# OLD LAWS OF THE 19TH CENTURY AND NEW REALITIES OF THE 21ST CENTURY: A NEED FOR REVAMPING THE INDIAN CONTRACT ACT

**Akshita Gupta*** **Aayushi Kunwar***

## ABSTRACT

*One of the oldest commercial laws in India is the Indian Contract Act,[1] 1872. It was written in the colonial era to govern contracts and bargains among individuals. When it was enacted, business was mainly conducted through the barter system, and the idea of digital exchange of transactions was unthinkable. The thing is that nowadays contracts are not limited to papers and signatures or even to face-to-face negotiations. Whether it is ordering food online and booking a cab or working as a freelancer on international platforms, contracts are being established digitally and, in most cases, within seconds. The technological change also poses a pertinent question: whether the Indian Contract Act[2] can handle the challenges of contemporary digital contracts. The Indian Contract Act has not undergone many changes in over 150 years of its existence, even though it is a foundational law.[3] Although it still does a decent job in regulating the agreements and obligations, it falls short when it comes to problems that emerge due to the use of e-contracts, online platforms, and app-based services. Words such as writing, signing, consent and communication were written in the context of letters and telegrams and not emails, pop-up boxes and automated agreements. The legislation also does not offer any protection against unreasonable conditions in standard-form contracts that are heavily employed by online service providers. One such development is the emergence of e-contracts, which include clickwrap and browse wrap contracts in which the user is bound by the terms upon clicking the button labelled' I Agree' without reading the fine print.[4] Courts have often struggled to decide whether such consent is truly valid. The Supreme Court in*

*BA LLB, SECOND YEAR, BENNETT UNIVERSITY, GREATER NOIDA.
*BA LLB, SECOND YEAR, BENNETT UNIVERSITY, GREATER NOIDA.
[1] The Indian Contract Act 1872
[2] The Indian Contract Act 1872
[3] Vinod K Jacob, 'Indian Contract Act lives on for 150 years and longer' (FT LK, 3 May 2022) https://www.ft.lk/Opinion-and-Issues/Indian-Contract-Act-lives-on-for-150-years-and-longer/14-734237 accessed 18 June 2025
[4] Mahawar S, E-contracts (iPleaders, 3 July 2022) https://blog.ipleaders.in/e-contracts/ accessed 18 June 2025

*Trimex International FZE Ltd. vs Vedanta Aluminium Ltd. (2010)*[5] *observed that even email communications could lead to a binding contractual obligation; however, this judgment did not provide any structure on the manner and circumstances under which electronic agreements are to be deemed valid. Likewise, in Google LLC vs Competition Commission of India (2023)*[6] *pointed at the issue of dominance of platforms and imbalance of bargaining power between businesses and consumers- effectively addressed. The emergence of the gig economy has resulted in a scenario where it is not a negotiated worker-consumer contract being signed, but one that is mainly pre-written by the powerful platforms.*[7] *Such contracts are not always transparent, and they might include unreasonable terms, which the users must agree to if they wish to use the service. In comparison to other jurisdictions like the UK or the European Union, where the rights of the consumer and unfair terms in contracts are better defined, the Indian Contract Act does not protect against this unequal bargaining power. This paper argues that the Indian Contract Act should be revamped urgently. Its purpose is not to abolish the Act but to bring it up to date with digital definitions and the recognition of e-contracts and data-driven models of consideration, as well as to protect weaker parties involved in online agreements. The following paper will address the major issues presented by the current legislation with references to particular sections, case law, and comparative perspectives. The aim is to suggest effective reforms, allowing Indian contract law to become more sensitive to the conditions of the digital era.*

**Keywords:** E-Contracts, Clickwrap, Browse Wrap, Gig Economy.

## INKLESS AGREEMENTS: ARE E-CONTRACTS- CONTRACTS OR NOT?

In the modern economy, there are business transactions whereby not a single piece of paper is exchanged. As witnessed in cloud service agreements to software licenses, the contemporary contract exists and functions solely in the cloud. The main elements of a valid agreement under Section 10 of the Indian Contract Act[8] do not mention electronic records or digital verification methods.

