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## CONFLICT OF LAWS IN CROSS-BORDER CLICKWRAP AGREEMENTS: AN INDIAN PERSPECTIVE

~ *Roshni Kumari*

### ABSTRACT

*With the advancement digital commerce, clickwrap agreements has become the dominant mode of contractual consent across borders. This raises critical questions at the intersection of contract law, jurisdictional authority and consumer protection. The enforceability of cross-border clickwrap contracts in India reveals a structural tension between party autonomy and domestic legislation. Prior research has examined validity or conflict of laws in clickwrap agreements in isolation. This leaves a gap in the integrated analysis of how Indian jurisprudence navigates the three-dimensional conflict of jurisdiction, choice of law, and enforcement. This paper addresses that gap by examining the enforceability and regulatory limits of cross-border clickwrap agreements under Indian law. The study draws upon statutory frameworks alongside landmark judicial precedents. Comparative reference is also made to the international conventions on notice and consent. The analysis reveals that while Indian law formally recognises party autonomy through doctrines such as Lex Loci Voluntatis and uphold exclusive jurisdictional clauses. The paper argues that longstanding non-ratification by India of the Hague Convention reflects a deliberate assertion of judicial sovereignty rather than administrative inertia, preserving the discretion of Indian courts to protect structurally weaker parties in digital contracts of adhesion. The UNCITRAL addresses cross-border insolvency frameworks. The broader implication calls for a change from treating acceptance as genuine consent to recognising it as a regulated interaction governed by mandatory public interest norms. Thereby, the digital contracts should be reframed as site for consumer rights rather than mere commercial autonomy.*

## INTRODUCTION

When you click “I agree” on an online service agreement, what you’re agreeing to extends far beyond the convenience of accessing that service. Behind that simple button lies a web of legal complications, question about which country’s courts can hear disputes, whose law apply and whether your consumer rights remain intact once you’ve crossed borders.

The rise of clickwrap agreements has reshaped how contracts work in digital economy. Unlike traditional contracts that are negotiated between parties of roughly equal standing, clickwrap agreements are take-it-or-leave-it instruments. You either accept the terms bundled by a foreign corporation, or you don’t get access to the service. This imbalance becomes pronounced when these agreements include exclusive jurisdiction clauses directing disputes to foreign courts or choice of law provisions selecting foreign legal systems. This is often without the user ever reading or truly understanding what they’ve agreed to.

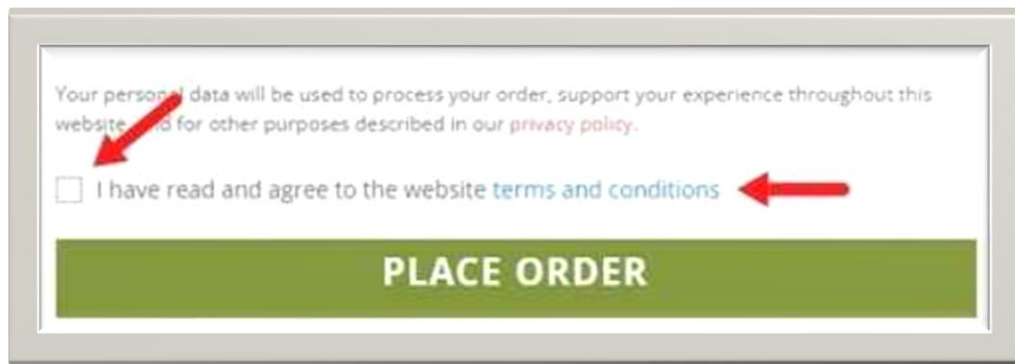
This creates a profound conflict: on one side stands the principle of party autonomy, which assumes free and informed consent. On the other side stands the reality of how digital contracts actually function, as adhesion contracts where one party dictates all terms. Adding to this, the complexity of cross-border enforcement, and the tension becomes impossible to ignore.

This paper navigates that tension by examining how Indian law handles cross-border clickwrap agreements. Specifically, it explores three interconnected questions: *firstly*, which court has the authority to hear disputes, *secondly*, whose laws will govern the contract, and *thirdly*, how Indian courts balance party autonomy against the need to protect consumers. The analysis reveals that while Indian jurisprudence formally respects contractual freedom, it has increasingly developed safeguards, through both statutory protections and judicial doctrine, to ensure that the act of clicking doesn’t strip users of their fundamental legal rights.

