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"PARK AT YOUR OWN RISK": BAILMENT, LICENCE AND THE LIMITS OF EXCLUSION NOTICES IN INDIAN PARKING LAW

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ABSTRACT:

Almost every car park in India carries a board saying "park at your own risk", "vehicles parked at owner's risk" or something close to it. Operators read it as a shield. This paper asks whether the shield works, and argues that the sentence has no single legal value because its effect depends on what the operator does with the car. Where the operator takes the keys, as in valet parking, the arrangement is a bailment under the Indian Contract Act, 1872, the operator must take reasonable care, and the Supreme Court has held in *Taj Mahal Hotel v. United India Insurance* that a notice cannot excuse negligence and that the operator carries the burden of proving care. Where the operator only provides space, the arrangement is usually a licence, and bailment law does not apply at all. Between these two poles sit the barrier-and-ticket lots of malls and offices, which Indian law has not clearly classified. The paper then tests the notice against contract and consumer law, compares England, Canada, Malaysia and Nigeria, and proposes a practical framework.

KEYWORDS: parking, bailment, licence, exclusion clause, valet parking, deficiency in service, unfair contract terms, consumer protection

I. INTRODUCTION

Anyone who has driven into a mall, a hospital or a hotel in India has seen the board. It sits near the entry barrier, usually in red, usually small, and it says that the vehicle is parked at the owner's risk. The question only becomes serious later, when the car comes back scratched, or does not come back at all.

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The law behind that board is older than the car. Indian law on the delivery of goods to another person for a purpose sits in the Indian Contract Act, 1872, which defines bailment as the delivery of goods from one person to another for some purpose, on a contract that they will be returned or disposed of as the owner directs once the purpose is accomplished.[3] A bailee must take as much care of the goods as a man of ordinary prudence would take of his own goods of the same kind.[4] The Act also says that a bailee who has taken that much care is not responsible for loss "in the absence of any special contract".[5] Those last words are where the notice on the wall tries to do its work. An operator says that the notice is the special contract, and that the driver agreed to carry the risk by driving in.

In November 2019 the Supreme Court dealt with a version of this argument in *Taj Mahal Hotel v. United India Insurance Co. Ltd.*[6] A guest's car had been handed to hotel staff for valet parking and was lost. The hotel relied on a disclaimer on the token. The Court did not accept it. The decision is a major step, but it is narrow. It concerns valet parking, where the hotel took the car and key, and not the common case where a driver parks personally and walks away.

This paper treats "park at your own risk" as a sentence that means different things in different settings, and asks what the law should do with each.

II. STATEMENT OF THE PROBLEM AND RESEARCH GAP

A. The problem

The first problem is uncertainty: neither driver nor operator can tell in advance whether a duty of care exists. The second problem is fairness. A notice is read, if at all, in a few seconds, at a barrier, with cars waiting behind. If a board is enough to wipe out liability, an operator can charge a fee, control the exit and still bear no risk.

B. The research gap

Writing on Indian parking law falls into two groups. One group is about valet parking and the *Taj Mahal* ruling. The other group is about whether malls can charge a parking fee at all, which is a question of planning and licensing rather than liability. Very little work asks what the fee-legality decisions say about the duty of care. A mall that tells a court it provides parking as part of its service, and then tells a driver that safety is the driver's own concern, is saying two things

[3]Indian Contract Act, 1872, No. 9 of 1872, § 148 (India).

[4]Indian Contract Act, *supra* note 1, § 151.

[5]Indian Contract Act, *supra* note 1, § 152.

[6]*Taj Mahal Hotel v. United India Insurance Co. Ltd.*, (2020) 2 SCC 224 (India) (decided Nov. 14, 2019), https://indiankanoon.org/doc/135865865/.

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that do not sit easily together. This paper examines that tension.

III. RESEARCH QUESTIONS, HYPOTHESIS AND OBJECTIVES

A. Research questions

The main question is this: **can a "park at your own risk" notice remove an operator's liability for loss of or damage to a vehicle under Indian law?**

Four smaller questions follow from it.

1. When is a parking arrangement a bailment, and when is it only a licence?
2. After *Taj Mahal*, what is the legal value of a disclaimer in valet and non-valet parking?
3. Can general contract law and consumer law limit the force of such a notice for paid parking?
4. What do other legal systems do, and can India learn from them?

