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VALIDITY OF ONLINE CONTRACTS IN INDIA: LEGAL CHALLENGES AND JUDICIAL TRENDS

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ABSTRACT :

The rapid migration of commercial and consumer transactions onto digital platforms has made the online contract, formed through e-mail exchange, click-wrap assent, browse-wrap notice, or electronic signature, the dominant mode of contracting in India today. This paper looks at how Indian courts have gone about deciding whether, and when, such a contract is valid and enforceable. It works through the statutory foundation for electronic contracting, principally Section 10-A of the Information Technology Act, 2000 read alongside the ordinary essentials of a valid contract under the Indian Contract Act, 1872, before turning to the specific doctrinal problems that keep coming up in practice: when an e-mail exchange actually ripens into a binding agreement, whether a click on an 'I Agree' button reflects genuine consent, which court has jurisdiction once a transaction crosses state or national borders, and whether an unstamped or unsigned electronic instrument can be enforced at all. My central argument is that Indian courts have not developed anything like a dedicated body of click-wrap or e-contract doctrine; instead, they have extended the inherited, nineteenth-century law of standard-form and adhesion contracts, together with a handful of pragmatic rules on the place and time of electronic communication, to a contracting environment those rules were never really designed for. The paper pays particular attention to the formation cases, *Trimex International v Vedanta Aluminium* and *P.R. Transport Agency v Union of India*, and to the unconscionability doctrine drawn from *Central Inland Water Transport Corporation v Brojo Nath Ganguly* and *LIC of India v Consumer Education and Research Centre*, which together supply the closest thing Indian law has to a click-wrap jurisprudence. It concludes that while this case-by-case approach has generally let courts reach sensible outcomes on the facts before them, it leaves the underlying law of online contracts considerably less predictable than it should be, particularly on stamping and on the fairness of consent obtained through lengthy standard terms, and that targeted legislative intervention would help.

INTRODUCTION

The way contracts get formed has changed a great deal over the last two decades. Where a binding agreement once required the physical exchange of signed paper, most commercial and consumer transactions in India today are concluded electronically, an e-mail confirming a shipment of goods, a click on an 'I Agree' button before installing an application, a swipe accepting the terms of a ride-hailing service, or an Aadhaar-based electronic signature on a loan agreement. These arrangements, generally described as 'online contracts' or 'e-contracts', now underpin sectors as varied as e-commerce, banking, insurance, employment, and government procurement.

The Indian Contract Act, 1872 was obviously not drafted with any of this in mind, and it took until the Information Technology (Amendment) Act, 2008 for Parliament to expressly clarify, through the newly inserted Section 10-A, that a contract would not be denied enforceability merely because it was formed electronically.¹ That was a necessary step, but it only answers the threshold question of form. It says nothing about when the contract was actually formed, whether a party genuinely consented to unfavourable terms buried deep in a lengthy set of standard conditions, which court has jurisdiction when the parties, the servers, and the payment gateway involved are all in different states or countries, or whether the underlying record needed to be stamped before it can be relied on in court. Those questions have fallen, in the absence of any comprehensive statutory code, almost entirely to the judiciary.

This paper works through how Indian courts have approached that task. It starts with the statutory foundation for online contracting, then turns to the formation cases and the doctrine that has grown up around consent and unconscionability in standard-form digital agreements, before looking at a set of special issues, stamping, cross-border jurisdiction, sectoral authentication standards, and data protection, that continue to generate genuine uncertainty. It ends with a brief comparative look at a few other jurisdictions, a critical assessment of how coherent this body of law actually is, and some suggested reforms.

¹The Indian Contract Act, 1872, ss 3–9, on the communication, acceptance, and revocation of proposals, apply without modification to contracts concluded through electronic means.

It is worth being clear at the outset about what this paper does, and does not, attempt to do. It is concerned with the private law of contract formation and validity, not with the separate, though related, body of law governing cybercrime, data breaches, or platform liability under the intermediary rules made under the IT Act. It focuses on reported judicial decisions and formally notified regulatory instruments rather than on internal platform practice, since the latter is not, in the ordinary course, publicly documented in a way that would support reliable doctrinal analysis. And it is confined to Indian law; comparative material from the United States, the European Union, and Singapore is used in Part VI only to sharpen the discussion of the Indian position, not as an independent object of study in its own right.

STATUTORY FOUNDATIONS OF ONLINE CONTRACTING

The Indian Contract Act, 1872

Nothing in the Contract Act distinguishes between a contract concluded on paper and one concluded electronically. The medium is, in principle, irrelevant; what matters is whether the essential ingredients, offer, unconditional acceptance, lawful consideration, capacity, free consent, and lawful object, are actually present.² That simple proposition turns out to carry most of the doctrinal weight in this area, because it means an online contract does not need its own separate law of formation. It needs the ordinary law of formation, applied to a new medium.

Section 10-A of the Information Technology Act, 2000

Section 10-A removes electronic form as an independent ground of unenforceability.³ It does this in fairly narrow terms: it does not say what counts as a valid electronic acceptance, or how a court should treat a standard-form click-wrap term, it simply says a contract cannot be struck down merely because it happened over e-mail or through a website rather than on paper. This drafting choice is not an accident. The IT Act, 2000 as a whole was substantially modelled on the UNCITRAL Model Law on Electronic Commerce, 1996, an instrument that was itself deliberately technology-neutral and confined to removing formal barriers to electronic transacting, leaving the substantive fairness of any given transaction to the ordinary law of contract in the enacting state.⁴ Read against that background, Section 10-A starts to look less like an oversight and more like a considered legislative choice to leave questions of consent, fairness, and unconscionability entirely to general contract doctrine, which is precisely the gap that Indian courts have since had to fill through the case law discussed in Parts IV and V below.

The Act also does some supporting work elsewhere. Section 5 equates a digital signature, properly affixed, with a handwritten one, and Section 3-A extends similar recognition to electronic signatures more broadly, including Aadhaar-based eSign.⁵ The First Schedule, though, carves out a set of instruments, negotiable instruments other than cheques, powers of attorney, trusts, wills, and contracts for the sale of immovable property, that still require a wet-ink signature, notwithstanding the general thrust of the Act.

