

“Digital Contracts and Consumer Protection in India: Rethinking Consent in Clickwrap and e-Commerce Agreements”

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Abstract

The digitalisation of commerce in India has transformed the way contracts are entered into, particularly through clickwrap and browse wrap agreements. While these mechanisms enable efficiency and accessibility, they also raise concerns about meaningful consumer consent. Indian law, anchored in the Indian Contract Act 1872 and the Consumer Protection Act 2019, provides limited safeguards against opaque terms and unfair clauses. The growing dominance of platforms such as Amazon, Swiggy, and Zomato reveals an imbalance of bargaining power, as consumers often accept terms without awareness of their implications. This paper argues that Indian law needs to move beyond formalistic consent to substantive fairness, drawing lessons from the EU’s Unfair Contract Terms Directive and the US doctrine of unconscionability. Comparative analysis highlights the importance of regulatory innovation, judicial intervention, and consumer awareness to safeguard trust in the digital marketplace. Ultimately, the study rethinks the concept of consent in e-commerce agreements to ensure that consumer rights remain protected in the twenty-first century.

Keywords: Digital contracts; Clickwrap agreements; Consumer protection; Indian Contract Act; Substantive fairness; Consent; Arbitration; E-commerce law; Unconscionability; EU Consumer Law.

Introduction

The transformation of commerce in the digital age has dramatically altered the manner in which contracts are formed, interpreted, and enforced. The growth of platforms such as Amazon, Swiggy, and Zomato has redefined consumer markets, making contractual interactions instantaneous and frictionless¹. However, beneath the efficiency lies a pressing concern: the nature of consumer consent in digital contracts, especially clickwrap agreements, and whether the Indian legal framework adequately safeguards consumers against opaque terms, forced arbitration clauses, and disproportionate bargaining power. The Indian Contract Act of 1872 and the Consumer Protection Act of 2019, while foundational, face challenges in addressing these emerging complexities. In contrast, jurisdictions such as the European Union and the United States have developed more sophisticated approaches to consent and fairness in digital transactions. This comparison provides a pathway for reconsidering the Indian framework to ensure consumer protection keeps pace with technological realities.

Clickwrap and browsewrap agreements have become the dominant forms of digital contracting. In a clickwrap agreement, users are required to click “I agree” to standardized terms before accessing services. In browsewrap agreements, terms are passively displayed, often accessible

¹ Sharashti Dubey and Rebekah Hanna Varghese, ‘Clickwrap Agreements in India: The Legal Stance’ (2024).

through a hyperlink, with the assumption that continued use of the service implies consent. In both cases, the consumer rarely reads or understands the terms². The problem is not only one of information asymmetry but also one of substantive unfairness, as many platforms embed clauses that restrict consumer rights³. For example, e-commerce platforms often include mandatory arbitration clauses that bar consumers from approaching courts, limit liability for defective services, or impose restrictions on refunds. The consumer, typically an individual with little bargaining power, has no realistic opportunity to negotiate these terms. This calls into question whether the consent ostensibly given is truly free, as required under the Indian Contract Act.

Under the Indian Contract Act of 1872, a contract requires free consent, lawful consideration, and lawful object to be valid. Free consent is vitiated by coercion, undue influence, fraud, misrepresentation, or mistake⁴. The Act is silent on whether contracts of adhesion, where terms are unilaterally drafted by one party and imposed on another, undermine free consent. Courts in India have tended to enforce standard form contracts unless they clearly violate public policy or specific statutory prohibitions⁵. This approach reflects a formal understanding of consent: if a consumer has clicked “I agree,” consent is presumed. Yet in digital transactions, the presumption of informed consent is largely fictional. Unlike traditional contracts, digital agreements are rarely scrutinized in full by consumers, who are often incentivized to proceed quickly to access services. The legal fiction of consent in such contexts masks the imbalance of power and undermines the principle that contracts are a product of mutual assent.

The Consumer Protection Act of 2019 represents a more progressive legislative attempt to address issues arising from e-commerce. It recognizes e-commerce platforms as service providers and holds them accountable for unfair trade practices, defective goods, and deficient services. It also establishes the Central Consumer Protection Authority (CCPA), which can initiate investigations into unfair contracts and misleading advertisements⁶. The Act defines an unfair contract as one that causes significant change in consumer rights, including terms that impose unreasonable charges or conditions. This provision could, in theory, be used to challenge forced arbitration clauses or liability limitations in clickwrap agreements. However, the implementation has been uneven⁷, and consumers often face hurdles in litigating against large corporations with deep pockets and sophisticated legal teams. Moreover, the Act does not yet provide explicit guidance on the validity of consent in digital contracts, leaving courts to rely on traditional doctrines that may not fit the digital context.