[5] Trimex International FZE Ltd v Vedanta Aluminium Ltd (2010) 3 SCC 1
[6] Google LLC v Competition Commission of India (2023) SCC OnLine SCC
[7] Srishti Aishwarya Shrivastava, The Enforceability of Electronic Click-Wrap and Browse-Wrap Agreements (NUJS Journal of Regulatory Studies, n d) https://journals.nujs.edu/index.php/njrs/article/download/11/8/28 accessed 18 June 2025
[8] The Indian Contract Act 1872, s 10

Whereas the Information Technology Act, 2000[9] has provided legal recognition of the digital signatures and electronic records, the Contract Act remains unclear on the same. Such a disconnect in law has given rise to grey areas regarding the enforceability of e-contracts, especially those that are cross-jurisdictional or depend on AI-based means to carry out their execution.

In this section, we are going to discuss how Section 10,[10] which does not explicitly manifest digital processes, obstructs legal certainty in the implementation and authentication of contemporary agreements. By using practical examples and highlighting the necessity of harmonisation between the Contract Act and IT Act, the section presents the argument to formalise digital contracts as one of the key elements of contemporary legal relationships.

In the digital economy, contracts are getting signed more often using online platforms, mobile applications, emails and automatic systems, avoiding the conventional form of written documents, signed and brought to the parties. Such electronic contracts (e-contracts) cover various forms of transactions such as e-commerce purchases, use of social media memberships, ride-hailing arrangements, and cloud computing. Nevertheless, the Indian Contract Act, 1872,[11] does not explicitly recognise and refer to e-contracts, and therefore their legalisation is based on judicial interpretation and other additional legislations that regard them, e.g., the Information Technology Act, 2000.[12] This inconsistency encounters considerable problems, especially when it comes to legal certainty, consumer protection, and fair contracting at the digital level.

## WHAT IS E-CONTRACT?

An electronic contract refers to a legally enforceable agreement that is formed, transmitted, and signed via electronic communications.[13] The Indian Contract Act defines the following aspects of a valid contract: offer, acceptance, consideration, intention to enter into a legal relationship, capacity and consent. But it was written when the contracts were paper, personal, and executed by hand. Therefore, the Act does not refer to electronic records or digital signatures. It

[9] The Information Technology Act 2000
[10] The Indian Contract Act 1872, s 10
[11] The Indian Contract Act 1872
[12] The Information Technology Act 2000
[13] Mahawar S, E-contracts (iPleaders, 3 July 2022) https://blog.ipleaders.in/e-contracts/ accessed 18 June 2025

presupposes physical delivery of communication (e.g. post or telegram under Sections 3 to 9).[14] It fails to consider computer-generated contracts and AI-mediated contracts.

This legal vacuum makes the position of e-contracts unclear, especially in the process of determining: Who offered and who accepted, and where and when the contract was entered into, and whether free and intelligent consent was given or not.

There is an excess Dependence on the Information Technology Act, 2000. As per sections 4,[15] Section 10-A[16] and Section 11 of the IT Act,[17] electronic records are to bare e treated as written records, Digital/e-signatures, and contracts made electronically, and they have been given legal recognition. But the IT Act fails to identify the vital aspects of a contract- it merely facilitates electronic enforcement. This implies that the enforceability of an e-contract continues to rely on the principles in the Contract Act, which, as noted, remain quiet or obsolete on numerous digital questions, such as is lack of Clarity on Digital Offer and Acceptance.

The Contract Act in sections 3-9[18] presupposes the time lapses between acceptance and offer and relies on such means of communication as the post or telegram. In real life, digital purchases are frequently carried out immediately, with no verbal or written confirmation. This introduces confusion in questions such as: at which point a contract is entered into, whether a button press is an acceptable validity, and what happens when computers are giving the offer/acceptance (e.g., AI chatbots).