The Consumer Protection Act, 2019 and the E-Commerce Rules, 2020

Because a very large share of online contracting in India is consumer-facing rather than business-to-business, the Consumer Protection Act, 2019 and the Consumer Protection (E-Commerce) Rules, 2020 made under it matter almost as much as the IT Act itself. The Rules impose disclosure obligations on e-commerce entities in relation to the display of terms and conditions, seller identity, and grievance redressal, and prohibit unfair trade practices in the course of e-commerce transactions.⁶ Unlike Section 10-A of the IT Act, which is concerned only with the form of the contract, these Rules go to its substance, they give a regulator, rather than only a court hearing a private dispute, the power to intervene where an online contracting process is itself unfair. That regulatory layer, discussed further in Part V below in connection with the 2023 Guidelines on dark patterns, is one of the few places where Indian law has moved beyond the reactive, litigation-driven model that otherwise characterises this area.

²Information Technology Act, 2000, s 10-A, inserted by the Information Technology (Amendment) Act, 2008, providing that a contract shall not be deemed unenforceable solely on the ground that it was formed through electronic means.

⁴The Information Technology Act, 2000 was enacted substantially on the basis of the UNCITRAL Model Law on Electronic Commerce, 1996, adopted by the United Nations Commission on International Trade Law to provide a common legal framework for electronic commerce across jurisdictions.

⁵Information Technology Act, 2000, s 5, read with the rules framed thereunder, equating a digital signature affixed in the prescribed manner with a handwritten signature; the First Schedule to the Act excludes negotiable instruments (other than cheques), powers of attorney, trusts, wills, and contracts for the sale or conveyance of immovable property from this recognition.

⁶The Consumer Protection (E-Commerce) Rules, 2020, made under the Consumer Protection Act, 2019, impose disclosure and fair-dealing obligations on e-commerce entities, including in relation to the display of terms and conditions and the prohibition of unfair trade practices.

Stamp Duty and the Evidentiary Framework

Two further statutes matter here, and both were built for a world of physical instruments. The Indian Stamp Act, 1899 and the corresponding state legislation contain no real mechanism for stamping a purely electronic, unsigned click-wrap instrument, which leaves its status as a stampable ‘instrument’ genuinely uncertain.⁷ Where duty is payable but has not been paid, the ordinary consequence under the Stamp Act is that the instrument cannot be admitted in evidence or acted upon until the deficient duty, along with any applicable penalty, is made good, a consequence that applies with full force to a digitally signed contract but sits far more awkwardly on an unsigned click-wrap record whose status as a chargeable instrument was never clear to begin with.

And once a dispute over an online contract actually reaches court, its admissibility as evidence is governed by the certification requirements applicable to electronic records, carried forward from the erstwhile Indian Evidence Act, 1872 into the Bharatiya Sakshya Adhiniyam, 2023, which in most circumstances require a certificate identifying the device on which the record was produced before secondary evidence of it can be admitted.⁸ Neither of these requirements is fatal to the enforceability of an online contract, but both add a layer of procedural friction that a paper contract, executed and stamped in the ordinary way, simply does not carry, and both are the kind of purely procedural obstacle that has nothing to do with whether the underlying agreement was fair or freely entered into, which is precisely why they sit awkwardly alongside the substantive unconscionability doctrine discussed in Part V.

FORMATION OF ONLINE CONTRACTS: JUDICIAL TRENDS

Offer, Acceptance, and the Instantaneous Communication Rule: Bhagwandas Kedia

Long before e-mail or click-wrap agreements existed, Indian courts had already worked out the basic rule that governs when a contract concluded through instantaneous communication is complete, and that rule still does most of the doctrinal work behind Section 13 of the IT Act today. In *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co*, a contract for the supply of cotton seed cake was negotiated over a long-distance telephone call between a party in Khamgaon and a party in Ahmedabad, and the question was where the contract had actually been made for purposes of fixing territorial jurisdiction.

The majority held that the ordinary postal rule under Section 4 of the Contract Act, under which a contract is complete the moment acceptance is posted, has no application to communication by telephone or any other instantaneous mode. Where the parties are, in effect, speaking to each other in real time, the contract is complete only when the acceptance is actually heard by the offeror, and the place of contracting is the place where the offeror is situated when that happens.⁹ This distinction between deferred, non-instantaneous communication (like post) and instantaneous, two-way communication (like telephone) is exactly the distinction that later had to be worked out afresh for e-mail, which sits somewhat awkwardly between the two categories: it is transmitted almost instantly, but, unlike a telephone call, is not received or read the moment it is sent. Section 13 of the IT Act sidesteps this classification problem by fixing a statutory rule of despatch and receipt for electronic records rather than asking, case by case, whether a given mode of electronic communication behaves more like post or more like a telephone call,¹⁰ but the underlying policy concern, that the place and moment of contract formation should track where the parties actually are when consensus is reached, traces directly back to *Bhagwandas Kedia*.

Contracts Concluded Through E-mail: Trimex International v Vedanta Aluminium

Trimex remains the leading Indian authority on when an exchange of e-mails actually becomes a binding contract. Trimex, a Dubai-based mineral trader, made a commercial offer by e-mail to supply bauxite to Vedanta, an Indian company, and after a sequence of e-mail negotiations, Vedanta sent an unconditional acceptance using the words ‘we confirm the deal for five shipments’. Trimex relied on that acceptance to arrange shipping and a third-party supply contract. When Vedanta later denied that any concluded contract existed and refused to honour the arbitration clause in the parties’ draft purchase order, Trimex sought the appointment of an arbitrator.

⁷The Indian Stamp Act, 1899, and corresponding state stamp legislation, were drafted with a physical instrument in mind and contain no express, comprehensive mechanism for stamping a purely electronic, unsigned click-wrap instrument.

⁸The Bharatiya Sakshya Adhiniyam, 2023, s 63 (corresponding to s 65-B of the erstwhile Indian Evidence Act, 1872), which conditions the admissibility of an electronic record as secondary evidence on production of a certificate identifying the device and confirming the integrity of the record.

⁹*Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co*, AIR 1966 SC 543. A majority of the Supreme Court held that where a contract is concluded through an instantaneous mode of communication such as telephone, it is complete at the place where and when the acceptance is heard by the offeror, applying by analogy the English rule later associated with *Entores Ltd v Miles Far East Corporation* [1955] 2 QB 327, rather than the postal rule ordinarily applicable to acceptance communicated by post.