The inadequacy of Indian law becomes more apparent when contrasted with developments in the European Union. The EU has long recognized the risks of unfair terms in consumer contracts. The Unfair Contract Terms Directive prohibits terms that cause a significant

² Pranav Sharma, ‘Digital Consent in India: Enforcing Clickwrap and Browsewrap Agreements’ (2025).

³ K Jha, ‘The Use of Arbitration Clauses by Social Media Websites’ (2023).

⁴ R Soni, ‘The Doctrine of Free Consent in the Digital Age’ (2025).

⁵ M/S Hemalatha Devi v B Udayasri (2024) 4 SCC 255.

⁶ The Legal School, ‘ADR in Consumer Law: Meaning, Mechanisms, and Challenges’ (2025).

⁷ The Law Way with Lawyers, ‘ODR in E-commerce and Consumer Disputes’ (2025).

imbalance between consumer and supplier rights to the detriment of the consumer. Importantly, it requires that terms be drafted in plain and intelligible language, failing which they may be deemed unenforceable. This reflects an emphasis on substantive fairness rather than mere procedural consent. The EU's General Data Protection Regulation (GDPR) further strengthens the notion of meaningful consent by requiring it to be freely given, specific, informed, and unambiguous. Consent obtained through pre-ticked boxes or by burying terms in lengthy policies is invalid. Although GDPR addresses data privacy rather than general contracts, its conceptual approach to consent resonates with the broader debate on fairness in digital contracting. Together, these instruments demonstrate a regulatory commitment to ensuring that consumers are not disadvantaged by the opacity of terms or the inequality of bargaining power.

The United States presents another interesting comparative model through the doctrine of unconscionability. American courts, particularly under the Uniform Commercial Code and subsequent jurisprudence, have recognized that contracts may be unenforceable if they are procedurally or substantively unconscionable⁸. Procedural unconscionability refers to unfairness in the formation process, such as lack of negotiation, hidden terms, or high-pressure tactics. Substantive unconscionability refers to unfairness in the content of the contract, such as excessive limitations of liability or one-sided dispute resolution clauses. This doctrine provides a flexible tool for courts to strike down oppressive digital contracts, even where formal consent exists. Although courts have varied in their application, the doctrine highlights the recognition that consumer consent cannot be reduced to a click, particularly when dealing with monopolistic or dominant platforms.

For India, the comparative experience suggests a need to rethink the doctrinal basis of digital consent. The Contract Act's nineteenth-century understanding of consent as a binary—either free or vitiated—fails to capture the nuanced coercion and informational asymmetry of modern digital markets. The Consumer Protection Act, while progressive, remains underutilized in addressing unfair terms in e-commerce agreements. A stronger regulatory framework, akin to the EU's emphasis on intelligibility and the US's unconscionability doctrine, could provide more robust protection. The question is whether Indian courts and regulators are prepared to move beyond formal consent and embrace substantive fairness.

A closer look at disputes involving food delivery platforms illustrates these concerns vividly. Zomato and Swiggy, for example, have faced consumer complaints regarding non-refunds for cancelled orders, exorbitant delivery charges during peak hours, and forced arbitration clauses that limit redress. Consumers often discover that their remedies are curtailed by terms they never meaningfully consented to. Courts have been reluctant to intervene, often directing parties to arbitration in line with the contractual terms. This judicial deference to the sanctity of contracts overlooks the broader policy issue: whether contracts of adhesion in the digital economy should be enforced when they undermine consumer rights. The challenge is to

⁸ Brooke Boliek, 'Upgrading Unconscionability' (2021); Scott Blount, 'Unconscionability in Online B2C Contracts' (2021); B McCall, 'Demystifying Unconscionability' (2015).

balance contractual freedom with consumer protection, recognizing that freedom of contract in the digital age is more illusory than real.

The rise of Amazon as a dominant e-commerce platform also raises similar issues. Consumers purchasing goods often encounter limitations of liability that absolve the platform of responsibility for defective products sold by third-party vendors. Although the Consumer Protection Act holds platforms accountable as intermediaries, enforcement remains patchy. Forced arbitration clauses are another obstacle, as they shift disputes away from consumer forums to private arbitrators, often chosen by the corporations themselves. This undermines the statutory rights of consumers to seek redress through accessible forums. The asymmetry of power between an individual consumer and a multinational corporation means that arbitration rarely delivers justice in practice. Unless regulators scrutinize and curtail such clauses, consumer protection risks being hollow in the digital marketplace.