The Internet and Mobile Association of India (IAMAI) study[19] carried out in 2023 noted: More than 80% users do not read the terms and conditions of the internet sites, and only 15 per cent know that by clicking on the I Agree button, they enter into a legally binding agreement. Most e-contracts are non-negotiable, and one cannot clarify or redress them. These statistics demonstrate that in many cases, real consent is absent, and the existing legal framework does not contribute much to filling the gap.

The absence of the Indian Contract Act to deal with the digital nature and structure of modern contracts is a danger both to consumer protection and business certainty. The arbitrary

[14] The Indian Contract Act 1872, s 3, s 4, s 6, s 7, s 8, s 9
[15] The Information Technology Act 2000, s 4
[16] The Information Technology Act 2000, s 10A
[17] The Information Technology Act 2000, s 11
[18] The Indian Contract Act 1872, s 3
[19] Internet and Mobile Association of India (IAMAI) https://www.iamai.in/ accessed 18 June 2025

definitions and the lack of digital values, as well as the case-by-case approach to the application of the law, render it irrelevant to a technology-driven economy.

In order to guarantee enforceability and rationality of e-contracts, India should revise the Contract Act to introduce definitions and regulations of e-contracts and specify the rules concerning digital offer, acceptance and consent. The amendment must also seek to protect consumers against unjustifiable provisions in standardised digital contracts. The Contract Act needs to be aligned with the IT Act and international standards, and only then will it be possible to get the law to keep pace with the nature of contracting in the 21st century.

## A CLICK IS NOT ALWAYS CONSENT: RECONSIDERING FREE CONSENT IN THE ERA OF ALGORITHMS

In an age when contracts are not signed over a table but agreed to by a touch on a screen, the classical notion of free consent is coming under severe stress. Section 14[20] of the Indian Contract Act, 1872 was formulated in an era where agreements were personal, negotiated and conscious. Now, this is no longer the case; users today regularly engage in legally binding agreements not by conversation, but by digital defaults, I Agree buttons, pre-checked boxes, and buried terms. This shift in negotiation, between the traditional and the instant, platform-driven consent, begs a serious question: Is it still possible to regard consent as free when it is not exactly informed, much less voluntary? The solution is in analysing the way technology has redefined the form, execution and enforcement of contracts. Digital contracts, particularly those about consumers and gig employees, are one-sided, full of illegible clauses, and crafted in such a way as to prevent examination.

According to section 14 of the Indian Contract Act, 1872, free consent has been defined as consent due not to coercion, undue influence, fraud, misrepresentation or mistake.[21] This was written in the 19th century when the world ran on face-to-face transactions and paper contracts, and parties mostly negotiated and struck a deal based on face-to-face interaction. But in the modern era of technology, the old concept of consent does not fit with the process of agreement today, especially via the internet and the use of automated interfaces and standardised online contracts.

[20] The Indian Contract Act 1872, s 14
[21] The Indian Contract Act 1872, s 14

In the digital era, the majority of agreements will no longer be as a result of direct negotiation, but instead passive, one-sided responses to pre-written provisions, frequently as a result of:

**Clickwrap agreements -** people have to click I agree to continue.

**Browsewraps,** aka the ongoing use of a website, demonstrate agreement.

**Shrinkwrap license -** the license where the terms are provided after the product is installed or opened.[22]

Such models cast a lot of doubt regarding the existence of real and informed consent in the first place. Take an example of a food delivery application such as Swiggy. When one user makes an order, they are deemed to have accepted a large number of Terms and Conditions, a set of terms and conditions that are highly complicated, mostly after clicking a button without knowing the small print. Such terms usually comprise Liability releases, Refund limitations, Arbitration provisions and Forfeiture of the right to sue.