¹⁰Information Technology Act, 2000, s 13, fixing the time and place of despatch and receipt of an electronic record in the absence of contrary agreement between the parties.

The Supreme Court held that a binding contract, arbitration clause included, had come into existence the moment Vedanta's unconditional acceptance was received, notwithstanding that no single, formally signed composite document existed.¹¹ What mattered to the Court was that the correspondence disclosed a clear meeting of minds on every essential commercial term, price, quantity, specification, delivery, and dispute resolution, and that the absence of a formally executed contract could not defeat an agreement that had, in substance, already been reached.¹² Trimex therefore stands for a fairly broad proposition: an exchange of e-mails, without more, is capable of constituting both a valid contract and a valid arbitration agreement under Indian law, so long as the correspondence shows unequivocal offer and unconditional acceptance.

Territorial Jurisdiction: P.R. Transport Agency v Union of India

P.R. Transport Agency was awarded a coal tender by a Jharkhand-based public sector undertaking, and the acceptance of its bid was communicated by e-mail and received at its place of business in Uttar Pradesh. When the undertaking later sought to cancel the acceptance, P.R. Transport Agency filed a writ petition before the Allahabad High Court, which the respondent resisted on the ground that no part of the cause of action had arisen in Uttar Pradesh at all.

The Allahabad High Court disagreed, relying on Section 13(3) of the Information Technology Act, which deems an electronic record received at the addressee's place of business.¹³ Since the petitioner's offices were in Uttar Pradesh, the contract was held to have been completed there, giving the Court territorial jurisdiction notwithstanding that the tendering authority itself was based elsewhere and an ouster clause purported to confine disputes to a different High Court. The Court was careful to add that while such a clause can validly restrict the jurisdiction of civil courts, it cannot curtail a High Court's constitutional writ jurisdiction where part of the cause of action has genuinely arisen within its territory.¹⁴ This decision has since become the standard reference point for fixing jurisdiction in disputes over online and e-commerce transactions: the place of receipt of an electronic communication, determined under Section 13 of the IT Act, functions as a reliable, if occasionally displaceable, proxy for where the contract was actually formed.

CONSENT AND UNCONSCIONABILITY IN STANDARD-FORM DIGITAL CONTRACTS

The most doctrinally unsettled part of this whole area concerns click-wrap and browse-wrap agreements, where the weaker party has no real chance to negotiate and often no realistic chance to read the terms before clicking assent. Indian courts have not built a separate body of click-wrap doctrine to deal with this. What they have done instead is extend the pre-digital law on standard-form and adhesion contracts to the online context.

The Doctrine of Unequal Bargaining Power: Brojo Nath Ganguly

Although decided long before e-commerce existed in any recognisable form, Brojo Nath Ganguly supplies the foundational doctrine that Indian courts still apply to click-wrap terms today. The dispute concerned a service rule of the Central Inland Water Transport Corporation, a government-owned company, that permitted the Corporation to terminate a permanent employee's service simply by giving three months' notice, without assigning any reason at all. An employee challenged the rule as arbitrary and unconscionable.

The Supreme Court held that an unfair or unreasonable term in a standard-form contract, where the parties are not on an equal footing and one side has no real choice but to accept the terms on offer, can be struck down as opposed to public policy under Section 23 of the Contract Act.¹⁵ Importantly, the Court did not void the employee's contract of service as a whole, it struck down only the offending termination rule while leaving the rest of the employment relationship intact, an approach to severability that has since informed how Indian courts think about unconscionable terms embedded within otherwise unobjectionable standard-form contracts, including, by extension, digital ones. This 'inequality of bargaining power' doctrine has become, in effect, the principal lens through which Indian courts and tribunals assess the fairness of digital adhesion contracts, even though it predates the internet

¹¹Trimex International FZE Ltd v Vedanta Aluminium Ltd (2010) 3 SCC 1. The Supreme Court held that a binding contract, including its arbitration clause, came into existence the moment Vedanta's unconditional acceptance was received by e-mail, notwithstanding the absence of a single, formally signed composite document.

¹²Trimex International FZE Ltd v Vedanta Aluminium Ltd (2010) 3 SCC 1, applying the Indian Contract Act, 1872, s 4 and the Arbitration and Conciliation Act, 1996, s 7, to hold that the correspondence between the parties disclosed unequivocal offer and unconditional acceptance.

¹³P.R. Transport Agency v Union of India, AIR 2006 All 23. The Allahabad High Court held, relying on the Information Technology Act, 2000, s 13(3), that an electronic record is deemed received at the addressee's place of business, and that a part of the cause of action therefore arose there.

¹⁴P.R. Transport Agency v Union of India, AIR 2006 All 23, further holding that while a contractual ouster clause may validly restrict the jurisdiction of civil courts under the Code of Civil Procedure, 1908, s 20, it cannot curtail the constitutional writ jurisdiction of a High Court under Article 226 where part of the cause of action genuinely arose within its territory.

¹⁵Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly (1986) 3 SCC 156. The Supreme Court held that an unfair or unreasonable term in a standard-form contract, where the parties are not on an equal footing and one party has no meaningful choice but to accept the terms offered, may be struck down as opposed to public policy under the Indian Contract Act, 1872, s 23.

entirely.

LIC of India v Consumer Education and Research Centre

This case concerned the terms of a group life insurance policy offered by the Life Insurance Corporation, a public statutory insurer with an effective monopoly over the relevant class of policy at the time, which restricted the benefits available to certain categories of policyholders on terms the policyholders themselves had no opportunity to negotiate. The Supreme Court held that a term offered by a dominant party in a standard-form contract must be reasonable, fair, and not arbitrary, and that mere formal assent does not shield an oppressive term from scrutiny.¹⁶ Commentators have repeatedly invoked this reasoning to argue that a user's click on 'I Agree' cannot, by itself, validate a term that is otherwise unfair, consent has to be assessed substantively, not just formally, and that argument has real traction given how directly the Court's language maps onto the click-wrap problem, notwithstanding that the case itself had nothing to do with electronic contracting. What makes LIC of India particularly useful for online contracting specifically is that, like a large digital platform, the insurer in that case was a dominant, effectively non-substitutable counterparty, exactly the market structure in which a user has no realistic alternative but to accept whatever standard terms are on offer, which is precisely the condition under which courts have been most willing to intervene.