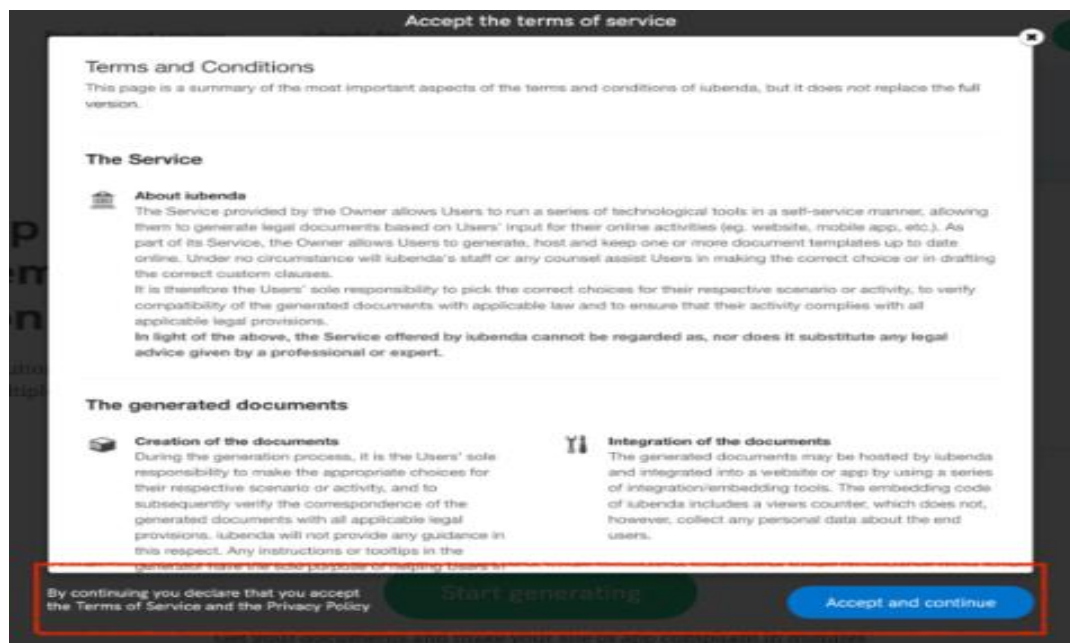
# 1. CONCEPTUAL FRAMEWORK: CLICKWRAP AGREEMENTS & CONFLICT OF LAWS

## 1.1 Defining Clickwrap Agreement

Clickwrap Agreement is a legal agreement that obtains binding consent from users. It is *active* in nature as consent is explicitly captured and acknowledged. It is a type of *electronic signature* which involves a user clicking a button to accept the agreement. It has replaced traditional electronic signatures like image of scanned signatures, biometric signatures and digital signatures<sup>1</sup>. Common clickwrap methods include a statement such as, by clicking “*I agree*”, the organisation captures the consent of users.



Browsewrap agreement obtains consent for the terms from user by using or browsing the website. It is *passive* in nature<sup>2</sup>. A common example of browse wrap agreement example is a



<sup>1</sup> Srishti Aishwarya Shrivastava, The Enforceability of Electronic Click Wrap and Browse Wrap Agreements, Vol VI, NLIU Law Review, 98, 101-103 (2022). (hereinafter as Srishti)

<sup>2</sup> Sirion, [Browsewrap Agreement: Best Practices and Enforceability](#) (last visited on June 6, 2026)

website that includes a “*Terms of Service*” hyperlink. The user is not required to click for acceptance. The continued *browsing* constitutes agreement<sup>3</sup>.

Clickwrap agreements are stronger than browse wrap agreement because it requires explicit consent<sup>4</sup>.

The defining legal characteristic of the clickwrap contracts is that it constitutes a *Contract of Adhesion*. This contract is an agreement which is drafted by one party (business) with stronger bargaining power and offered to another party who is a consumer. It comes with the idea that the weaker party has only option to adhere to the contract terms and cannot realistically negotiate or change them<sup>5</sup>. The *take-or-leave-it* aspect is the defining characteristic of this contract. This aspect can be asserted as binary, it is non-negotiable and non-alterable.

