [69].

⁶⁶*Murliadhar Aggarwal v State of UP* (1974) 2 SCC 472 [30]; *PASL Wind Solutions v GE Power Conversion India* (n 66).

⁶⁷*PASL Wind Solutions v GE Power Conversion India* (n 66) [68]–[74].

⁶⁸*ibid* [71].

⁶⁹Adrian Briggs, *The Conflict of Laws* (3rd edn, Oxford University Press 2013) 248.

⁷⁰*ibid.*

⁷¹*ibid.*

⁷²Saloni Khanderia, 'Practice does not Make Perfect: Rethinking the Doctrine of The Proper Law of the Contract – A Case for the Indian Courts' (2020) 16(3) *Journal of Private International Law* 423, 430, referring to *Kumarina Investment Ltd v Digital Media Convergence Ltd & Anr* 2010 TDSAT 73 [27].

overriding mandatory norms focus on protecting the country's critical state or private interests.

Given the uncodified nature of India's conflict-of-law rules, courts have been left responsible for defining the parameters of these exceptions. However, despite frequent consumer disputes, there are no reported cases where courts have clarified whether Indian consumer protection laws are considered mandatory, even when a contract contains unfair terms. Are national laws promoting consumer welfare essential to Indian public policy? These aspects have remained ambivalent in India since the enactment of the CPA 1986 and its subsequent re-enactment in CPA 2019.

3. Beyond choice: determining the mandatory force of Indian consumer protection law to invalidate dispute resolution clauses

3.1. Constraints to choice-of-law clauses in Indian consumer disputes

In consumer disputes, determining whether the chosen foreign law can be invalidated due to a lack of *bona fide* intentions or a violation of Indian public policy is complex, particularly in the absence of codified choice-of-law rules or principles that clarify the extraterritorial scope of CPA 2019.

Under common law, the putative proper law, which would apply if the contract were valid, determines its validity or terms.⁷³ Therefore, the putative proper law governs issues such as coercion, misrepresentation, and undue influence, potentially affecting a contract's validity. The parties may have expressly or impliedly chosen this law or the one the court has objectively identified. Because applying the putative proper law (also known as the putative governing law in many jurisdictions) is limited to testing a contract's validity in cases involving coercion, choice-of-law rules of several major jurisdictions contain special principles tailored for consumer contracts. These principles ensure maximum protection for weaker parties, extending beyond oppressive tactics such as coercion or misrepresentation. Nevertheless, as previously noted, in the lack of specific regulations governing consumer disputes involving foreign elements in India, the enforceability of choice-of-law rules remains constrained by the same limitations applicable to all contracts. They should not have been made with *bona fide* intentions or be illegal or against Indian public policy.⁷⁴

3.2. Limitations of unconscionability as the standard to assess public policy violations in international consumer contracts

In consumer contracts, Indian courts have relied on unconscionability as the criterion to determine violations of public policy. The Supreme Court has defined it as an action that demonstrates a complete disregard for conscience and is "irreconcilable with what is right or reasonable".⁷⁵ For a contract to be classified as unconscionable, there must be a gross inequality in the bargaining power between the parties, with contract terms that

⁷³NTPC (n 42) [21], [24], [26]; *Sumitomo Heavy Industries Ltd v ONGC Ltd & Ors* (1998) 1 SCC 305 [10]; *Union of India v Hardy Exploration & Production (India) Inc* (2019) 13 SCC 472 [7].

⁷⁴NTPC (n 42) [14].

⁷⁵*Central Inland* (n 40) [76].

disproportionately benefit one party.⁷⁶ This phenomenon of “gross inequality” can emerge from a significant imbalance in economic power between the contracting parties or from various other circumstances, whether instigated by the parties themselves or not.⁷⁷ Such an imbalance leaves the weaker party with

... no choice or rather no meaningful choice, but to give [sic] their assent to a contract ... however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.⁷⁸

In domestic disputes, the Supreme Court has deemed several contracts unconscionable, thus rendering them violative of Indian public policy and *void ab initio*.⁷⁹ In the context of standard-term international consumer contracts containing choice-of-law clauses that impose unreasonable costs and inconveniences on Indian consumers – case law suggests a likelihood that such clauses will be invalidated for violating Indian public policy due to being unconscionable.⁸⁰ This may be the contract’s position prohibiting class-action lawsuits or requiring dispute resolution to take place abroad through obscure clauses. Even with the higher standards required to establish such violations in contracts involving foreign entities, unconscionability will be regarded as a violation of Indian public policy, given its impact on social welfare and fundamental rights that emphasize equality.⁸¹