Click-wrap and Shrink-wrap Agreements: DDIT v Gujarat Pipavav Port

In the specific context of a shrink-wrap software licence, the Income Tax Appellate Tribunal observed that such agreements, while capable of satisfying the formal essentials of a valid contract, remain vulnerable to challenge as adhesion contracts where their terms are unconscionable or unreasonable and were never really open to negotiation.¹⁷ The dispute itself arose in a tax context, over the correct characterisation of payments made under a software licence, rather than a pure contract dispute, but the reasoning has been widely cited as persuasive authority for the proposition that the electronic, non-negotiated form of a click-wrap or shrink-wrap agreement does not place it beyond the reach of the unconscionability doctrine.

It is worth noting that the Tribunal's observations on this point were not strictly necessary to the outcome of the case, and a Tribunal is not, in the ordinary hierarchy of Indian courts, a body whose findings on general contract-law questions bind a civil court in a later, unrelated dispute. Even so, the reasoning is frequently cited, precisely because there is so little other Indian authority that addresses click-wrap and shrink-wrap agreements head-on, and because the Tribunal's basic point, that adhesion-contract doctrine developed for paper contracts applies with equal force to their electronic equivalents, is difficult to dispute given the reasoning already discussed above in Brojo Nath Ganguly and LIC of India.

Arbitration Clauses in Online Contracts

Following the reasoning in Trimex, Indian courts have generally treated an arbitration agreement recorded in an electronic exchange, or incorporated by reference into a click-wrap agreement, as capable of satisfying the requirement of a written arbitration agreement.¹⁸ Section 7(4) of the Arbitration and Conciliation Act, 1996 itself recognises an exchange of letters, telex, telegrams, or other means of telecommunication, including electronic means, as sufficient to constitute a written arbitration agreement provided the record in question provides a record of the agreement, so the statutory text already anticipates, in fairly broad terms, the possibility of an arbitration clause being concluded electronically rather than on a single signed page.

At the same time, where the arbitration clause forms part of an otherwise one-sided click-wrap agreement, one that mandates arbitration in a distant, inconvenient forum, or one buried deep within terms the user was never realistically going to read, courts have shown some willingness to decline enforcement on the same unconscionability grounds discussed above, rather than treating the clause as severable and automatically immune from scrutiny. This is a genuinely difficult area, because arbitration law generally favours treating an arbitration clause as separable from the rest of the contract in which it appears, so that even if the main contract is challenged, the arbitration clause itself survives to decide that very challenge. Applying unconscionability scrutiny to the arbitration clause itself, rather than only to the substantive terms of the underlying contract, sits in some tension with that separability principle, and Indian courts have not yet worked out a fully settled position on how the two should be reconciled in the specific context of consumer click-wrap agreements.

¹⁶LIC of India v Consumer Education and Research Centre (1995) 1 SCC 482. The Court held that a term offered by a dominant party in a standard-form contract must be reasonable, fair, and not arbitrary, and that formal assent does not by itself immunise the term from judicial scrutiny.

¹⁷DDIT (IT) v Gujarat Pipavav Port Ltd, Income Tax Appellate Tribunal, Mumbai (2017). The Tribunal observed that shrink-wrap and click-wrap agreements, while capable of satisfying the formal essentials of a valid contract, remain vulnerable to challenge as adhesion contracts where their terms are unconscionable or unreasonable and were imposed without any real opportunity for negotiation.

¹⁸Trimex International FZE Ltd v Vedanta Aluminium Ltd (2010) 3 SCC 1, treating an arbitration agreement recorded in electronic correspondence as capable of satisfying the requirement of a written arbitration agreement under the Arbitration and Conciliation Act, 1996, s 7.

Dark Patterns and Manipulative Consent Design

A more recent, and more targeted, response to the consent problem discussed above comes not from a court but from a regulator. On 30 November 2023, the Central Consumer Protection Authority notified the Guidelines for Prevention and Regulation of Dark Patterns, 2023, exercising its powers under Section 18 of the Consumer Protection Act, 2019.¹⁹ The Guidelines define a 'dark pattern' as any deceptive design practice in the user interface or user experience of a platform that is designed to mislead or trick a user into an action they did not originally intend, and they list thirteen specific dark patterns that are now prohibited outright, among them false urgency, disguised advertising, subscription traps that make it disproportionately difficult to cancel a recurring payment, and 'nagging', the repeated, unwanted interruption of a user's activity to extract a particular form of consent.²⁰

What makes this development significant for the law of online contracts specifically, rather than for consumer protection generally, is that several of the listed dark patterns describe precisely the mechanisms by which click-wrap and browse-wrap assent is typically obtained, pre-ticked consent boxes, interfaces that make declining a term visually harder than accepting it, and bundled consent that forces a user to agree to unrelated terms in order to access an unrelated service. Where Brojo Nath Ganguly and LIC of India supply a doctrinal basis for challenging such terms after the fact, in litigation, the 2023 Guidelines supply a regulatory basis for challenging the manner of obtaining consent to them in the first place, which is, in principle, a faster and less costly route to the same underlying concern about genuine consent in standard-form digital contracting.²¹

SPECIAL ISSUES AND CONTEMPORARY CONCERNS

Stamping of Electronic Instruments

Where an electronic contract carries a digital signature, its character as an executed, stampable instrument is relatively clear. Where it is a click-wrap agreement with no signature of any kind, that character is genuinely uncertain, since neither the Indian Stamp Act, 1899 nor most state stamp legislation was drafted with an unsigned electronic instrument in mind.²² Several states have introduced e-stamping mechanisms through empanelled agencies, which helps, but compliance requirements still differ from state to state, and the underlying ambiguity over whether a click-wrap agreement is an 'instrument' chargeable to duty at all has not really been resolved.