### **1.2 The Conflict: Why cross border contract triggers a conflict of laws**

When dispute arises in a cross-border clickwrap contract, courts must navigate a three-dimensional conflict resolution process:

- a) **Jurisdiction (Forum):** This dimension determines the court of which country has the right to adjudicate the dispute. Here is an example of jurisdictional clause from Washington Post:

#### **14. Governing Law and Forum**

This Agreement shall be governed by the laws of the United States and the District of Columbia. By using the Services, you waive any claims that may arise under the laws of other states, countries, territories or jurisdictions. You agree that any disputes, legal action or suit arising out of or in connection with these Terms or your use of the Services must be brought in the state or federal courts located in the District of Columbia. You irrevocably consent to the jurisdiction of, and venue, in, such courts and waive any objection that such courts are an inconvenient forum.

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<sup>3</sup> Srishti, *supra* note 1, at 103-104.

<sup>4</sup> Mr. Sanjay Singh Rawat, Ms. Mahima Anand, Ms. Simran Bharti, Mr. Virendra Kumar, Ms. Nidhi Mehta, Vol VIII, Issue 1, International Journal for Multidisciplinary Research, 1, 1-2 (2026). (hereinafter as Sanjay)

<sup>5</sup> Srishti, *supra* note 1, at 101-102.

There are two principles:

- i. **Personal Jurisdiction:** it focuses on the connection (business presence or transaction location) of defendant with India<sup>6</sup>.
  - ii. **Subject-Matter Jurisdiction:** it focusses on type of dispute which is based upon forum and applicable law chosen by parties. In accordance with *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.*, the courts can uphold jurisdictional clauses unless they conflict with public policy.
- b) **Choice of Law:** This determines the substantive law of which country would govern the merits of the dispute. Here is an example of clause which mentions which law will apply from Amazon:

### APPLICABLE LAW

By using any Amazon Service, you agree that applicable federal law, and the laws of the state of Washington, without regard to principles of conflict of laws, will govern these Conditions of Use and any dispute of any sort that might arise between you and Amazon.

The parties can choose the governing law even if substantive law differs. This choice must be *bona fide*. It cannot violate mandatory laws and public policy of the country where lawsuit is filed. Courts can apply their own procedural rules (*Doctrine of Lex Fori*) and the Indian courts can sparingly apply the conflict rules of foreign law to avoid unjust outcomes (*Renvoi*).

- c) **Recognition and Enforcement:** This dimension determines if a judgement of a given country is recognised and executable by authorities in another country. India has a two-tier system. Judgements from reciprocating countries can be enforced by Section 44A of the Code of Civil Procedure. Judgements from non-reciprocating countries are not directly enforceable. A new lawsuit must be filed in India based on that foreign judgement, which then acts merely as evidence, making enforcement difficult and time-consuming.

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<sup>6</sup> Venkata Sai Revanth Rao Maddi, The Enforceability of Click Wrap Agreements: Striking A Balance Between Economics and Consumer Protection, Volume V Issue I, Indian J. Integr. Res. Law, 412, (2025).

## 2. VALIDITY AND ENFORCEABILITY OF CLICKWRAP CONTRACTS UNDER INDIAN LAW

### 2.1 Statutory Framework

The validity of clickwrap agreements in India is a two-key system requiring compliance with both technical and substantive laws. [The Information Technology Act, 2000](#) is the primary statute governing electronic contracts in India.

- i. **Section 10-A of the Information Technology Act, 2000<sup>7</sup>**: It is the enabling provision. It specifies essentials for constituting a legally valid contract. Firstly, there must be existence of an electronic pact which constitutes a proposal. In electronic contract, the proposal is made through electronic means such as email, website forms or e-commerce platforms<sup>8</sup>. Secondly, there must be acceptance of proposal. In an electronic contract, acceptance is signified through various electronic actions. This includes clicking on an “Accept” button, downloading a software program, or performing an act in accordance with the terms of the proposal. Thirdly, there must be consideration. In an electronic contract, consideration can take various forms, such as exchange of money, goods, services or promises. Consideration should be lawful and not prohibited by law<sup>9</sup>. Section 10-A of the Information Technology Act, 2000 considers electronic signature legally valid on certain conditions. It promotes the legality and enforceability of the electronic contracts in India. This has enabled businesses and individuals to engage in contractual relationships electronically. Thereby, facilitating the growth of e-commerce and digital transactions<sup>10</sup>.
- ii. **Section 11 of the Information Technology Act, 2000<sup>11</sup>**: It determines who is legally responsible for an electronic record. An electronic record is attributed to an originator. It is considered when it was sent by the originator, authorised person or an automated system programmed by them.