Theoretically, Indian courts could invoke public policy to strike down unfair terms in digital contracts. Public policy, though nebulous, has been used to invalidate contracts that undermine fairness, morality, or statutory rights. Yet Indian jurisprudence has historically applied this doctrine cautiously, preferring to uphold contractual freedom. The reluctance to interfere in private bargains is understandable in a commercial context, but in consumer transactions characterized by adhesion and inequality, a more interventionist stance may be justified. The recognition of unfair contracts under the Consumer Protection Act is a step in this direction, but its potential has yet to be fully realized.

The way forward for India lies in developing a nuanced understanding of consent in digital contexts. Consent should not be equated with a mere click. Instead, the law should recognize that meaningful consent requires clarity, transparency, and genuine choice. This could involve mandating that key terms—such as dispute resolution mechanisms, liability limitations, and refund policies—be presented prominently and explained in plain language before consumers agree. Such an approach would align with the EU's intelligibility standard and ensure that consumers are not misled into waiving fundamental rights. It would also require regulators like the CCPA to actively monitor and penalize platforms that engage in unfair contracting practices.

Furthermore, Indian law could benefit from adopting a proportionality test in evaluating contractual terms, similar to the approach in constitutional rights adjudication. Such a test would assess whether a term is necessary, proportionate, and justified in light of the legitimate interests of both parties. For example, while platforms may have legitimate reasons to limit liability for third-party sellers, completely absolving themselves of responsibility may fail the proportionality standard. A more balanced allocation of risks would protect consumer rights without stifling business innovation.

Ultimately, the debate on digital contracts is part of a larger conversation about the role of law in governing technology-driven markets. As commerce shifts online, the traditional doctrines of contract law must adapt to ensure that consumers are not left vulnerable. The Indian legal

framework, rooted in colonial-era legislation, requires updating to reflect the realities of twenty-first-century digital interactions. Learning from the EU's emphasis on intelligibility and fairness, and the US's flexible doctrine of unconscionability, India can craft a model that respects contractual freedom while preventing exploitation. This balance is crucial not only for consumer rights but also for sustaining trust in the digital economy.

The comparative experiences of the EU and the United States underscore the importance of proactive regulation rather than reactive litigation. In India, reliance on consumers to challenge unfair terms is unrealistic given the asymmetry of resources and knowledge. Most digital disputes are resolved through grievance portals or standard complaint mechanisms, which, while helpful, do not address the structural imbalance of power. A regulatory framework that sets minimum standards for digital contract fairness would shift the burden from the consumer to the platform, aligning incentives toward transparent and equitable contracting. Such regulation could mandate, for instance, that mandatory arbitration clauses be opt-in rather than pre-imposed, that refund policies be clearly articulated, and that liability limitations not absolve platforms entirely from oversight of third-party vendors.

Data privacy concerns intersect closely with contract fairness⁹. Many clickwrap agreements incorporate consent for extensive data collection, often bundled with the terms of service, creating a dual problem: consumers unwittingly waive privacy rights while also agreeing to potentially onerous contractual obligations. The GDPR's approach—requiring separate, granular, and informed consent for data processing—offers a model for disentangling privacy from service acceptance. India's Personal Data Protection Act (2023), though a significant step forward, has yet to harmonize with consumer protection in the contractual context. Integrating consent standards across privacy and contract law could reduce the likelihood of consumers being misled or coerced into unfair agreements. This intersection highlights the broader challenge: digital contracts are rarely just commercial instruments; they are also tools of behavioral influence and data extraction, raising the stakes for regulatory oversight.

Enforcement mechanisms are equally critical. The EU combines legislative mandates with empowered regulatory agencies, consumer associations, and class action mechanisms to monitor and challenge unfair terms. In contrast, India's Consumer Protection Act relies heavily on the CCPA and decentralized consumer forums. While these institutions are valuable, they face challenges of capacity, awareness, and accessibility, particularly for consumers in smaller towns or rural areas. Technology-driven solutions, such as automated flagging of potentially unfair clauses or standardized contract templates vetted by regulators, could complement legal reforms. These innovations would provide consumers with practical protection, translating legal principles into actionable safeguards.

Judicial intervention will continue to play a pivotal role in shaping the contours of digital contract law. Indian courts have occasionally invalidated unfair clauses, such as penalty provisions that are disproportionately high or terms that purport to waive statutory protections.

⁹ Anita Gandhi and R Thakur, 'Wringing Consent from Consumers' (2025).