Sector-Specific Regulatory Developments: Banking and Financial Services

Alongside the general contract-law and IT-Act framework, specific regulators have developed their own rules for concluding contracts remotely with a reasonable degree of authentication, and banking is the clearest example. In January 2020, the Reserve Bank of India amended its Master Direction on Know Your Customer norms to permit a Video based Customer Identification Process, or V-CIP, as a consent-based alternative to in-person verification for opening an account or availing certain financial services, a process that is treated as being on par with a face-to-face identification once the regulated entity meets the prescribed technical standards, including live, geo-tagged video recording and facial-recognition verification.²³ The Master Direction was further amended in May 2021 to widen the use of V-CIP for periodic KYC updation as well as fresh onboarding.

What this shows, in the specific context of banking and financial contracts, is that some of the authentication concerns discussed above, particularly around identity verification, have already begun to be addressed through detailed sectoral regulation rather than through the general provisions of the IT Act alone, and comparable digital onboarding norms have since been adopted by other financial sector regulators for the intermediaries they oversee, even though the procedural detail differs from regulator to regulator.²⁴ This sector-specific approach has real advantages, a banking regulator is better

¹⁹Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023, notified on 30 November 2023 under s 18 of the Consumer Protection Act, 2019. The Guidelines define a 'dark pattern' as any practice or deceptive design pattern, using user interface or user experience interactions on any platform, that is designed to mislead or trick a user into an action the user did not originally intend, by subverting or impairing consumer autonomy or choice.

²⁰Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023, Annexure 1, which lists thirteen specified dark patterns, including false urgency, subscription traps, nagging, and forcing a user to share personal information not necessary for the transaction in hand. The Guidelines apply to all platforms systematically offering goods or services in India, advertisers, and sellers.

²¹The Consumer Protection Act, 2019, s 2(47), defining 'unfair trade practice' to include a range of misleading and manipulative practices, a definition that overlaps with, and is now supplemented in the digital context by, the Guidelines for Prevention and Regulation of Dark Patterns, 2023.

²³Reserve Bank of India, Amendment to the Master Direction on KYC dated 9 January 2020, inserting a Video based Customer Identification Process (V-CIP) as a consent-based alternative to in-person verification, to be treated on par with face-to-face customer identification where a regulated entity meets the prescribed technical and procedural standards; the Master Direction was further amended on 10 May 2021 to expand its use for periodic KYC updation.

²⁴Regulated entities under the Reserve Bank of India's KYC framework include banks, non-banking financial companies, and payment system operators; comparable digital onboarding and e-KYC norms have also been adopted by the Securities and Exchange Board of India and the Insurance Regulatory

placed than a court to prescribe the technical standards a video-based identification process should meet, but it also means that the overall authentication landscape for online contracts in India is now a patchwork of general contract law, general IT Act provisions, and increasingly detailed sectoral rules that do not always speak to each other in a consistent way.

Cross-Border and Multi-Jurisdictional Transactions

Online contracts routinely involve parties, servers, and payment intermediaries spread across different states or countries. Section 13 of the IT Act supplies a default rule for the place of despatch and receipt of an electronic record,²⁵ which, in a real sense, statutorily codifies for electronic records the same underlying concern with the place where the parties actually are that the Supreme Court had already addressed for telephone contracts in *Bhagwandas Kedia*,²⁶ but that default can be displaced by a contractual choice-of-forum clause, and the fairness of such a clause is in turn subject to the same unconscionability scrutiny discussed above where it has been unilaterally imposed on a consumer. The practical result is a degree of forum uncertainty that falls disproportionately on individual consumers dealing with large platforms headquartered outside India, since pursuing a claim in a distant or foreign forum specified by a standard-form choice-of-forum clause is, for most individual consumers, simply not realistic regardless of the clause's formal enforceability.

Authentication, Fraud, and the Bharatiya Sakshya Adhiniyam, 2023

The absence of any face-to-face interaction in online contracting increases the risk of identity fraud and of disputes over whether a particular individual actually clicked 'I Agree' or affixed an electronic signature. Aadhaar-based eSign and Certifying-Authority-issued digital signatures offer a relatively high degree of assurance, but click-wrap acceptance recorded through nothing more than an IP address or an account login offers comparatively weak proof of identity, and the certification requirements applicable to electronic evidence under the Bharatiya Sakshya Adhiniyam add a further evidentiary hurdle for a party trying to prove that a disputed online contract was ever actually concluded.²⁷

Minors and Capacity in Online Contracting

Section 11 of the Contract Act renders an agreement with a minor void from the outset, yet most online platforms have no real mechanism for verifying a user's age at the point of contracting beyond self-declaration. That creates a structural vulnerability, a significant share of the click-wrap assent obtained by digital platforms may, in principle, be voidable for want of capacity, though this is rarely litigated in practice given how low individual transaction values usually are.

The problem is compounded by the fact that Indian courts have generally treated the incapacity of a minor as going to the very existence of the contract, following the classical position that an agreement with a minor is void ab initio rather than merely voidable at the minor's option, which means a platform cannot simply treat the risk as one it can price in or insure against in the way it might treat an ordinary voidable contract. In practice, most consumer platforms respond to this risk not through verification at the point of contracting but through a combination of age-gating declarations, parental-consent clauses buried in standard terms, and, for data-protection purposes specifically, the verifiable parental consent mechanism the Digital Personal Data Protection Act, 2023 requires before processing a child's personal data.²⁸ None of these responses actually solves the underlying contract-law problem, since a declaration of age that the platform has no way of verifying does not, by itself, cure the incapacity of a user who turns out to have been a minor all along.

The Digital Personal Data Protection Act, 2023 and Consent

Where an online contract involves the collection or processing of personal data, as most consumer click-wrap agreements do, the Digital Personal Data Protection Act, 2023 layers additional consent obligations onto the contracting process, requiring that consent be free, specific, informed, unconditional, and unambiguous.²⁹ The Act traces its constitutional lineage to the Supreme Court's recognition of informational privacy as an incident of the fundamental right to life and personal liberty under Article 21,³⁰ and it is primarily a data-protection requirement rather than a contract-law one. Even so, it has started

and Development Authority of India for their respective regulated intermediaries, though the detailed procedural requirements differ across regulators.