The majority of users do not have any significant chance to learn, bargain or reject such terms. This is not free consent, as it should be under Section 14. The lack of Informed Consent in such situations, as users tend not to read the full terms and conditions, as they are lengthy and complex, and they are often presented in very small sections with very tiny letters. In such cases, consent is turned into a formality that is given through just a single click. And often, there is no room for reasoning, particularly in B2C, there is no negotiation, it is all terms by one party (which is the company). The consumer just has to accept or leave. Hence, the use of an outdated understanding of consent in Section 14 fails to capture the dynamics of digital contracting, where users are not aware of what they are consenting to and have no authority to make any changes. Here, consent is often technical, symbolic, and made out of necessity, which calls into question the basis of the fairness of contractual agreements.[23]

To be relevant and effective, the concept of free consent must be redefined to: Enforce elements of transparency in internet conditions, limit the terms of exploitation in the general form

[22] Clickwrap and Shrinkwrap Agreements: Enforceability (Legittai, published c. January 2024) https://legittai.com/blog/clickwrap-and-shrinkwrap-agreements accessed 18 June 2025
[23] Yadav A, The Doctrine of Free Consent in the Digital Age: A Legal Analysis under the Indian Contract Act (LegalOnus, 11 June 2025 accessed 18 June 2025

contract, acknowledge coercion based on design, and introduce a higher degree of informed consent in online transactions.

## "NEW-AGE MINORS, OUTDATED LAW: A CASE FOR REFORMING SECTION 11 IN THE DIGITAL ERA"

In today's fast-paced digital age, the distinction between minors and adults in the commercial world is not as clear-cut as it once was. From teenage YouTubers earning lakhs through brand endorsements to child gamers signing e-sports contracts, the lines of contractual capacity have blurred significantly. Yet, Indian contract law continues to operate under the framework established more than a century ago. Section 11[24] of the Indian Contract Act, 1872, declares that only persons who have attained the age of majority are competent to contract, and the landmark case of Mohori Bibee v. Dharmodas Ghose (1903) reinforced the principle that contracts entered into by minors are *void ab initio*. While this rule was appropriate in the colonial context of the 19th century, it fails to consider the complex, tech-driven realities of the 21st century.

Minors today are not merely passive consumers; they are active participants in the digital economy. From Instagram reels to YouTube unboxings, child influencers are now central to an industry worth a billion. For instance, 12-year-old Ryan Kaji from the United States, one of the most prominent kid influencers globally, earned over $27 million in 2021 through his YouTube channel Ryan's World,[25] which features sponsored content, merchandise, and brand collaborations. But Ryan is not the only case. India too has seen a surge in child influencers, with top kid influencers aged 6–12 reportedly earning 1–2 lakhs per branded video, and contributing to an influencer marketing industry expected to touch 2,200 crores by 2025.[26]

These engagements are inherently contractual, detailing timelines, deliverables, content rights, and compensation. Yet, under Indian contract law, they are effectively unenforceable. Section 11 of the Indian Contract Act, 1872, which deems only those who have attained the age of majority as competent to contract, renders such agreements void if entered into by a minor. This legal vacuum not only exposes sponsoring companies to risk but, more critically, denies

[24] Indian Contract Act 1872, s 11
[25] *Forbes Highest Paid YouTuber 2021 List* (Hypebeast, 19 January 2022) https://hypebeast.com/2022/1/forbes-highest-paid-youtube-stars-mrbeast-logan-jake-paul-markiplier-rhett-and-link-news accessed 18 June 2025
[26] ET BrandEquity, 'Influencer marketing industry in India to reach Rs 2,200 cr by 2025: Report' (20 October 2022) https://brandequity.economictimes.indiatimes.com/news/research/influencer-marketing-industry-in-india-to-reach-rs-2200-cr-by-2025-report/94990088 accessed 18 June 2025

minors, who may generate substantial income, any statutory safeguards concerning their labour rights, earnings, or ownership of content.