Consequently, contracts favouring one party that leave the other with no choice but to acquiesce to the terms are typically considered unconscionable.⁸² Given that standard-term consumer contracts are fundamentally established between parties with unequal bargaining power, courts may deem them unconscionable if they contain unfair terms defined under section 2(46) of CPA 2019. This may include a demand for exorbitant security deposits, applying unjustifiable fees, and clauses allowing one-sided terminations.⁸³ Similarly, contracts requiring arbitration in a foreign jurisdiction unfamiliar to the consumer and utilizing the laws of a country unrelated to the transaction would be deemed unconscionable. This principle extends to contracts that limit a company’s liability to a minimal amount, regardless of the damages the consumer suffers.

Notably, concluding contracts with unfair and unreasonable terms aligns with the concept of exerting undue influence, as defined in ICA 1872.⁸⁴ These contracts involve a power imbalance, where one party exerts influence over the other to gain an inequitable benefit.⁸⁵ The law allows the affected party to annul the contract, rendering it invalid. Consequently, courts have found it appropriate to construe unconscionable contracts as violative of Indian public policy.⁸⁶

⁷⁶*ibid* [83], [84], and [89].

⁷⁷*ibid* [80].

⁷⁸*ibid*; Law Commission of India, *Unfair Terms in Contract* (Report No 103, May 1984) <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080820.pdf>> accessed 21 March 2025.

⁷⁹*Central Inland* (n 40); *LIC of India v Consumer Education and Research Centre* (n 40); *Jacob Punnen v United India Insurance Co* (n 40); *Pioneer Urban Land and Infrastructure Ltd v Govindan Raghavan* (2019) 5 SCC 725.

⁸⁰*ibid*.

⁸¹*PASL Wind Solutions v GE Power Conversion India* (n 66).

⁸²*Central Inland* (n 40); *LIC of India v Consumer Education and Research* (n 40); *Jacob Punnen v United India Insurance Co* (n 40); *Pioneer Urban Land and Infrastructure Ltd v Govindan Raghavan* (n 40).

⁸³CPA 2019, s 2(47).

⁸⁴ICA 1872, s 16(1).

⁸⁵*ibid*.

⁸⁶*Central Inland* (n 40); *LIC of India v Consumer Education and Research* (n 40); *Jacob Punnen v United India Insurance Co* (n 40); *Pioneer Urban Land and Infrastructure Ltd v Govindan Raghavan* (n 40).

However, the reliance on unconscionability as the criterion to identify Indian public policy violations results in shortcomings in consumer protection. Aside from the insurance, e-commerce, employment, travel, and banking sectors, which operate under standard-term contracts, many sectors pose consumer exploitation risks.⁸⁷ This occurs even when consumers have some degree of choice regarding contract terms. Consider a language school incorporated overseas with Indian consumers enrolling to improve their skills. While terms such as those refusing access to online recordings, higher fees for international students, and inflexible submission deadlines across time zones may not constitute take-it-or-leave-it clauses, they allow the stronger party to exploit its position and gain an unfair advantage in negotiations. Without contractual obligations that mandate students to adhere to a specific jurisdiction or foreign law, which would strip them of the safeguards provided by Indian law – particularly [section 2\(46\)](#) and [2\(47\)](#) of the CPA 2019—such scenarios will not be deemed unconscionable. This is due to the fact that they do not exhibit a one-sided nature or eliminate the consumer’s meaningful choice in the decision to sign the contract.