²⁸The Digital Personal Data Protection Act, 2023, s 6, requiring that consent to the processing of personal data be free, specific, informed, unconditional, and unambiguous, a standard that has begun to inform how courts and regulators assess the genuineness of assent to the data-related clauses of a standard-form online contract.

³⁰Justice K.S. Puttaswamy v Union of India (2017) 10 SCC 1, recognising the right to privacy as a fundamental right protected under Article 21 of the

to influence how regulators and courts think about whether a user's assent to the data-related clauses of a standard-form agreement is genuine, adding a further dimension to the unconscionability analysis discussed earlier, since a click that satisfies the Contract Act's requirement of acceptance may still fall short of the Digital Personal Data Protection Act's more demanding requirement that consent to data processing be specific and unambiguous rather than bundled into a single, general act of assent to an entire set of standard terms.

A BRIEF COMPARATIVE PERSPECTIVE

It is worth stepping back briefly to see how the Indian position compares with a few other common law jurisdictions, if only because the IT Act's UNCITRAL lineage means India shares a common starting point with a number of them.³¹

In the United States, the enforceability of click-wrap and browse-wrap agreements has been worked out largely through state contract law together with the Uniform Electronic Transactions Act and the federal E-SIGN Act, and the resulting case law draws a fairly sharp line between click-wrap agreements, generally enforced where the user was given reasonable notice and required to take an affirmative step such as clicking a button, and browse-wrap agreements, treated with considerably more caution where a user's continued browsing, without any affirmative act, is said to constitute acceptance.³² Indian courts have not yet drawn quite as sharp a formal line between the two categories, but the underlying inquiry, whether the user had genuine, conspicuous notice of the terms before being bound by them, is much the same one that animates the Brojo Nath Ganguly line of authority discussed above.

The European Union goes considerably further than either India or the United States, imposing detailed, ex ante information and transparency obligations on online traders under the e-Commerce Directive and the broader body of EU consumer-protection law, obligations that operate regardless of whether a particular consumer ever litigates a particular contract.³³ India's own move in this direction, the Consumer Protection (E-Commerce) Rules, 2020 and the 2023 Guidelines on dark patterns, is considerably narrower in scope, but it points in the same regulatory direction: toward policing the fairness of the consent-gathering process itself, rather than leaving fairness to be tested only after a dispute has already arisen.

Singapore's Electronic Transactions Act, which like the Indian IT Act draws heavily on the UNCITRAL Model Law, offers perhaps the closest structural parallel to the Indian position: broad recognition of electronic contracts and signatures, coupled with a specific list of excluded instruments that still require traditional execution.³⁴ What distinguishes the Indian experience from all three of these comparators is less the statutory text, which is not radically different, than the extent to which Indian courts have had to do the work of substantive fairness review themselves, through inherited nineteenth-century adhesion-contract doctrine, in the absence of the more detailed ex ante disclosure regime found in the European Union or the more developed body of click-wrap-specific case law found in the United States.

It is also worth noting that the UNCITRAL framework did not stop at the 1996 Model Law on Electronic Commerce. A separate Model Law on Electronic Signatures followed in 2001, addressing more specifically the reliability and legal effect of different signature technologies, and Section 3-A of the Indian IT Act, which extends recognition beyond asymmetric-cryptography digital signatures to a broader category of electronic signatures meeting prescribed reliability criteria, reflects the same underlying, technology-neutral approach. The practical effect of building the Indian framework on this UNCITRAL foundation is that India's statutory starting point is genuinely comparable to a wide range of other jurisdictions that adopted the same model law; what has diverged, over time, is not the statutory text so much as the surrounding body of case law and regulation that each jurisdiction has built on top of that common foundation.

CRITICAL ANALYSIS AND AREAS OF CONCERN

Absence of a Dedicated E-Contract Statute

Unlike jurisdictions that have enacted comprehensive electronic-transactions legislation dealing directly with click-wrap formation, mandatory disclosure,

Constitution, and supplying part of the constitutional basis on which the Digital Personal Data Protection Act, 2023 was subsequently enacted.

³²Uniform Electronic Transactions Act (United States) and the Electronic Signatures in Global and National Commerce Act, 2000 (E-SIGN Act), under which click-wrap agreements are generally enforceable where reasonable notice and affirmative assent are shown, while browse-wrap agreements are treated with greater caution absent clear notice.

³³Directive 2000/31/EC of the European Parliament and of the Council (the e-Commerce Directive), and the transparency and information obligations found more broadly in European Union consumer-protection law.

³⁴Electronic Transactions Act (Singapore), on which parts of the Indian Information Technology Act, 2000 were loosely modelled, and which similarly excludes specified categories of instrument from electronic execution.

and consumer withdrawal rights, India continues to rely on Section 10-A of the IT Act supplemented by judge-made doctrine developed for an entirely different contracting context.³⁵ That has produced a workable, but reactive, body of law, one that develops only as disputes happen to reach the courts rather than a framework designed with digital contracting specifically in mind. The reactive character of this development matters practically as well as theoretically: a platform designing a new consent flow today has no single statutory checklist it can consult to know, in advance, whether that flow will hold up if challenged, it has to piece together an answer from a formation case decided in a shipping dispute, an unconscionability case decided in an employment dispute, a tax tribunal's observations on software licensing, and a set of consumer-protection guidelines notified only in 2023. That is a demanding exercise even for a well-resourced legal department, and it is simply not realistic for the smaller platforms and start-ups that make up a large share of India's digital economy.

Tension Between Formal Assent and Substantive Fairness

Indian courts have not settled on a clear, generally applicable test for when a click should be treated as genuine consent and when it should not. Brojo Nath Ganguly and LIC of India pull toward substantive scrutiny of standard terms, while the basic contract-law position remains that a party who clicks 'I Agree' is, in the ordinary course, bound by what they agreed to.³⁶ This is not necessarily a flaw, different categories of digital contract probably do call for different degrees of scrutiny, but the absence of any clearly articulated meta-principle for choosing between formal and substantive assent leaves a fair amount of discretion sitting with individual courts, and that discretion is exercised inconsistently.

