MODEL CONTRACTS AND THE LIMITS OF JUDICIAL REVIEW: A REAPPRAISAL OF CLAUSE 8 OF THE MODEL CONTRACT APPENDED TO SCHEDULE-A OF ORDINANCE NO. 24 OF NAGPUR UNIVERSITY

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ABSTRACT

This article critically examines the legal reasoning adopted in the *Citizen Education Society* (2023 Full Bench) judgment of the Bombay High Court, Nagpur bench which upheld the enforceability of model contractual terms, particularly Clause 8 of the Model Contract appended to Ordinance No. 24, without requiring explicit consent or incorporation by the parties. The judgment, based on the precedent set in the judgment of *Premlata Sudhakar Sathe* (1981), assumes that statutory model contracts are automatically binding on affiliated private institutions, thereby bypassing fundamental principles of the Indian Contract Act, 1872.

Relying on notably the judgment of *Vidya Ram Mishra*, the article argues that model or statutory terms do not acquire enforceability unless expressly adopted through a valid contract. The article highlights that the assumption of a default statutory contract contradicts the doctrine of party autonomy and violates the requirement of free consent under Sections 7 and 10 of the Contract Act. It concludes that the Citizen Education judgment's reliance on *Premlata* is *per incuriam*, and therefore requires urgent reconsideration to avoid the judicial imposition of non-consensual obligations in private contractual relationships.

Keywords: Indian Contract Act, 1872; Sample / Draft Contract; Model Contract; Clause 8, Ordinance No. 24; Citizen Education Judgment; Premlata Case; Vidya Ram Mishra Case; Per Incuriam; Party Autonomy; Consent in Contract Law; Enforceability of Contracts; Judicial Overreach; Private Unaided Institutions; Employment Contracts; Legal Incorporation of Terms

I. INTRODUCTION

The Indian legal framework governing contracts, particularly in the context of educational institutions, draws a fine line between enforceable contractual obligations and university regulations. This distinction becomes especially critical when dealing with private unaided institutions, which, though recognized by statutory bodies like universities, are not themselves statutory authorities. A key issue emerging in recent jurisprudence concerns the status and enforceability of model / sample contracts, such as those appended under The College Code of Nagpur University (also known as Ordinance No. 24), and whether terms contained therein, particularly Clause 8 of the Model Contract appended to the Schedule-A of the Ordinance No. 24, can bind institutions (affiliated colleges) in the absence of explicit contractual adoption.

This article examines the enforceability of model / sample contracts, analysing whether mere university recognition imposes public law obligations on private entities and whether such obligations can be enforced under Article 226 of the Constitution of India. It also critiques the *per incuriam* nature of precedent judgments that expand the scope of regulation clauses without clear contractual incorporation, especially where statutory flavour is absent.

II. MODEL CONTRACTS: A PREREQUISITE FOR ENFORCEABILITY

Under Indian Contract Law, a contract must reflect mutual assent and intention to be bound, either through express agreement or implied conduct. In the context of education law, model contracts, such as those found in Schedule-A of Ordinance No. 24 are intended to serve as standardized templates to guide institutions and ensure uniformity. However, these templates do not automatically acquire legal enforceability unless expressly incorporated into the agreement between parties.

It is a well-settled principle that the statutory nature of a contract emerges only when the terms prescribed by statute are adopted by the parties into a binding agreement. In the absence of such incorporation, any model terms or conditions, regardless of their origin, do not create enforceable rights or obligations. This has been emphasized in several Hon'ble Supreme Court rulings, including Vidya Ram Mishra v. Jai Narain College[1], where the Hon'ble Supreme Court

[1] Vidya Ram Mishra v. Jai Narain College (1972) 1 SCC 623.

has clarified that unless terms in a statute are incorporated into a contract, they remain aspirational and non-binding.

Under Indian law, the enforceability of any contract, be it a private agreement, a statutory form, or a model contract, rests on the foundational principles enshrined in the Indian Contract Act, 1872 (hereinafter "Contract Act"). One of the central tenets of contract law is the principle of ***consensus ad idem*** i.e., there must be a meeting of minds between the parties on all material terms of the agreement. Merely prescribing a model and / or statutory template does not, in itself, create a binding contract unless the parties have explicitly agreed to be governed by it.

Section 10 of the Contract Act defines what agreements are contracts and states, "*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*." This provision makes it clear that free consent and mutual agreement are essential prerequisites. Thus, a statutory and / or model contract, such as the one appended to Ordinance No. 24, cannot be treated as enforceable unless incorporated with mutual consent into an agreement between the parties.

Further, Section 11 of the Contract Act emphasizes competence to contract, reaffirming that the parties must voluntarily enter into the agreement. These provisions together underscore that no contractual obligation can arise from a model and / or statutory format unless it is expressly adopted by the parties.

It is pertinent to note that the model / sample contracts serve as guiding templates and are often introduced to promote uniformity, especially in regulated sectors like education. However, their legal standing is comparable to any other form of contract. Unless the terms of such model contracts are expressly incorporated either by reference or by execution, they remain legally non-binding.