On the other hand, the lack of accountability also creates room for misuse. The problem becomes even more serious when minors engage in fraudulent activities online, such as financial scams or unauthorised transactions. Despite possessing the technical knowledge and intent to defraud, they are shielded by the protective cloak of minority, facing little to no contractual liability. This creates a troubling incentive structure: minors can knowingly enter contracts, profit from them, and later escape liability on the grounds of age. Such misuse is not just hypothetical; it is a growing concern in cybercrime circles where underage individuals are often recruited for illegal digital operations. For example, in April 2023, authorities busted a cyber-fraud ring in Mumbai headed by a 17-year-old, discovering ₹97 lakh across 24 bank accounts tied to phishing and malware operations.[27] Similarly, in the infamous 2020 Twitter Bitcoin scam, a 17-year-old from Florida hacked into high-profile accounts like Barack Obama's and Elon Musk's to solicit Bitcoin, causing global alarm.[28] These real-world cases highlight how minors today are not only aware of the contractual nature of their actions but are capable of exploiting digital platforms with precision and intent.

International jurisdictions have already begun addressing this legal blind spot. The California Coogan Law,[29] enacted after the case of child actor Jackie Coogan, whose earnings were misappropriated by his parents, requires that a portion of a child's income from entertainment contracts be placed in a trust. This ensures financial protection while acknowledging the contractual involvement of minors. Similarly, legal scholars have proposed the adoption of a "graded capacity" model, allowing older minors between 16 and 18 to enter into binding agreements in specific categories like employment, digital content creation, and education, provided there is informed consent and some degree of adult oversight.

In India, however, no such distinctions exist. Whether a minor is a 10-year-old child unknowingly pressing "I agree" or a 17-year-old content creator signing a brand deal, the law

[27] Manish K. Pathak, 'Cyber fraud racket led by minor busted, ₹97L found in 24 bank accounts' (*Hindustan Times*, 22 April 2023) https://www.hindustantimes.com/cities/mumbai-news/teenage-mastermind-busted-in-cyber-fraud-racket-3-arrested-and-97-lakh-frozen-in-mumbai-police-operation-101682104003310.html accessed 18 June 2025

[28] *Teenager Graham Ivan Clark arrested in Twitter hack that hit Obama, Musk* (ABC7 Chicago, 31 July 2020) https://abc7chicago.com/twitter-hack-arrest-graham-ivan-clark-bitcoin/6345366/ accessed 18 June 2025

[29] California Family Code § 6750–6753 (West 2023) https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=11.&title=&part=4.&chapter=3.&article= accessed 18 June 2025

treats both identically as incapable of contracting. Meanwhile, minors continue to access websites, install applications, and enter into digital service agreements without age verification or meaningful warnings. These interactions, though routine, often carry legal implications, ranging from data sharing and subscription payments to intellectual property transfers.

This stark mismatch between law and lived experience underscores the urgent need to revisit how the Indian Contract Act deals with minors. As minors become increasingly visible in the digital marketplace, it is essential to re-evaluate the doctrine of absolute voidability and consider a framework that better balances protection with accountability. While the protective intent behind the current law is understandable, its blanket approach is no longer tenable in an era where minors are not just participants, but also earners, creators, and at times perpetrators.

## A CRITICAL APPROACH TOWARDS SECTION 74 OF THE INDIAN CONTRACT ACT, 1872

In today's fast-evolving commercial landscape, contracts have become complex legal instruments that often reflect significant power imbalances between parties, especially in high-value and standardised transactions. Section 74[30] of the Indian Contract Act, 1872, deals with stipulated damages and penalty clauses in the event of a contractual breach. The provision states that if a contract names a specific sum as compensation for breach or includes a penalty clause, the aggrieved party is entitled to reasonable compensation not exceeding the amount stipulated, whether or not actual loss is proven. While the intent was to bring clarity and reduce litigation, the ambiguous distinction between 'liquidated damages'-a a genuine pre-estimate of loss and 'penalty' - a punitive amount aimed at deterring breach has led to inconsistent judicial interpretations and exploitation in real-world scenarios.