One way to see this inconsistency is to notice how differently the same basic fact pattern, a user clicking through lengthy, unread standard terms, is likely to be treated depending on which body of doctrine a court reaches for first. A court that starts from ordinary offer-and-acceptance principles is likely to treat the click as conclusive proof of assent and move on to enforce the term as written. A court that starts from Brojo Nath Ganguly is likely to ask a further, substantive question about whether the term is fair, regardless of the click. Both starting points are legitimate applications of existing Indian doctrine, but they can lead to opposite outcomes on materially similar facts, and which starting point a given court reaches for is not, at present, governed by any predictable rule.

A Patchwork of Sectoral Authentication Standards

The banking sector's V-CIP framework, discussed above, illustrates a broader problem: authentication standards for online contracting in India are developing sector by sector, banking, securities, insurance, each under its own regulator, rather than through a single, general standard applicable to online contracting as such.³⁷ Financial regulators other than the RBI have followed a broadly similar path within their own sectors.³⁸ A consumer signing a loan agreement through video-based verification enjoys a materially higher standard of identity assurance than the same consumer clicking 'I Agree' on an unrelated e-commerce platform's terms of service, even though both are, in the eyes of the Contract Act, equally valid contracts once formed. That is not necessarily wrong, high-value financial contracts plausibly warrant more stringent authentication than a low-value online purchase, but the absence of any general, cross-sectoral principle for calibrating authentication requirements to the value and risk of a given transaction means the current allocation of stringent versus lax standards owes more to which regulator happens to oversee a given sector than to any considered policy judgment about risk.

A related consequence is that a single online transaction can, in practice, straddle two different authentication regimes at once. A digitally originated personal loan, for instance, is typically preceded by a V-CIP onboarding process governed by RBI standards, but the loan agreement itself is very often concluded through a click-wrap or e-signature flow governed by nothing more demanding than Section 10-A of the IT Act. The identity of the borrower may therefore be verified to a high standard while the terms of the loan itself are accepted through a comparatively undemanding process, which is an odd allocation of regulatory attention once one recognises that both steps are, in substance, part of the same underlying contracting transaction.

Fragmented Stamp Legislation

Because stamp duty in India is levied under both central and state legislation, and because e-stamping mechanisms have developed unevenly across states, the practical question of whether, and how, a given online contract needs to be stamped can have a different answer depending on where the parties happen to be located.³⁹ That is a genuinely avoidable source of uncertainty, and it sits oddly alongside a body of contract-formation doctrine that is

³⁶Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly (1986) 3 SCC 156.

otherwise reasonably settled. A business operating a single digital platform across multiple Indian states currently has to work out, state by state, whether its standard click-wrap terms of service need to be stamped at all, and if so, under which state's rate schedule and through which empanelled e-stamping agency, an exercise that has no equivalent anywhere else in the formation or enforcement of an online contract and that adds a genuinely disproportionate compliance burden relative to the underlying legal question, which is, in substance, the same simple question repeated fifty times over with fifty potentially different answers.

Uncertain Evidentiary Standards

The certification requirement applicable to electronic records, while intended to guard against manipulated or unreliable evidence, continues to pose a real practical obstacle to enforcing an online contract, particularly where the party who could supply the necessary certificate is unavailable or simply uncooperative.⁴⁰ In my view, this is one of the more underappreciated obstacles in this whole area, courts have generally been willing to infer a concluded contract from the totality of an electronic exchange, as in *Trimex*, but that willingness does not by itself solve the separate, more mechanical problem of getting the underlying record admitted into evidence in the first place.

The difficulty is sharpest for exactly the kind of low-value, high-volume consumer transaction that now makes up the bulk of India's online contracting activity. A business party in a *Trimex*-style dispute can usually afford to produce a certificate, or to call the relevant technical witness, because the value of the underlying transaction justifies the cost of doing so. An individual consumer disputing a comparatively small click-wrap transaction very often cannot, which means the certification requirement, though facially neutral as between commercial and consumer disputes, in practice falls more heavily on precisely the class of litigant the unconscionability doctrine discussed in Part V is meant to protect.

Limited Practical Uptake of Collective Remedies

The Consumer Protection Act, 2019 does allow a recognised consumer association, or a class of consumers with the same interest, to bring a representative complaint rather than requiring every affected consumer to litigate individually, and this mechanism is, in principle, well suited to challenging a standard-form online contract that affects a large, dispersed class of users in an identical way. In practice, though, very few of the reported disputes over click-wrap or browse-wrap terms discussed in this paper were brought as representative or class proceedings, they were brought by individual litigants, tax authorities, or in one case an arbitration petitioner, which means the case law that exists has developed somewhat piecemeal, shaped by whatever individual dispute happened to reach a court, rather than through a sustained, systemic challenge to a particular platform's standard terms. Given how uniform standard-form digital contracts typically are across a platform's entire user base, this underuse of collective remedies is a genuine missed opportunity, since a single representative proceeding could, in principle, resolve the fairness of a term for an entire class of users at once rather than leaving the question to be litigated over and over in individual disputes of comparatively low value.

Part of the explanation for this underuse is structural rather than doctrinal. A representative complaint still requires an identifiable, organised claimant, typically a registered consumer association, willing to invest the time and resources in pursuing a proceeding whose ultimate benefit will be spread across a large, often unorganised class of individual users, each of whom has comparatively little individually at stake. Where the 2023 Guidelines on dark patterns are enforced instead through regulatory action by the Central Consumer Protection Authority itself, that structural obstacle largely disappears, since the Authority can act on its own motion rather than waiting for an association to come forward, which is one reason the regulatory route discussed above may, in practice, end up doing more to discipline unfair standard-form terms than the collective-litigation route ever has.

A Regulatory Response Without a Doctrinal Counterpart

One further difficulty, less discussed than the others, is that the 2023 Guidelines on dark patterns and the general law of unconscionability under *Brojo Nath Ganguly* currently run on entirely separate tracks. A practice that the Guidelines expressly prohibit, a pre-ticked consent box, for instance, is not automatically treated as evidence of an unconscionable term for purposes of a private contract claim, and a term that a court might strike down as unconscionable is not automatically a violation of the Guidelines.⁴¹ Similarly, the general unconscionability doctrine of *Brojo Nath Ganguly*⁴² operates independently of the Guidelines. The two frameworks address closely related conduct without formally referring to each other, which means a consumer, or a court, currently has to run what is substantively the same fairness inquiry twice, once under regulatory guidelines enforced by the Central Consumer

Protection Authority and once under general contract doctrine enforced by a civil court, with no guarantee that the two inquiries will reach the same result.