Similarly, in contracts like those mentioned above, which restrict class-action suits or require an unreasonable security deposit, there is ambiguity about whether they constitute a breach of Indian public policy, permitting the invalidation of the foreign law specified in the choice-of-law clause. Such instances of significant unfairness are not protected by Indian law, even if they violate Indian public policy permitting courts to apply national law. The law to assess a contract’s validity is limited to procedural unfairness, focussing primarily on the methods of contract formation rather than its substantive content.⁸⁸ Even if specific conflict-of-law rules governing consumer contracts required Indian courts to disregard choice-of-law clauses, Indian law does not address exploitation that may arise in scenarios like those mentioned above. While these scenarios may not be one-sided, they reflect abuses of bargaining power. At this time, questions such as these remain governed by the overarching principles of contract formation. The choice-of-law clause would only be invalidated if there was evidence that their terms were negotiated under coercion, fraud, misrepresentation, or mistake.⁸⁹

That said, while unfair contractual terms may be deemed unconscionable, standard-term contracts that facilitate unfair trade practices – as defined under [section 2\(47\)](#) of CPA 2019—are not always classified as such unless they disproportionately favour the stronger party. Unfair trade practices include false representations, such as misleading consumers into believing a used product is brand new.⁹⁰ Another example is the “roach motel” strategy, where companies make cancelling subscription services harder than registration.⁹¹ Such strategies exploit consumer inertia and information gaps, relying

⁸⁷Ram Mohan and Jain (n 17) 602.

⁸⁸*ibid* 602–603.

⁸⁹*ibid*, referring to the scope of ICA 1872, s 10. But see Manasi Kumar and Poorna Mysoor, ‘The Duty of Good Faith’ in KV Krishnaprasad et al (eds), *Foundations of Indian Contract Law* (Oxford University Press 2024) 314, 318–19, illustrating that courts have applied the doctrine of good faith when interpreting provisions on contract formation under the ICA 1872, emphasizing the importance of parties conducting themselves in a manner that respects the interests of their counterparts. For instance, courts have recognized that while parties have the autonomy to set contract terms, this freedom is not absolute; it must be exercised in good faith to prevent self-serving behaviour that could undermine the other party’s expectations.

⁹⁰ICA 1872, s 2(47).

⁹¹For a discussion, see Ashley Sheil et al, ‘Staying at the Roach Motel: Cross-Country Analysis of Manipulative Subscription and Cancellation Flows’ (2024) Proceedings of the 2024 CHI Conference on Human Factors in Computing Systems 1 <<https://doi.org/10.1145/3613904.3642881>> accessed 25 October 2024.

on the likelihood that consumers will forget to cancel their subscriptions or find the process too cumbersome.⁹² By creating exit barriers, companies retain subscribers at the expense of consumer rights and transparency.⁹³

Unlike unfair contractual terms that oppress consumers, such as excessive deposits, not all unfair trade practices are biased or force consumers into accepting a contract. This distinction is relevant in cases involving deceptive representations. It is essential to distinguish these practices from other forms of unfair trade practices characterized by one-sided clauses, such as those in property contracts that require buyers to take possession despite delays caused by the developer.⁹⁴ Such clauses are unconscionable and may be invalidated for violating Indian public policy.⁹⁵ However, in the context of deceptive representations, including misleading advertisements, it is crucial to recognize that, beyond failing to satisfy the criteria for unconscionability, Indian courts are unlikely to annul representations or choice-of-law clauses in contracts favouring sellers or service providers based on public policy violations. These clauses do not fundamentally contradict essential societal norms and values, a requirement for determining a violation of Indian public policy under conflict-of-law rules. Nevertheless, whether choice-of-law clauses in contracts involving unfair trade practices might be invalidated due to a lack of *bona fide* intent remains a subject of ongoing debate.

3.3. *Unfair contract terms and trade practices in private international law*

One perspective posits that the provisions of CPA 2019, which regulate and prohibit unfair trade practices – especially those involving deceptive practices – ought to be regarded as mandatory despite not being explicitly integrated into Indian public policy. This interpretation would render any choice-of-law clauses that seek to circumvent such provisions invalid. By their very nature, overriding mandatory provisions aim to safeguard the interests of private persons. It is widely recognized that consumer protection legislation constitutes overriding mandatory norms when they predominantly seek to foster and protect consumer welfare.⁹⁶ In India, the CPA 2019 is a “social benefit-oriented legislation” designed to advance consumer interests and protect them from exploitation.⁹⁷ Its principles are influenced by the United Nations General Assembly Consumer Protection Resolution, which India is a signatory to.⁹⁸ The United Nations Economic and Social Council has also underscored the importance of protecting consumers’ economic interests.⁹⁹

⁹²*Ibid.*

⁹³*Ibid.*

⁹⁴*Pioneer Urban Land and Infrastructure Ltd v Govindan Raghavan* (n 40).