The Indian judiciary has adopted a shifting stance on this matter. In Fateh Chand v. Balkishan Das (1963),[31] the Supreme Court ruled that only reasonable compensation could be granted, regardless of any sum named in the contract. This principle was reaffirmed in *Maula Bux v. Union of India* (1969),[32] where the court held that in cases involving unquantifiable losses, reasonable compensation had to be judicially assessed. However, a major shift occurred with *ONGC v. Saw Pipes Ltd.* (2003),[33] where the Court expanded the scope of Section 74 by

[30] Indian Contract Act 1872, s 74
[31] *Fateh Chand v Balkishan Das* AIR 1963 SC 1405 (SC)
[32] *Maula Bux v Union of India* AIR 1970 SC 1955 (SC)
[33] *ONGC v Saw Pipes Ltd* (2003) 5 SCC 705 (SC)

holding that compensation could be awarded even without proof of actual loss, provided the stipulated sum was not excessive. This broader interpretation was later moderated in *Kailash Nath Associates v. DDA* (2015),[34] wherein the Supreme Court clarified that the existence or likelihood of loss must be demonstrable for Section 74 to apply.

These legal uncertainties have practical ramifications. In government contracts, especially in infrastructure and public works, contractors are often subjected to stiff penalties for delays, even when caused by bureaucratic inefficiencies or force majeure events. These penalties are justified on the grounds of 'public inconvenience', despite the absence of clear metrics to quantify such inconvenience. For example, a contractor in a metro rail project was penalised over 50 lakhs for delay.[35] Although the delay was partially due to pending land acquisition by the state authorities. In the private sector, smaller businesses and start-ups often find themselves at a disadvantage when entering contracts with multinational corporations. Similarly, in the real estate sector, builders routinely impose steep interest rates, sometimes as high as 18% per annum, on homebuyers for delayed payments, while offering minimal compensation, often capped at 5 per square foot per month for project delays.[36]

The cumulative effect of these practices underscores how Section 74 is often leveraged by stronger parties to impose excessive penalties on the weaker counterpart, rather than serve as a fair mechanism for compensation. The lack of clear legislative guidance allows room for such misuse. In contrast, English law has evolved a more balanced approach since the landmark case of *Dunlop Pneumatic Tyre Co. Ltd. v. New Garage and Motor Co. Ltd.* (1915),[37] which laid down tests for distinguishing between penalties and liquidated damages. This was significantly advanced in Cavendish Square Holding BV v. Talal El Makdessi (2015),[38] where the UK Supreme Court ruled that a clause should not be deemed penal if it protects a legitimate interest and is proportionate to the breach.

The pressing need for reform in Section 74 stems from its outdated framework that no longer accommodates the complexities of modern contractual dealings. Rather than functioning as a

[34] Kailash Nath Associates v DDA (2015) 4 SCC 136
[35] *Metro Line 2B contractor fined ₹1.5 cr for slow work, Times of India* (Mumbai, 28 October 2024) https://timesofindia.indiatimes.com/city/mumbai/metro-line-2b-contractor-fined-1-5cr-for-slow-work/articleshow/114703287.cms accessed 18 June 2025
[36] *Builders cannot charge exorbitant interest on delayed payment* (14 June 2019) *LatestLaws.com* https://www.latestlaws.com/latest-news/builders-cannot-charge-exorbitant-interest-on-delayed-payment accessed 18 June 2025
[37] Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd [1915] AC 79 (HL)
[38] Cavendish Square Holding BV v Talal El Makdessi [2015] UKSC 67, [2016] AC 1172

shield for justice, it is often manipulated as a sword by dominant parties to suppress legitimate business operations, especially of emerging enterprises. To align with contemporary commercial realities, any future amendments must draw inspiration from comparative jurisprudence, emphasise proportionality, and introduce clear statutory benchmarks. Only then can Section 74 fulfil its original promise not just of legal certainty, but of equitable fairness in the world of contracts.