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<sup>7</sup> Information Technology Act, 2000, § 10A, No.21, Acts of Parliament, 2000 (India).

<sup>8</sup> Sanjay, *supra* note 4, at 1-2.

<sup>9</sup> Legacy Partners, e-Contracts: Are They Legal and Enforceable in India? (June 16, 2020), <https://legacypartners.in/insights-and-research/e-contracts-are-they-legal-and-enforceable-in-india> (interpreting Section 10A as providing negative assurance regarding electronic form).

<sup>10</sup> Saransh Jauhari, India: Though Click-Wraps Are Legal, Can Minors Enter Click-Wraps, THE MONDAQ (November 24th) <https://www.mondaq.com/india/it-and-internet/1305896/though-click-wraps-are-legal-canminors-enter-click-wraps>.

<sup>11</sup> Information Technology Act, 2000, § 11, No.21, Acts of Parliament, 2000 (India).

- iii. **Section 12 of the Information Technology Act, 2000<sup>12</sup>**: It dictates how receipt of the electronic record is acknowledged by the addressee.
- iv. **Section 13 of the Information Technology Act, 2000<sup>13</sup>**: It determines when and where an electronic record is dispatched and received. It localises place of business. It helps in resolving the conflict in relation to jurisdiction (*Lex loci Contractus*).
- v. **Section 2(e) of the Indian Contract Act, 1872<sup>14</sup>**: defines an agreement as “*every promise and every set of promises, forming a consideration, is an agreement*”<sup>15</sup>.
- vi. **Section 10 of the Indian Contract Act, 1872<sup>16</sup>**: mentions requirements for contracts: competent parties, free consent, lawful consideration, lawful object and not declared to be void<sup>17</sup>.

## 2.2 Key Legal Doctrines

- a) **Doctrine of *Consensus ad Idem* (meeting of minds)**: In accordance with **Section 13 of the Indian Contract Act, 1872<sup>18</sup>**, when two or more persons are said consent to a common thing when they agree upon the same thing in same sense<sup>19</sup>. In click wrap agreements, conflict arises when a user clicks without reading. Indian courts apply the reasonable notice test. This test determines if a party received adequate notice of contractual terms, considering the context of reasonable person, ensuring fairness and transparency. The United States Court of Appeals for the Second Circuit ruled in *Specht v. Netscape* that submerged terms (where a user doesn't see them before clicking) do not create a binding contract because there was no reasonable notice and thus, no *Consensus ad Idem*<sup>20</sup>.
- b) **Doctrine of Unconscionability**: From **Section 16<sup>21</sup> and Section 23<sup>22</sup> of the Indian Contract Act, 1872**, *doctrine of unconscionability* has been derived. It refers to a

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<sup>12</sup> Information Technology Act, 2000, § 12, No.21, Acts of Parliament, 2000 (India).

<sup>13</sup> Information Technology Act, 2000, § 13, No.21, Acts of Parliament, 2000 (India).

<sup>14</sup> Indian Contract Act, 1872, § 2(e), No.9, Acts of Parliament, 1872 (India).

<sup>15</sup> R.D. Law Chambers, Enforceability of Shrink Wrap and Click Wrap Agreements in India (July 27, 2025), <https://rdlawchambers.com/enforceability-of-shrink-wrap-and-click-wrap-agreements-in-india> (analysing acceptance mechanisms in click-wrap contexts).

<sup>16</sup> Indian Contract Act, 1872, § 10, No.9, Acts of Parliament, 1872 (India).

<sup>17</sup> Legacy Partners, e-Contracts: Are They Legal and Enforceable in India? (June 16, 2020), <https://legacypartners.in/insights-and-research/e-contracts-are-they-legal-and-enforceable-in-india> (interpreting Section 10A as providing negative assurance regarding electronic form).