⁹⁵*Ibid.*

⁹⁶See, for instance, the Unfair Contract Terms Act 1977 (UK); the ACL 2010; and the common law principles of various other African countries such as Zambia, Botswana, Kenya, Namibia, Uganda, and South Africa referred to in Oppong (n 15), 138–141 referring to the laws of Zambia, Botswana, Kenya, Namibia, Uganda, and South Africa. Also see the conflicts rules prescribed in the Rome I Regulations 2008, art 6; Swiss PIL 1987, art 120; CCRF 2022, art 1212; Turkish PIL 2007, art 26(1); Law of the People’s Republic of China on the Law Applicable to Foreign-Related Civil Relationships 2010, art 42.

⁹⁷CPA 2019, s 29.

⁹⁸UNGA Res 39/248 (9 April 1985) UN Doc A/RES/39/248; Barowalia (n 24) 90.

⁹⁹UN Secretary-General, ‘Consumer Protection: Report of the Secretary-General’ (27 May 1983) UN Doc E/1983/62.

Although consumer protection and welfare are not constitutional rights, the Constitution of India guarantees equality before the law,¹⁰⁰ protection against discrimination,¹⁰¹ and the right to constitutional remedies,¹⁰² creating a framework for safeguarding consumer rights. The Directive Principles of State Policy also emphasize the state's role in promoting social welfare and justice,¹⁰³ extending to consumer protection and ensuring fair treatment in the marketplace. Accordingly, provisions protecting consumers from unfair trade practices should be considered mandatory, rendering any choice-of-law clause attempting to circumvent CPA 2019 invalid. Similarly, provisions addressing unfair contractual terms should be deemed mandatory, rendering such terms invalid.

However, an alternative view asserts that provisions governing unfair trade practices and unfair contracts are not mandatory and, therefore, cannot invalidate the foreign law chosen by the parties. For provisions to be mandatory, they must protect public and private interests and require national courts to enforce them. Consider provisions prohibiting (i) contracts in restraint of trade and (ii) employers from contracting out minimum wage obligations. These rights are constitutionally protected and binding, making compliance mandatory.¹⁰⁴ Any contract that violates them is void and unenforceable, regardless of the foreign law chosen by the parties. In contrast, while CPA 2019 grants courts the discretion to invalidate unfair contracts, they are not obligated to do so.¹⁰⁵ Instead, courts may order the seller or service provider to modify the contract by removing unfair terms.¹⁰⁶ Similarly, CPA 2019's provisions on unfair trade practices, such as misleading advertisements or false representations concerning the quality or grade of goods or services, are not worded as mandatory.¹⁰⁷ CPA 2019 does not empower courts to invalidate contracts in disputes arising from such practices.¹⁰⁸ Rather, courts may impose penalties or order imprisonment.¹⁰⁹ Thus, while CPA 2019 aims to protect consumer interests and welfare, its provisions on unfair trade practices do not function as legislative directives, as compliance is not mandatory.

Consequently, in the absence of case law, the mandatory nature of provisions protecting consumers from unfair trade practices is uncertain. *Lex fori* applies to international consumer contracts with unfair trade practices. However, enforcing such contracts may violate Indian public policy, leading courts to invalidate them.

3.4. Choice-of-court clauses in favour of foreign courts and their implication on applying CPA 2019

The jurisdiction of consumer courts in India extends to disputes where the defendant resides, is employed for gain, or conducts business within a court's territorial limits.¹¹⁰ In

¹⁰⁰Constitution of India 1950, art 14.

¹⁰¹*ibid* art 15.

¹⁰²*ibid* art 32.

¹⁰³*ibid* art 39A.

¹⁰⁴CA 1872, s 27; Minimum Wages Act 1948, s 25.

¹⁰⁵CPA 2019, ss 49 and 59.

¹⁰⁶*ibid*.

¹⁰⁷*ibid* ss 10, 18, 19, 21, 22 and 39.

¹⁰⁸*ibid*.

¹⁰⁹*ibid* s 21(2).