## REFORMS: The INDIAN CONTRACT ACT IS TO BE MODERNISED IN THE DIGITAL ERA

The Indian Contract Act 1872[39], being a watershed in the legal framing of the contractual relationship, has failed to evolve as per the digital and technological revolution of the 21st century. It was formulated during a time when communication was done using paper, and service transactions were done physically, thus becoming less effective in dealing with the issues arising in e-contracts, algorithmic decision-making and platform-based service models. To make sure that the law will stay relevant, effective, and fit all future needs, the following changes will be introduced: not only based on the domestic needs of India, but on the best practices of the world at large.

Firstly, the Act should acknowledge and identify electronic contracts. Although Section 10-A of the Information Technology Act, 2000[40] indirectly approves the validity of e-contracts, the lack of a similar provision in the Indian Contract Act created a gap of interpretation and legal ambiguity. The amendments must involve the definition of an electronic contract and the rule that the communication using emails, mobile applications and automated systems will amount to offer and acceptance under Sections 4 to 9. Moreover, the Act must also specify the time and location of the formation of digital contracts as per Section 11 of the IT Act,[41] which is also in line with the UNCITRAL Model Law on Electronic Commerce.[42] This would eliminate the issue of jurisdiction or validity of contracts in online transactions.

The other area that needs reform is the concept of consent in digital contracts. The definition of free consent in section 14[43] of the Act will not be sufficient to deal with the case of users

[39] The Indian Contract Act 1872
[40] The Information Technology Act 2000, s 10A
[41] The Information Technology Act 2000, s 11
[42] UNCITRAL, Model Law on Electronic Commerce with Guide to Enactment 1996 (United Nations 1999)
[43] The Indian Contract Act 1872, s 14

who will be subject to standardised clickwrap or browsewrap contracts. Such online contracts are usually agreed upon by a mere click without being read or understood, posing some major implications on the issue of informed consent and bargaining power. Indian courts, like in Trimex International FZE Ltd v. Vedanta Aluminium Ltd (2010),[44] have recognised the validity of contracts entered into electronically, yet have not focused well on the question of digital coercion or deception. Based on GDPR within the European Union and case laws such as Specht vs, in the United States, this should be supplemented by Netscape to add minimal requirements to an acceptable digital consent, including the need to disclose the material terms, explicit consent method (i.e., box checks), and reasonable withdrawal period for the user.

Coming hand in hand with consent is the matter of regulating standard form contracts, particularly in the online environment. Companies like Uber, Swiggy, and Amazon force consumers and gig workers to accept pre-written terms of service, which exclude liability and limit remedies.[45] The Indian Contract Act does not provide a statutory mechanism to deal with such discrepancies, even though in Central Inland Water Transport Corp. v. Brojo Nath Ganguly (1986)[46] the Supreme Court acknowledged the existence of such clauses and struck them down as being unconscionable. A new clause must be introduced under the Act, which can regulate the standard form contracts, especially in the digital context. It would need platforms to make sure that they were more transparent, that they did not have unfair bonuses (one-sided termination or mandatory arbitration without redress), and that the provisions could be reviewed and struck down in court as unjust or exploitative. Other laws, such as the UK Consumer Rights Act 2015,[47] the US Uniform Commercial Code, serve as a good model to follow in carrying out such reforms.[48]

Moreover, the changes should strive to make the Indian Contract Act more compatible with the Information Technology Act. Currently, no synchronisation of the law in the areas of contract and IT-based processes exists in the form of digital signatures, attribution practices on electronic records, and automation of smart contracts. Amendments in legislation should also make it clear that any e-authentication, such as Aadhaar-based e-credentials and smart contracts based on blockchain, is legally binding and possesses the same status as a traditional signature.

[44] Trimex International FZE Ltd v Vedanta Aluminium Ltd (2010) 3 SCC 1
[45] Srishti Aishwarya Shrivastava, The Enforceability of Electronic Click-Wrap and Browse-Wrap Agreements (NUJS Journal of Regulatory Studies, n d) https://journals.nujs.edu/index.php/njrs/article/download/11/8/28 accessed 18 June 2025
[46] Brojo Nath Ganguly v University of Calcutta AIR 1962 SC 349
[47] Consumer Rights Act 2015 (UK)
[48] Uniform Commercial Code (US, 2017 ed) 2-204

The Electronic Transactions Act was passed in Singapore.[49] The US E-SIGN Act[50] can serve as an example to India since it offers a detailed guide as to the recognition of electronic contracts and digital authentication devices.