This disconnect is not merely theoretical. A platform found by the Central Consumer Protection Authority to have engaged in a specified dark pattern faces regulatory consequences under the Consumer Protection Act, 2019, but that finding does not, without more, entitle an individual consumer who was actually affected by the practice to any private remedy, refund, damages, or rescission of the contract, since the private remedy still has to be separately established under the ordinary law of contract, applying the *Brojo Nath Ganguly* test afresh. A consumer would therefore, in principle, have to prove essentially the same manipulative design twice over, once to the Authority's satisfaction and once to a court's, before actually recovering anything, which is an inefficient use of both the regulator's and the judiciary's resources and, more importantly, a real practical deterrent to individual consumers pursuing what would otherwise be a straightforward claim.

PROPOSED REFORMS

Based on the analysis above, I would suggest the following measures to bring somewhat more coherence and predictability to the law governing online contracts in India. None of these proposals requires abandoning the case-by-case flexibility that has generally served Indian courts well; each is aimed instead at removing a specific, identifiable source of avoidable uncertainty while leaving the underlying interpretive discretion of the courts intact.

1. Express Provision for the Stamping of Electronic Instruments

The Indian Stamp Act, 1899 and corresponding state legislation should be amended to expressly address the stamping of unsigned electronic instruments, including click-wrap agreements, removing the current ambiguity over their status as stampable instruments and over their admissibility where duty has not been paid.⁴³

2. Mandatory Layered Disclosure for Consumer Click-wrap Agreements

Sector regulators, building on the model of the Consumer Protection (E-Commerce) Rules, 2020, should mandate clear, layered disclosure of material terms in consumer-facing click-wrap and browse-wrap agreements, so that fairness is addressed at the point of contracting rather than left entirely to after-the-fact litigation.⁴⁴

3. A Clearer Standard for Age and Identity Verification

Given how difficult Section 11 of the Contract Act is to apply to a self-declared, unverified online user, some clearer regulatory guidance on acceptable age-verification mechanisms for consumer-facing digital platforms would reduce the current gap between the formal law of capacity and how online contracting actually works in practice.

4. Consolidation Into a Comprehensive Electronic Transactions Framework

Given the volume and value of digital transactions concluded in India every day, Parliament would be well served by consolidating the currently scattered provisions of the IT Act, the Contract Act, and sector-specific consumer-protection rules into a more comprehensive electronic-transactions statute, along the lines found in some comparable common law jurisdictions, rather than continuing to rely on Section 10-A supplemented by doctrine built for paper-based adhesion contracts.⁴⁵

5. Simplified Certification for Electronic Evidence

The certification procedure applicable to electronic records could be simplified for routine, low-value online contracts, so that the evidentiary burden imposed on a party seeking to enforce an online contract is proportionate to the value and complexity of the transaction, rather than uniformly as demanding as it currently is for every category of electronic record.⁴⁶

6. Formal Linkage Between Regulatory Guidelines and Contract Doctrine

The Central Consumer Protection Authority's Guidelines on dark patterns and the judicially developed unconscionability doctrine discussed in Part V should be brought into express dialogue with each other, for instance, by providing that a finding of a specified dark pattern under the Guidelines creates a rebuttable presumption of unconscionability for purposes of a private claim under Section 23 of the Contract Act. That would let the regulatory and doctrinal tracks reinforce rather than duplicate one another, and would give consumers a more direct route from a regulatory finding to a private remedy.⁴⁷

7. Encouraging Representative Proceedings Against Standard-Form Terms

Given how uniform standard-form digital contracts are across a platform's user base, and how little practical use has so far been made of the representative-complaint mechanism under the Consumer Protection Act, 2019, some combination of litigation-funding support and a lower procedural threshold for consumer associations bringing representative challenges specifically to standard-form online contract terms would help close the gap between how these disputes are best resolved, once, for an entire class of affected users, and how they are actually being resolved at present, piecemeal, through individual proceedings of limited precedential reach.

CONCLUSION

Online contracts occupy a settled but incompletely mapped position in Indian law. Section 10-A of the Information Technology Act, 2000 answers the threshold question of form, and the judiciary, through *Trimex International v Vedanta Aluminium*, *P.R. Transport Agency v Union of India*, and the line of cases applying the unconscionability doctrine of *Brojo Nath Ganguly* and *LIC of India* to standard-form digital terms, has supplied workable, if occasionally inconsistent, answers to the recurring questions of formation, jurisdiction, and consent.

What comes out of all this is not one unified theory of online contract validity, but a fairly flexible set of doctrines borrowed from a pre-digital contracting world and applied, case by case, to a digital one. Formation questions are handled through an extension of the instantaneous-communication rule first worked out in *Bhagwandas Kedia* and carried into the digital age by *Trimex* and Section 13 of the IT Act. Jurisdictional questions are handled through the same statutory deeming provision, as *P.R. Transport Agency* shows. And questions of fairness and consent are handled almost entirely through inherited adhesion-contract doctrine, *Brojo Nath Ganguly* and *LIC of India*, now supplemented, though not yet formally integrated, by the Central Consumer Protection Authority's 2023 Guidelines on dark patterns.

That flexibility has generally served Indian courts well in reaching fair outcomes on the facts of individual disputes, but it has also left the law considerably harder to predict in advance than it needs to be, especially on stamping, on the fairness of standard terms that almost nobody actually reads before clicking 'I Agree', and on the increasingly uneven landscape of sectoral authentication standards. The reforms suggested here, clearer stamping rules, mandatory layered disclosure, better age-verification guidance, a consolidated statutory framework, a more proportionate approach to evidentiary certification, and a formal link between regulatory guidelines and private contract doctrine, are meant to preserve the flexibility that has served Indian courts reasonably well while cutting down on the unpredictability that currently comes with it. Until that legislative work is done, the validity of an online contract in India will keep resting, case by case, on how a court chooses to apply nineteenth-century contract doctrine to a twenty-first-century way of transacting, a task the judiciary has, on the whole, performed capably, but one that inherently produces certainty only after the fact, once a dispute has already reached a court.

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