¹¹⁰The Code of Civil Procedure 1908, s 20.

online consumer contracts, sellers and service providers are deemed to conduct business in every State in India where their product or service is available for sale.¹¹¹ Courts across India can adjudicate disputes arising from such contracts, allowing plaintiffs to initiate proceedings before any appropriate court based on convenience. Additionally, consumer courts have jurisdiction over disputes involving foreign entities if the cause of action arises within their territorial limits.¹¹²

However, a choice-of-court clause favouring a foreign court in disputes involving a foreign entity can exclude a court's jurisdiction.¹¹³ Indian courts must uphold such clauses unless the choice-of-court clause is vexatious, oppressive, or opposes Indian public policy.¹¹⁴ The key factor in determining the validity of a choice-of-court clause is, thus, the oppressive and contravening nature of the proceedings and not the foreign law applied. The vexatious and unjust nature of foreign law being applied is irrelevant in determining the validity of the clause. As indicated by the Supreme Court in the seminal case of *Modi Entertainment*, whether the proceedings before the foreign forum chosen by the parties are vexatious and oppressive essentially hinges on the injustice that both parties will suffer if the Indian court refuses to disregard the choice-of-court clause.¹¹⁵

This may be when a *force majeure* event or the invalidation of a choice-of-court clause (secured through coercion or similar means) prevents the parties from pursuing litigation before the chosen court. Thus, because of uniform principles in this regard, the fact that proceedings in international disputes are exclusively vexatious and oppressive to the consumer is irrelevant. Indian courts have enunciated the irrelevance of the cost and inconvenience of pursuing litigation abroad in determining whether a choice-of-court clause is oppressive.¹¹⁶ Such clauses would thus continue to be valid in consumer contracts despite the burden they may impose. Instead, an Indian court would assess the injustice the other party (i.e. the entity) would suffer if it did not assume jurisdiction.¹¹⁷ As in the case of other types of contracts between parties with equal bargaining power, consumers must provide the court with "good and sufficient reasons" in its request for an anti-suit injunction to prevent the other party from proceeding before the chosen foreign court.¹¹⁸

By the same principle, including a choice-of-court clause in an international consumer contract does not violate Indian public policy.¹¹⁹ Although such clauses oust the jurisdiction of Indian courts, they are not construed as bars to legal proceedings under section 23 of ICA 1872. In *Modi Entertainment*, the Supreme Court held that section 23 does not apply to choice-of-court clauses that confer jurisdiction to foreign courts.¹²⁰ Given the separability of a choice-of-court clause from the main contract, Indian courts are unlikely to invalidate such clauses, even if the contract contains unfair provisions – unless it violates Indian public policy. While choice-of-court clauses secured through fraud may be invalidated for violating Indian public policy, it remains uncertain whether they can be

¹¹¹*World Wrestling Entertainment v M/s Reshma Collection and Ors*, 2014 SCC OnLine Del 2031 [11], [12], [21].

¹¹²The Code of Civil Procedure 1908, s 20.

¹¹³*Modi Entertainment* (n 39).

¹¹⁴*ibid* [24].

¹¹⁵*ibid*.

¹¹⁶*Moser Baer India Ltd v Koninklijke Philips Electronics NV* 2008 (102) DRJ 713 [6], [9].

¹¹⁷*Modi Entertainment* (n 39) [24].

¹¹⁸*ibid* [26]–[27].

¹¹⁹*ibid* [14].

¹²⁰*ibid*.

invalidated for containing unfair terms. However, given the implications for social welfare and the protection of consumer interests, Indian courts may be inclined to do so despite the high threshold.

The ambiguities surrounding choice-of-court clauses in consumer contracts highlight the need for conflict-of-law rules tailored to protect consumer interests. If consumer dispute arbitration is prohibited to protect such interests, then litigation before foreign courts should likewise be prohibited, except in cases where a choice-of-court clause is secured *ex-post* (after the dispute arises).

4. Moving forward: India in the global order

4.1. Choosing the appropriate law: a path to consider

Given India's market size, it must define the scope of CPA 2019 in international contracts. One solution is to adopt a hybrid approach, drawing inspiration from the EU.¹²¹ Under EU law, while parties can choose the governing law for their contracts, such law should not weaken the consumer protections guaranteed under the law of parties' residences.¹²² Thus, the goods or service provider's chosen law will only apply if it offers consumer protections that are at least equal to or greater than those under the consumer's home country's law.¹²³ The comparison between the protections provided by the chosen law and those under the consumer's home country law allows the chosen law to apply, even if consumer protection under the consumer's home country's law is mandatory. Unlike China, Australia, and several African countries,¹²⁴ where national consumer protection laws can be enforced regardless of the chosen law, the EU refrains from automatically applying the consumer's home country's overriding mandatory norms. Thus, applying such norms is restricted to when they provide protection that surpasses the chosen law.¹²⁵ This approach balances freedom of contract with consumer protection. The UK, Turkey, and Russia have adopted a similar approach.¹²⁶

Adopting a similar approach in India would ensure consumer protection by allowing the application of foreign laws only when they offer greater protection than CPA 2019. This approach would protect Indian consumers from unfair practices while advancing sustainable development. It would also promote fair trade practices while prioritizing consumer welfare.