The development of artificial intelligence and smart contracts also requires a visionary reform agenda. The technologies also give way to contracts that are formed and enforced without human intervention, and thus the question arises as to whether there is intention, consent, and accountability. The Indian Contract Act should have enabling provisions that specify and legalise smart contracts by placing provisos under which such contracts are enforceable. It should also be stated in the law who will be responsible when AI systems autonomously conclude contracts or execute the obligations of the contract. The 2021 report of the UK Law Commission[51] on smart legal contracts and the Digital Services Act provided by the EU are recommendations that may be taken up by India to use in the Indian legal system.[52]

Lastly, the consideration definition in Section 2 (d)[53] needs to be expanded to cover the value exchanges in the contemporary world. The digital economy relies on a data-for-service business model, with most services running using that model, with users giving their data in exchange for the free service. Nevertheless, data and non-monetary value are not considered valid considerations in the current law. The definition of consideration should be enlarged and include personal data, attention (e.g., views of an ad) and behavioural inputs. Meanwhile, there should be precautions taken against the misuse of personal information, and there also needs to be precautions that users are aware of what they are losing out on.

Overall, these reforms are not just essential to ensure that the Indian Contract Act remains up-to-date in the digital era, but they are also necessary for the values of fairness, transparency, and certainty under the rule of law. The inclusion of the best practices around the world, adopting technological advances, and responding to the practical issues of conducting business in the digital sector would allow the law to perform its historical roles, as well as meet the multifaceted demands of a fast-changing business environment.

[49] Electronic Transactions Act 2010 (Singapore, Rev Ed 2020),
[50] Electronic Signatures in Global and National Commerce Act (US, 15 USC §§ 7001–7031, 2000)
[51] Law Commission, Smart Legal Contracts: Advice to Government (Law Com No 401, 2021) (https://www.lawcom.gov.uk/project/smart-contracts/) accessed 18 June 2025.
[52] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) \[2022] OJ L277/1
[53] The Indian Contract Act 1872, s 2(d)

## CONCLUSION

The Indian Contract Act, 1872, has been the foundation for contract law in India for over a century. Its detailed drafting has allowed it to function with minimal amendments over the years, providing the backbone for legal agreements in the Indian corporate and commercial sectors. However, in an era shaped by digital platforms, evolving business models, and online transactions, the unchanged structure of the Act is struggling to meet the demands of modern contracting practices.

This article critically examines the growing disconnect between the Act's original provisions and present-day realities. It highlights how the traditional definition of free consent under Section 14 fails to capture the realities of e-contracts, where consent is often reduced to a click on a pre-checked box. It also explores how Section 11, which renders all contracts with minors void, fails to address the active participation of minors in the digital economy as content creators and earners. Further, it addresses the misuse of Section 74[54] on liquidated damages and penalty clauses, particularly in standard-form and government contracts, where stronger parties use penalty clauses as a tool of dominance rather than justice. A significant portion of the discussion also focuses on the need to explicitly recognise and regulate e-contracts, which have become the norm in consumer and gig economy interactions.

Through case law analysis, real-world examples, and comparative insights, the article argues for urgent reform of the Indian Contract Act. It calls for the inclusion of digital-age safeguards, a reassessment of capacity and consent, and the establishment of fairer standards in damage clauses, ensuring the law evolves in step with society and technology, and protects the rights of individuals in both traditional and digital contracting environments.[55]

[54] The Indian Contract Act 1872, s 74
[55] Loopholes in Indian Contract Act: A Critical Analysis (International Journal of Creative Research Thoughts, Vol 10, Issue 6, June 2022) https://ijcrt.org/papers/IJCRT22A6251.pdf accessed 18 June 2025