It is no *res integra* that the Hon'ble Court/s have consistently held that the mere existence of a model form and / or statutory schedule does not result in a binding agreement, unless parties have intended and agreed to incorporate such provisions. In this context, the Hon'ble Supreme Court's decision in Vidya Ram Mishra (Supra) is significant. The Hon'ble Supreme Court held that "*The statutory conditions do not apply proprio vigore. They become conditions of service only by virtue of their incorporation into the contract of service*." This directly supports the

argument that statutory and / or model terms do not acquire enforceability unless contractually adopted.

Section 7 of the Contract Act states that for a contract to be concluded, the acceptance must be absolute and unqualified. The language of the section is instructive i.e., "*In order to convert a proposal into a promise, the acceptance must... (1) be absolute and unqualified, and be expressed in some usual and reasonable manner. (2)……..*" Applying this principle, unless both parties have absolutely and unconditionally accepted the terms of the model contract, no binding contractual relationship arises. This is particularly relevant where the model contract includes significant obligations (e.g., Clause 8 of the Ordinance No. 24 model contract), such as requiring prior approval of a university for termination is not to be complied with as these terms were never accepted. These obligations cannot be imposed unilaterally; they must be voluntarily accepted. There is also no provision in the Indian Contract Act that allows for implied incorporation of model terms into private contracts by default.

Even from an equity standpoint, without an express contract, the doctrine of estoppel does not operate to enforce model terms. The parties cannot be bound by what they never agreed to. In the context of employment, especially in private unaided institutions, service conditions must be founded in a contract, not merely inferred from policy documents or regulatory codes.

In sum, under the Indian Contract Act, 1872, a model and / or statutory contract cannot be enforced unless the parties have expressly agreed to be bound by its terms. The fundamental requirements under Sections 7, 10, and 11 of the Contract Act mandate free consent, unqualified acceptance, and competence. The Hon'ble Supreme Court has reaffirmed that unless statutory terms are adopted into a contract, they do not have legal force. Therefore, Clause 8 of the Model Contract in Ordinance No. 24 cannot be enforced against a private unaided institution unless it has been explicitly incorporated into the employment agreement. This doctrinal position upholds the autonomy of private contracting and protects against the imposition of obligations that were never consensually agreed upon.

III. PRIVATE INSTITUTIONS AND THE LIMITS OF PUBLIC LAW

A recurring argument in litigation involving private unaided institutions is that university recognition or affiliation subjects them to codes, making their internal actions, such as termination of employees subject to judicial review under Article 226. However, courts have

consistently held that recognition by a university does not, by itself, convert a private institution into a public body, nor does it transform its administrative decisions into actions subject to writ jurisdiction.

The institution (affiliated colleges) is not a statutory body, nor are its service rules vested with any statutory character. Therefore, the mere fact that it operates under the recognition of a university does not make its service-related decisions challengeable under writ jurisdiction. Judicial review under Article 226 is limited to situations involving public duties, which are typically associated with statutory or governmental bodies, and not private educational entities functioning under a framework of private contracts.

IV. THE MISPLACED RELIANCE ON CLAUSE 8 OF THE MODEL CONTRACT

One of the key points of contention relates to Clause 8 of the Model Contract appended to Schedule-A of Ordinance No. 24, which deals with the procedure for the termination of employees and the requirement of approval from the Executive Council of Nagpur University.

It is crucial to note that the model contract, including Clause 8, has no binding effect unless incorporated into the actual agreement between the employer and the employee. Without a written agreement or incorporation by reference, the model contract remains a guideline, not a legal instrument capable of creating enforceable rights.

The propounded doctrine of statutory flavour applies only when statutory terms are expressly included in a contract, thereby acquiring legal enforceability. Without such incorporation, model provisions, even if appended to statutes or ordinances, do not create mandatory obligations. In fact, their implementation and breach do not attract consequences under public law unless they are converted into contractual obligations through written or implied agreement.

The principle was cemented by the Hon'ble Supreme Court in *Vidya Ram Mishra* (supra), where it was held that statutory service conditions have no force of law unless incorporated into the employment contract. Mere reference to statutes or codes in the employment context does not transform them into binding agreements. Therefore, Clause 8 of the Model Contract

appended to Ordinance No. 24 remains non-enforceable unless the contract specifically refers to or includes it.

Judicial review under Article 226 is a powerful constitutional remedy intended to protect fundamental and legal rights against state action. However, this remedy is not available for enforcement of purely private contractual rights, especially when the party sought to be held accountable is not a statutory or public body. It is pertinent to note that the dispute relates to contractual terms of employment, the remedy lies in civil courts under private law, not in constitutional writ jurisdiction. The non-existence of Clause 8 in the signed employment contract further strengthens the position that no public law remedy is maintainable in this case.