B. Hypothesis

The paper's working hypothesis is that the notice has no fixed effect. It does not defeat a claim where the operator has custody of the vehicle, and it may be effective in a pure licence, but consumer protection law gives paid-parking customers a stronger claim than the bailment-licence line alone suggests.

C. Objectives

The objectives are to explain the bailment-licence distinction in parking, read the Indian decisions as one body of law, test exclusion notices against contract and consumer principles, compare four other jurisdictions, and propose a workable framework.

IV. SCOPE AND METHODOLOGY

The paper is limited to private-vehicle parking offered by hotels, malls, hospitals, offices and commercial lots in India. It does not cover on-street parking, vehicles left with repairers, or criminal liability for theft.

The method is doctrinal. The primary sources are the Indian Contract Act, 1872, the Consumer Protection Act, 2019 and decisions of the Supreme Court, High Courts and the National Consumer Disputes Redressal Commission. Secondary sources are one academic article, a consumer-affairs column and news reports of court decisions. The Supreme Court's judgment in *Taj Mahal* was read directly, other decisions are cited through reports. Where a source is a news report, the footnote says so.

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V. THE CONCEPTUAL FRAMEWORK: BAILMENT OR LICENCE?

A. What makes a bailment

Three ideas matter. The first is delivery, which the Act says can be made by anything that puts the goods in the bailee's possession or that of a person authorised to hold them.[7] The second is possession and control. Bailment needs the bailee to take possession, even briefly. The third is a duty. Once there is a bailment, the bailee must take reasonable care and must return the goods.[8]

B. What makes a licence

A licence is permission to use space. The owner of the land allows another person to enter and put something there, but does not take the thing into his own hands. The visitor keeps control, so the licensor is not a bailee of what is left on the land. The Supreme Court in *Taj Mahal* drew exactly this distinction, explaining that parking a car in a space the owner provides does not by itself create a bailment, and that the question is whether the owner took the vehicle into custody.[9]

C. The practical test

Courts look at a cluster of facts. Who holds the key? Who drives the car in and out? Must a token be returned to get the car out? Is the fee for storage or only for space? Does the operator control the exit? Is a guard employed to watch the vehicles? The more yes answers, the closer the arrangement is to bailment.

Table 1 sets out the three common settings.

Setting	**Who control the car**	**Likely character**	**Effect of "own risk" notice**
Valet parking	Operator takes keys and drives the car	Bailment	Cannot excuse negligence, operator must prove reasonable care
Barrier-and-ticket lot with guards	Driver parks, operator controls entry, exit and watch	Unsettled, may be bailment on facts	Uncertain, depends on proof of custody and on fairness of the term

[7]Indian Contract Act, *supra* note 1, § 149.
[8]Indian Contract Act, *supra* note 1, §§ 151, 160.
[9]*Taj Mahal*, *supra* note 4, ¶ 18.

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Setting	Who control the car	Likely character	Effect of "own risk" notice
Open space or self-park, no surveillance	Driver keeps the key and control	Licence	May be effective as a notice, but bounded by contract and consumer law

VI. THE INDIAN CASE LAW

A. The National Commission line

Before 2019 the National Consumer Disputes Redressal Commission had produced a line of decisions on the question. In *Alagraj* a three-member bench held that a person who provides parking for a nominal fee does not undertake to ensure the safety of the vehicle.[10] A larger bench in *Rohini Group of Theatres* followed that approach for a theatre attendant who collected a small fee.[11] *Bombay Brazzerie* reflects the same thinking.[12] The thread was that an operator who collects little and only allows space is a licensor, not a bailee.

B. Cases that found bailment

Other decisions went the other way when the facts showed more than space. In *New India Assurance v. Delhi Development Authority* an insurer, having paid for a stolen vehicle, sued as a subrogee, and the Delhi High Court treated the arrangement at a municipal lot as a bailment.[13] In *Mahesh Enterprises v. Arun Kumar Gumber* a contractor ran a parking lot under a licence from a public authority, issued a slip, charged the prescribed fee and controlled the exit. The State Commission held the contractor alone liable, and the National Commission upheld that view.[14] A consumer-affairs column summed up its message: a contractor who takes money for parking must see that the vehicle is safe.[15] The Supreme Court in *Taj Mahal* later approved the reasoning of these cases.[16]

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[10]*Commissioner, Corporation of Madras v. S. Alagraj*, I (1996) C.P.J. 54 (N.C.) (India), as discussed in *Taj Mahal*, *supra* note 4.