<sup>18</sup> Indian Contract Act, 1872, § 13, No.9, Acts of Parliament, 1872 (India).

<sup>19</sup> Christina L. Kunz , Maureen F. Del Duca, Heather Thayer & Jennifer Debrow, Click-Through Agreements: Strategies for Avoiding Disputes on Validity of Assent, 57 Bus. LAW. 401 (2001).

<sup>20</sup> *Specht v. Netscape Communications Corporation* 306 F.3d 17 (2d Cir. 2002)

<sup>21</sup> Indian Contract Act, 1872, § 16, No.9, Acts of Parliament, 1872 (India).

<sup>22</sup> Indian Contract Act, 1872, § 23, No.9, Acts of Parliament, 1872 (India).

contract that consists of clauses which are one-sided, oppressive, or unfair, due to vast inequality in bargaining power. This leaves weaker party with no choice by imposing unfair and unjust terms. As established in *Brojo Nath Ganguly Case*<sup>23</sup>, if there is vast unequal bargaining power which is common in take-it-leave-it in relation to adhesion contracts like clickwrap agreements, the terms are so one-sided, such terms can be considered to void.

- c) **Doctrine of *Contra Proferentem***: it is a principle that ensures that if a clause in a contract is ambiguous or capable of multiple interpretations, it is interpreted against the party who drafted it and in favour of the party who merely accepted it. In the context of clickwrap agreements, where a foreign corporation drafts one-sided terms, this doctrine acts as a crucial protection for users<sup>24</sup>.

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<sup>23</sup> *Central Inland Water Transport Corpn. V. Brojo Nath Ganguly*, (1986) 3 ACC 156.

<sup>24</sup> Deven R. Desai & Joshua A. Kroll, "Trust but Verify: A Guide to Algorithms and the Law," (2017) 31 Harvard Journal of Law & Technology 1. (hereinafter as Desai & Kroll)

### 3. JURISDICTION IN CROSS-BORDER CLICKWRAP AGREEMENTS

#### 3.1 The framework of Section 20 of the Code of Civil Procedure, 1908

The **Section 20 of the Code of Civil Procedure, 1908**<sup>25</sup> defines that a suit can be filed where:

- a) The defendant resides or carries on business and personally works for gain.
- b) The cause of action arises, wholly or in part.

In clickwrap contracts, the cause of action arises in India if the user clicks the button while in India, or if the service is delivered to an Indian IP address. Therefore, in accordance with Section 20 of the Code of Civil Procedure, 1908<sup>26</sup>, the Indian court initially has the jurisdiction. The *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy & Anr.*<sup>27</sup> specified that for the purposes of Section 20(c) of the Code of Civil Procedure, 1908<sup>28</sup>, the part of the cause of action in an e-contract arises in a forum only if the defendant has purposefully directed their business activities toward that forum, resulting in a transaction.

#### 3.2 Exclusive vs. Non-Exclusive Clauses

The two types of jurisdictional agreements are as follows:

- a) **Non-Exclusive Jurisdiction:** these are permissive clauses. They indicate that a particular forum has jurisdiction. Simultaneously, it does not prevent a party from filing a suit in another court that also possesses jurisdiction under the **Code of Civil Procedure, 1908**.
- b) **Exclusive Jurisdiction:** these are “mandatory” or “ouster” clauses. They manifest a clear intent to restrict the parties to a single forum. It ousts the authority of all other courts that might otherwise have had a legal right to hear the dispute.

The foundational logic for such jurisdictional clauses is derived from the landmark case of *Hakam Singh v. Gammon (India) Ltd. (1971)*<sup>29</sup>. The Supreme Court established two critical rules:

- a) **Non-Conferment:** parties cannot, by agreement, confer jurisdiction on a court that does not possess it under the Code of Civil Procedure, 1908.

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<sup>25</sup> Code of Civil Procedure, 1908, §20, No. 5, Acts of the Parliament, 1908 (India).

<sup>26</sup> Desai & Kroll, *supra* note 24, at 1.

<sup>27</sup> *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*, 2009 SCC Online Del 3780.

<sup>28</sup> Code of Civil Procedure, 1908, §20(c), No. 5, Acts of the Parliament, 1908 (India).