4.2. The way forward: choice-of-court clauses

Rules on jurisdiction are necessary to ensure complete protection. Switzerland and Russia prohibit choice-of-court clauses in consumer contracts.¹²⁷ Disputes must be

¹²¹Rome I Regulations 2008, art 6(1).

¹²²*Ibid.*

¹²³*Ibid*; Turkish PIL 2007, art 26(1); CCRF 2022, art 1212(1).

¹²⁴Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships 2010, art 42; ACL 2010, Chapter 3; see also, Oppong (n 15) 138–141, who refers to Zambia, Botswana, Kenya, Namibia, Uganda, and South Africa laws.

¹²⁵Rome I Regulations 2008, art 6(1).

¹²⁶Brussels Ibis 2012, arts 17–19, which applies to all contracts concluded in the UK before 1 January 2021; Consumer Rights Act 2015 (UK), part 2; Turkish PIL 2007, art 26(1); CCRF 2022, art 1212(1).

¹²⁷Swiss PIL 1987, art 114; Решение Верховного Суда РФ № 34-КГ20–6-К3 от 15 декабря 2020 г [Decision of the Supreme Court of the Russian Federation No 34-KG20–6-K3 of 15 December 2020].

resolved in the consumer's home country. In contrast, the EU and the UK do not prohibit businesses from excluding the jurisdiction of national courts in consumer contracts. However, a business's right to determine the court to adjudicate consumer disputes is limited. Choice-of-court clauses are only valid if made *ex-post*—unless the consumer and the business are resident or domiciled in the same Member State. In such cases, the business may propose that the court's jurisdiction be based on their shared residence at the time of the contract's conclusion (*ex-ante*).¹²⁸ In all other cases, i.e. where the consumer and the business do not reside in the same Member State (in the case of the EU) or within the UK at the time of the contract's conclusion, the right to choose the court remains the consumer's prerogative.¹²⁹ The business's ability to choose the court is limited to *ex-post* choices. Since consumers rarely have legal representation when purchasing goods or services, an *ex-post* choice-of-court clause protects them from being forced to accept the business's chosen court.

While India's approach to choice-of-court clauses is not as specific as the EU or UK, it favours invalidating clauses that burden or harass consumers. Adopting a framework similar to the EU or UK could enhance clarity and predictability in consumer contracts. This would provide stronger protections for Indian consumers against unfair choice-of-law clauses. It would also align India with international standards, advancing consumer welfare and promoting sustainable development.

5. Conclusion

Although CPA 2019 is India's primary law governing consumer disputes, there is ambiguity regarding its extraterritorial application and its status as a source of overriding mandatory norms or a crucial aspect of Indian public policy. The criteria to determine overriding mandatory norms and public policy aimed at safeguarding public or private interests have remained ambiguous, posing challenges to interpretation. CPA 2019 does not establish primacy over choice-of-law clauses nor classify its provisions governing unfair terms or trade practices as mandatory or integral to Indian public policy. Consequently, whether choice-of-law clauses incorporating such unfair terms or trade practices can be invalidated is debatable. CPA 2019's failure to assert its primacy over unconscionable contracts allows sellers to use choice-of-court and choice-of-law clauses to circumvent its applicability, exploit consumers, and impede their access to justice. While these clauses can enhance certainty and reduce transaction costs, they may disadvantage consumers if not legislated. Consumers may be forced to litigate or defend their rights in foreign jurisdictions, where they may not enjoy the same level of protection as India. Thus, in the interest of predictability and clarity, India should consider adopting an EU-like hybrid approach, allowing the application of foreign law only if it confers stronger protection for local consumers.

¹²⁸Brussels Ibis 2012, art 19.

¹²⁹*Ibid* art 19(3); Civil Jurisdiction and Judgments Act 1982 (UK), s 15B.

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