[11]*Rohini Group of Theatres v. V. Gopalakrishnan*, II (1996) C.P.J. 1 (N.C.) (India), as discussed in *Taj Mahal*, *supra* note 4.

[12]*Bombay Brazzerie v. Mulchand Agarwal*, (2002) NCDRC 42 (India).

[13]*New India Assurance Co. Ltd. v. Delhi Development Authority*, AIR 1991 Del. 298 (India), as discussed in *Taj Mahal*, *supra* note 4.

[14]*Mahesh Enterprises v. Arun Kumar Gumber*, Revision Petition No. 250 of 1997, 2001 C.P.J. 1 (N.C.) (Nat'l Consumer Disputes Redressal Comm'n Nov. 15, 2000) (India), https://future.indiankanoon.org/doc/21683/.

[15]Pushpa Girimaji, *Contractor Has to Ensure Vehicle's Safety*, The Tribune (Sept. 14, 2008), https://www.tribuneindia.com/2008/20080914/spectrum/rights.htm (reporting the *Mahesh Enterprises* decision).

[16]*Taj Mahal*, *supra* note 4, discussing *New India Assurance*, *supra* note 11 and *Mahesh Enterprises*, *supra* note 12.

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C. *Taj Mahal Hotel*: what the Supreme Court held

In *Taj Mahal* the guest handed the car to hotel staff, who took the key and parked it. The car was later lost while in the hotel's hands. The Court held the hotel was a bailee, because it took delivery of the car and key and kept control. It then turned to the notice. The Court agreed with the older Madras view, that a bailee cannot use the phrase "special contract" in the Contract Act to exclude liability for its own negligence, and it followed the line of authority in which that view has been generally accepted in India.[17] The Court also placed the burden of proof on the hotel. Once the car was gone while in the hotel's custody, it was for the hotel to prove that it had taken reasonable care. The hotel had not done that.[18]

The Court was firm: in valet parking, a bailee cannot contract out of the duty of care. But it was also careful. Its rule was framed around valet parking, and it did not say the same holds for every car park.[19]

D. The older Madras foundation

The rule in *Taj Mahal* goes back to the Full Bench decision of the Madras High Court in *Sheik Mahamad Ravuther v. British India Steam Navigation Co.*, which held that the words "in the absence of any special contract" in section 152 do not let a bailee exclude liability for negligence.[20] *Lily White v. R. Munuswami*, a Madras case on laundry receipts, applied similar reasoning to a notice limiting a launderer's responsibility.[21]

E. What the cases leave open

The pattern is clear at the ends and blurred in the middle. A valet case is a bailment. An open lot with a handwritten board is probably not. A mall with a barrier, ticket machine, fee and uniformed guards is neither obviously one nor the other, and no Indian appellate court has decided it as a bailment question.

VII. CAN A NOTICE BIND THE DRIVER? CONTRACT AND UNFAIRNESS

Even if a licence is all there is, the operator still has to show that the board became part of a contract with the driver. This is a separate question, and many notices fail it.

[17] *Taj Mahal*, *supra* note 4, discussing the Madras Full Bench view cited at note 18 below.
[18] *Taj Mahal*, *supra* note 4, ¶¶ 28–30.
[19] *Taj Mahal*, *supra* note 4, ¶ 28.
[20] *Sheik Mahamad Ravuther v. British India Steam Navigation Co. Ltd.*, (1909) I.L.R. 32 Mad. 95 (F.B.) (India); Indian Contract Act, *supra* note 1, § 152.
[21] *Lily White v. R. Munuswami*, AIR 1966 Mad. 13 (India), https://future.indiankanoon.org/doc/81982/.