V. JUDICIAL OVERREACH AND THE *PER INCURIAM* DOCTRINE

A significant legal rectification is required in the judgment of Citizen Education Society, Nagpur v/s. Dhanajay s/o. Ambadas Dhabe, 2023 (2) Mh.L.J. 585[2] (2023 FB), which relies on the earlier Full Bench decision in Premlata Sudhakar Sathe v/s. Governing Body of G.S. Tompe College, 1918 Mh. L.J. (F.B.) 332[3]. In *Premlata Sudhakar Sathe* (Supra), it was observed that failure to execute a written contract under Article 38(2) of the College Code would not prevent the invocation of rights listed in Schedule-A. However, this judgment is *per incuriam*, as it fails to consider the binding precedent of the Hon'ble Supreme Court.

In *Vidya Ram Mishra* (Supra), the Hon'ble Supreme Court made it unequivocally clear that statutory terms and conditions do not apply *proprio vigore* and must be incorporated into a contract to have any legal effect. Thus, *Citizen Education Society* (Supra) wrongly relied on *Premlata Sudhakar Sathe* (Supra), ignoring the authoritative and contrary view of the Hon'ble Supreme Court. As per the doctrine of *per incuriam*, any precedent that overlooks a binding higher court judgment is not good law and should not be followed.

The judgment in *Citizen Education Society* (Supra), which relied on the earlier decision in *Premlata Sudhakar Sathe* (Supra), merits a thorough reconsideration. The Hon'ble Court/s, in both cases, appears to have proceeded on the erroneous assumption that the statutory model contract appended to Schedule-A of Ordinance No. 24 is automatically binding on parties by virtue of affiliation or recognition by the University. This approach overlooks the fundamental

[2] Citizen Education Society, Nagpur v/s. Dhanajay s/o. Ambadas Dhabe, 2023 (2) Mh.L.J. 585
[3] Premlata Sudhakar Sathe v/s. Governing Body of G.S. Tompe College, 1918 Mh. L.J. (F.B.) 332

requirement under the Indian Contract Act, 1872, that for any contractual terms, statutory or otherwise, to be enforceable, there must be free consent and express or implied incorporation of those terms into a valid agreement. In the absence of an executed contract or any documentary evidence indicating acceptance of the model terms, particularly Clause 8, the Hon'ble Court's presumption of a default statutory contract being in force is both legally and doctrinally unsound.

Furthermore, this line of reasoning runs contrary to the binding precedent set by the Hon'ble Supreme Court in *Vidya Ram Mishra* (Supra), which unequivocally held that statutory service terms do not apply *proprio vigore* and become enforceable only upon incorporation into a contract of service. The failure of *Citizen Education Society* (Supra) to address or distinguish this authoritative decision renders its reliance on Premlata Sudhakar Sathe (Supra) *per incuriam*. The assumption that a statutory contract is automatically deemed to be entered into merely because a model form exists, undermines the essential principles of party autonomy and contractual consent, and invites judicial overreach into private legal relationships. A doctrinally sound interpretation requires reaffirmation of the need for express agreement before binding parties to model or statutory terms.

VI. ERRONEOUS EXPANSION OF STATUTORY PROVISOS

Another critical flaw in *Citizen Education Society* (Supra) lies in its unwarranted expansion of the scope of Clause 5 of Statute 53. The Full Bench judgment stretched the scope of the proviso to include sub-clauses (a), (b), (d), and (e) of Clause 8 of Schedule A, thereby importing obligations that do not statutorily flow from the parent provision.

Such judicial expansion violates settled interpretative norms, which dictate that provisos must be construed strictly and in harmony with the main clause. The introduction of external terms into the statutory matrix without legislative backing undermines the principle of separation of powers and usurps legislative authority. The Hon'ble Court/s cannot read into statutes what is not expressly provided, especially when doing so imposes obligations on private parties without their consent.

VII. CONSTITUTIONAL AUTONOMY AND EDUCATIONAL RIGHTS

It should be noted that some affiliated colleges being a minority unaided institution, enjoy the

fundamental right to administer its affairs under Article 30(1) of the Constitution. This includes the power to appoint and terminate staff in accordance with internal policies, as long as they are consistent with law and public interest.

Any attempt by the state or judiciary to interfere in internal administrative decisions, such as staff termination, absent any statutory violation, would constitute a violation of constitutional autonomy guaranteed under Part III of the Constitution. Therefore, imposing Clause 8 of the model contract without its incorporation infringes upon these fundamental rights and sets a dangerous precedent for judicial overreach into private education management.

VIII. CONCLUSION

This article reiterates the vital legal principle that model contracts, however standardized or statutorily referenced, cannot be enforced unless expressly incorporated into a private agreement. The Hon'ble Court/s have time and again resisted the temptation to convert non-binding model terms into enforceable obligations absent clear contractual consent. The judgment in *Citizen Education Society* (Supra), being founded on a *per incuriam* precedent and involving an unwarranted expansion of statutory clauses, must be revisited and read in light of the Hon'ble Supreme Court's consistent jurisprudence, particularly in *Vidya Ram Mishra* (Supra).