However, these interventions are case-specific and often reactive. A more principled approach would involve courts adopting doctrines akin to unconscionability or applying a proportionality test to evaluate contractual fairness comprehensively. This doctrinal evolution could encourage platforms to adopt fairer terms proactively, knowing that courts would scrutinize enforceability beyond the mere formal act of clicking “I agree.”

The normative principle underlying these reforms is that consent in the digital economy should be substantive, not formalistic. Formalistic consent treats the act of clicking as sufficient, whereas substantive consent evaluates whether the consumer truly understood the terms, had meaningful choice, and was not coerced or misled. Without this shift, the legal fiction of consent will continue to legitimize contracts that systematically disadvantage consumers. Moreover, substantive consent aligns with broader principles of justice and equity, ensuring that digital markets operate on trust rather than exploitation. It also supports innovation by encouraging platforms to compete on transparency and fairness rather than obfuscation.

Policy measures could further enhance consumer protection. Standardized templates for e-commerce contracts, approved or recommended by the government, would reduce the incidence of opaque or one-sided clauses. Mandatory disclosure of key contract terms—such as cancellation rights, refund policies, and dispute resolution mechanisms—before consent could be given would empower consumers to make informed decisions. Educational campaigns to raise awareness of digital rights and contract implications would complement these structural measures, creating a culture of informed digital participation. Regulatory incentives for platforms that adopt fair contracting practices, such as certifications or reputational benefits, could further encourage compliance without stifling business innovation.

Another dimension for reform concerns cross-border digital transactions. Many platforms operating in India are global entities, governed by foreign legal regimes in addition to Indian law. The EU’s emphasis on extraterritorial application of the GDPR provides a model for extending consumer protection standards beyond borders. India could consider similar measures, ensuring that foreign platforms serving Indian consumers adhere to domestic consumer protection norms. This approach would prevent regulatory arbitrage, where platforms exploit weaker national standards to impose unfair contracts, and would align with India’s broader digital sovereignty objectives.

The dynamic nature of technology also requires a flexible, principle-based approach rather than a rigid statutory one. While the Consumer Protection Act provides broad definitions of unfair practices, the rapid evolution of digital services, artificial intelligence in contract drafting, and automated dispute resolution mechanisms necessitate ongoing judicial and regulatory vigilance. A principle-based framework could incorporate doctrines of substantive consent, proportionality, and fairness while remaining adaptable to future technological developments. This would ensure that consumer protection remains robust even as contract forms evolve, preserving the core values of autonomy, fairness, and access to justice.

The debate over digital contracts is not merely theoretical. Real-world consumer harm is increasingly documented in complaints related to food delivery, e-commerce, online education, and ride-hailing platforms. Delayed refunds, hidden charges, denial of statutory rights, and forced arbitration have emerged as recurring issues. Empirical evidence suggests that consumers rarely understand the full scope of digital contract obligations. This reality underscores the urgency of legal and regulatory intervention. If India fails to adapt, digital markets risk eroding consumer trust, which could have broader economic and social repercussions. Trust is a critical currency in digital commerce, and legal frameworks that fail to protect it compromise not only individual rights but also market efficiency.

Ultimately, the issue of consent in digital contracts challenges traditional assumptions of contract law. It calls into question whether formal assent—clicking a box—can suffice in an environment characterized by informational opacity, inequality of bargaining power, and automated contract generation. Indian law must evolve to recognize that consent is meaningful only when it is informed, voluntary, and capable of genuine refusal. Legislative and regulatory reforms should aim to align the Contract Act and Consumer Protection Act with this principle, drawing lessons from the EU’s intelligibility requirement and the US doctrine of unconscionability. Judicial oversight, proactive regulatory action, consumer education, and technological innovation must converge to ensure that consumers are not systematically disadvantaged in the digital marketplace.

In conclusion, digital contracts present both opportunities and challenges. They facilitate efficiency, convenience, and access to a wide array of services but simultaneously expose consumers to opaque, unfair, and sometimes coercive contractual practices. The Indian legal framework, anchored in the Contract Act of 1872 and the Consumer Protection Act of 2019, provides foundational protections but falls short of addressing the unique realities of digital contracting. Comparative lessons from the EU and the United States highlight the importance of substantive consent, intelligibility, and the ability of courts to intervene when terms are unfair. For India, a multi-pronged approach encompassing legal reform, regulatory oversight, judicial evolution, and consumer education is necessary to ensure that the promise of the digital economy does not come at the cost of consumer rights. By rethinking consent in clickwrap and e-commerce agreements, India can safeguard fairness, build trust in digital markets, and promote equitable participation in the twenty-first-century economy.