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A. Reasonable notice

The old English rule is that a ticket or sign binds a person only if reasonable steps were taken to bring it to the person's attention before the contract was made. In *Parker v. South Eastern Railway* the Court of Appeal asked whether the railway had given reasonable notice of the conditions on a cloakroom ticket.[22] In *Olley v. Marlborough Court* a hotel's notice, displayed in a guest's room after the guest had already booked and paid, came too late to be part of the contract.[23] And in *Thornton v. Shoe Lane Parking* a driver took a ticket from an automatic machine at the car park entrance. The Court of Appeal held the contract was made when the machine accepted his entry, and that conditions printed on the ticket, which he could only see afterwards, were not part of it. Lord Denning added that a particularly harsh term must be drawn to the driver's attention in a more obvious way.[24]

These cases are English, but the Contract Act's requirement of consent (sections 13 and 14) supports the same approach. A board not visible from the driver's seat, or a clause in tiny print on a ticket handed over after the barrier lifts, is a weak foundation for a term that removes a right of action.

B. Unequal bargaining power and public policy

Indian courts have said for decades that standard-form terms imposed on a weaker party can be struck down. In *Central Inland Water Transport Corp. v. Brojo Nath Ganguly* the Supreme Court held that unconscionable and unfair terms in a contract between unequal parties are void as against public policy under section 23 of the Contract Act.[25] A parking notice fits that description, since the driver cannot negotiate.

C. Unfair contract terms in consumer law

The Consumer Protection Act, 2019 gives these ideas a statutory home. The Act defines an "unfair contract" as a contract between a manufacturer, trader or service provider and a consumer that has terms causing significant change in the rights of the consumer, and lists examples, including the imposition of any unreasonable charge, obligation or condition that puts the consumer at a disadvantage.[26] A State Commission can declare such terms null and void.[27] The Supreme Court has applied the idea in two builder-buyer cases. *Pioneer Urban*

[22]*Parker v. South Eastern Railway Co.*, (1877) 2 C.P.D. 416 (C.A.) (Eng.).
[23]*Olley v. Marlborough Court Ltd.*, [1949] 1 K.B. 532 (C.A.) (Eng.).
[24]*Thornton v. Shoe Lane Parking Ltd.*, [1971] 2 Q.B. 163 (C.A.) (Eng.).
[25]*Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly*, (1986) 3 SCC 156 (India); Indian Contract Act, *supra* note 1, § 23.
[26]Consumer Protection Act, 2019, No. 35 of 2019, § 2(46) (India).
[27]Consumer Protection Act, *supra* note 24, § 49(2).

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Land described a one-sided clause as an unfair trade practice, and *Ireo Grace* repeated that a buyer cannot be bound by terms that are totally one-sided.[28] Neither concerns parking, but both show the Court looking behind the contract to the balance of power.

VIII. CONSUMER LAW AND THE NATURE OF PAID PARKING

A. Parking as a "service"

The Consumer Protection Act defines "service" broadly to include services of any description made available to potential users.[29] A person who pays for parking is a "consumer" under the Act, because the definition covers a person who hires or avails a service for consideration.[30] A "deficiency" is any fault, shortcoming or inadequacy in the quality, nature or manner of performance undertaken.[31] This is a different route to liability: a complaint needs a service, consideration and a deficiency, not a bailment. In the National Commission cases above, the real question was whether the service included safe keeping.

B. What the fee cases say

The Gujarat High Court's decision in *Ruchi Malls v. State of Gujarat* is usually remembered as a ruling about fees. A Division Bench held in July 2019 that malls and multiplexes must provide parking for their customers and that charging for it was not generally allowed under the planning rules.[32] What is useful for this paper is the reasoning on why operators said they should be able to charge. The Court rejected the idea that charging could be justified by the cost of safety and security, observing that this was not a ground on which a fee could stand.[33] The matter later went to the Supreme Court, which passed an interim order in October 2019 and in 2021 asked the State to implement common parking guidelines.[34]

In April 2023 the Kerala High Court dealt with a challenge to fees at a large shopping mall and held that a building owner can decide whether to levy a fee on a stand-alone parking facility, although the legal basis of that decision was different from Gujarat's.[35]

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[28]*Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725 (India); *Ireo Grace Realtech (P) Ltd. v. Abhishek Khanna*, (2021) 3 SCC 241 (India).

[29]Consumer Protection Act, *supra* note 24, § 2(42).

[30]Consumer Protection Act, *supra* note 24, § 2(7).

[31]Consumer Protection Act, *supra* note 24, § 2(11).

[32]*Ruchi Malls Pvt. Ltd. v. State of Gujarat*, R/L.P.A. No. 1412 of 2018 (Guj. July 10, 2019) (India), https://future.indiankanoon.org/doc/37126996/.

[33]*Ruchi Malls*, *supra* note 30, ¶ 24.

[34]*Supreme Court Asks Gujarat Govt. to Implement Common Guidelines for Parking Policy under the Town Planning Act or GDCR*, LiveLaw (Sept. 1, 2021), https://www.livelaw.in/amp/news-updates/supreme-court-asks-gujarat-public-parking-issue-common-guidelines-gdcr-town-planning-180809 (news report, also covering the Oct. 15, 2019 interim order).

[35]*Bosco Louis v. State of Kerala* and *Pauly Vadakkan v. Lulu International Shopping Mall Pvt. Ltd.*, W.P.(C) Nos.

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C. The tension

These cases create a practical argument that no court has yet tested. If an operator charges a fee, the service is paid. If the operator also tells the court, as in *Ruchi Malls*, that safety and security are part of what it provides, then a driver might say the service includes watching the car. A board that says the opposite then looks like an attempt to take away, by a notice, a benefit the operator advertised and charged for. In consumer law terms, that is an argument for deficiency in service, and potentially for an unfair term. It is the author's own argument and not a settled rule. It would need to be proved on the facts, for example by showing guards, CCTV, tickets and branding that promise a safe lot. It would be weaker for a free, unmanned bay.

IX. COMPARATIVE PERSPECTIVES

A. England

In *Ashby v. Tolhurst* the Court of Appeal held that a person who left a car in a car park, paid a fee and received a ticket was a licensee and the attendant was not a bailee, because the car was not handed over to the attendant.[36] Later cases, including *Tinsley v. Dudley* and *Williams v. Linnitt*, followed that approach for car parks where the owner did not take custody.[37] So in England a self-park with no handover is a licence.

At the same time, English statute law limits what operators can say. The Consumer Rights Act 2015 makes unfair terms in consumer contracts non-binding and says that a trader cannot exclude or restrict liability for death or personal injury caused by negligence.[38] Terms must be transparent, and doubt favours the consumer.[39] The Hotel Proprietors Act 1956 also limits what a hotel proprietor owes for vehicles and property left in them, and makes the protection depend on conditions such as a proper notice, which shows that Parliament chose to regulate this area by statute.[40]

B. Canada

In *Bata v. City Parking Canada* the Ontario Court of Appeal considered a commercial garage

23932 and 29749 of 2021 (Ker. Apr. 10, 2023) (India); *see Building Owner Can Decide If Parking Fees Is to Be Levied from Customers Utilizing Its Shopping Facility: Kerala High Court*, LiveLaw (Apr. 18, 2023), https://www.livelaw.in/amp/high-court/all-high-courts/kerala-high-court-lulu-mall-parking-fees-building-owner-prerogative-multi-level-parking-standalone-license-226649 (news report).

[36]*Ashby v. Tolhurst*, [1937] 2 K.B. 242 (C.A.) (Eng.).

[37]*Tinsley v. Dudley*, [1951] 2 K.B. 18 (C.A.) (Eng.); *Williams v. Linnitt*, [1951] 1 K.B. 565 (C.A.) (Eng.).

[38]Consumer Rights Act 2015, c. 15, §§ 62, 65 (U.K.).

[39]Consumer Rights Act, *supra* note 36, §§ 68–69.

[40]Hotel Proprietors Act 1956, 4 & 5 Eliz. 2, c. 62, § 2 (U.K.).

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whose ticket said cars were left at the owner's risk. It is cited for the point that bailment or licence depends on the facts, and that a disclaimer is only as strong as the contract carrying it.[41]

C. Malaysia

The Malaysian position appears in a 2011 press report, in which the Ministry of Domestic Trade was reported to have said that "park at your own risk" signs could no longer be relied on to avoid liability.[42] This is a report of an official statement, not a judgment, and it should be read that way. It shows a regulator, not only a court, taking a position against the signs.

D. Nigeria

A recent Nigerian article titled *The Illusion of Immunity* examines "park at owner's risk" notices and argues that they give operators less protection than operators assume, in particular where the operator has taken some control of the vehicle.[43]

E. What the comparison shows

Table 2 summarises the comparison.

Country	**Self-park,no handover**	**Statutory limits on notices**	**Main lesson**
India	Likely licence, unsettled for barrier lots	Consumer Protection Act, 2019, Contract Act, s. 23	Valet notice cannot excuse negligence
England	Licence (*Ashby*, *Tinsley*)	Consumer Rights Act 2015, Hotel Proprietors Act 1956	Licence rule is strict, so the statute carries the load
Canada	Fact-dependent (*Bata*)	Provincial consumer statutes	Notice must be part of the contract
Malaysia	Not decided in a judgment	Regulator's position reported	Regulators can act against the signs

[41] *Bata v. City Parking Canada Ltd.*, (1973) 43 D.L.R. (3d) 190, [1974] 2 O.R. (2d) 446 (Ont. C.A.) (Can.), https://ctdj.ca/en/jurisprudence/bata-v-city-parking-canada-ltd-1973-43-d-l-r-3d-190-1974-2-o-r-2d-446/.

[42] *'Park at Your Own Risk' No Longer Applicable*, The Borneo Post (Oct. 10, 2011), https://www.theborneopost.com/2011/10/10/%E2%80%98park-at-your-own-risk%E2%80%99-no-longer-applicable/.

[43] Rapuluchukwu Ernest Nduka & Chidimma Victory Nduka, *The Illusion of Immunity: Legal Effectiveness of "Park at Owner's Risk" Notices in Nigerian Jurisprudence*, 17(2) Nnamdi Azikiwe U. J. Int'l L. & Jurisprudence 32 (2026), https://www.ajol.info/index.php/naujilj/article/view/333692.

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Country	Self-park,no handover	Statutory limits on notices	Main lesson
Nigeria	Not clearly settled	Limited	Notices overstate their protection

Two lessons stand out. No common-law system gives a pure "own risk" notice automatic force, and where courts are strict about the licence rule, as in England, legislation protects consumers. India already has such a statute, but its parking use is largely untried.

X. A PROPOSED FRAMEWORK

The paper suggests a four-step approach for courts and consumer commissions, with practical steps for operators and regulators.

A. A four-step test

1. **Custody.** Did the operator take the vehicle or key? If yes, it is a bailment, the notice cannot excuse negligence and the operator must show reasonable care, as *Taj Mahal* requires.
2. **Control and consideration.** If there was no handover, did the operator charge a fee, control the exit, issue a return-ticket and keep guards? If so, the court should be willing to find a bailment or treat the arrangement as a service with a safety undertaking, as in *Mahesh Enterprises*.
3. **Notice.** If neither applies, did the notice form part of the contract? It must be visible before entry and in language the driver can understand, and unusual terms need more prominent warning.
4. **Fairness.** Even if the notice binds, is it unfair under section 2(46) or section 23? A fee-charging operator that also promotes safety should find it hard to defend a clause removing responsibility for negligence.

B. For operators

Operators should state clearly what they provide. "This lot is unattended, we provide space only" is more honest, and more likely to be upheld, than "own risk" beside a guard booth. They should also keep CCTV and guard records, since the burden of proof in a bailment falls on them.

C. For regulators

Governments can issue short model rules setting out what must be displayed, what a ticket must

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say, and which parking terms are unfair, in the direction the Supreme Court's 2021 order points. A State Commission could also test the point under section 49(2).

XI. CONCLUSION

The sentence "park at your own risk" sounds absolute, but the law does not treat it that way. After *Taj Mahal*, an operator who takes a vehicle and key cannot hide behind it. An operator who only provides space has a better position, but must still show that the notice was part of the contract and was fair. The unsettled middle, the paid, guarded, barrier-controlled lot, is where most Indian drivers now park, and it is where the law is least clear.

The paper's own suggestion is that the fee cases and consumer law belong together. An operator that charges a fee and defends it by pointing to safety cannot easily say that safety is the driver's own concern. That argument needs a test case, and the author does not claim courts have accepted it. Until then, drivers should keep the ticket and take photographs, operators should say plainly what they offer, and courts should read the board for what it is, a sentence written by one side, not the end of the matter.

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