<sup>29</sup> *Hakam Singh v. Gammon (India) Ltd.*, (1971) 1 SCC 286.

- b) Selection of Forum:** If two or more courts have the legal authority to try a case, an agreement between parties is to limit the dispute to only one of those competent courts is valid and does not violate public policy under Section 28 of the Indian Contract Act, 1872<sup>30</sup>.

The legal challenge for users is intensified with the recent ruling in *Swastik Gases P. Ltd. v. Indian Oil Corp. Ltd. (2013)*<sup>31</sup>. The Supreme Court held that in the absence of ouster words like exclusive, only, or alone, the mere mention of a particular seat or forum in a contract implies the exclusion of other courts. It upholds party autonomy in commercial contracts. The application to clickwrap agreements is deeply problematic. The choice of an exclusive jurisdiction was prevalent as a negotiated term in traditional contracts. In clickwrap agreements, this consent is forced and non-negotiable. The conflict arises because the law assumes priorly a deliberate choice of forum, whereas reality in clickwrap agreements is that the user is presented with a “take-it-or-leave-it” aspects<sup>32</sup>.

### **3.3 The “Manifest Injustice” Exception: A Judicial Safety Valve**

The principle of party autonomy leaves no choice to courts but to respect the jurisdictional choices. Indian jurisprudence provides a safe ground for users trapped in clickwrap agreements.

The definitive word on ouster clauses in international contracts was delivered by the Supreme Court in *Modi Entertainment Network v. WSG Cricket Pte. Ltd*<sup>33</sup>. The court established that while parties may agree to the exclusive jurisdiction of a foreign court, such a clause is not an absolute bar to the jurisdiction of Indian courts.

The court held that a person seeking to bypass an exclusive jurisdiction must demonstrate *strong grounds* or *just circumstances* that justify the intervention of court. This established the principle that an Indian court, being a court of equity, can grant an anti-suit injunction or refuse to stay its own proceedings if the contractual forum leads to an unconscionable result.

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<sup>30</sup> Indian Contract Act, 1872, § 28, No.9, Acts of Parliament, 1872 (India).

<sup>31</sup> *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32* .

<sup>32</sup> Vintage Legal VL, Browsewrap vs. Clickwrap: Navigating the Fine Print of Online Agreements (Dec. 28, 2025), <https://www.vintagelegalvl.com/post/browsewrap-vs-clickwrap-navigating-the-fine-print-of-online-agreements> (distinguishing passive browsewrap mechanisms from affirmative clickwrap requirements).

<sup>33</sup> *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd., (2003) 4 SCC 341*.

An Indian court can ignore an exclusive jurisdiction if the user can prove that the foreign forum is:

- a) **Vexatious or Oppressive:** The court looks at whether enforcing the clause would be patently unfair.
- b) **Inconvenient (Forum Non-Conveniens):** While mere *inconvenience* is usually insufficient in commercial contracts, in clickwrap agreements, the Supreme Court considers whether the chosen forum acts as a *denial of justice*. If hurdles for approaching foreign court are high that the user is forced to abandon their legal rights, the Indian court may declare the forum *inconvenient* and assume jurisdiction.

In clickwrap agreements, the *manifest injustice exception* is frequently invoked because the user never *negotiated* the foreign forum<sup>34</sup>. It is seen that an exclusive jurisdiction is often a tactical hurdle designed to discourage litigation. This has been recognised by the Indian courts.

### **3.4 Long-Arm Jurisdiction and the “Purposeful Availment” test**

In digital sphere, a foreign corporation may not have a physical office in India, yet its services are consumed by millions of Indian users. To address this, Indian Jurisprudence has adopted the doctrine of *long-arm jurisdiction*. This doctrine allows courts to reach across borders based on the conduct of the defendant.

The definitive framework for jurisdiction in cases for digital contracts in India was established by the Delhi High Court in *Banyan Tree Holding (P) Ltd. v. Murali Krishna Reddy*<sup>35</sup>. The court moved away from a strictly territorial approach. It adopted the international standard of *purposeful availment*.

This doctrine stipulates that for an Indian court to exercise jurisdiction over a non-resident defendant; the plaintiff must showcase that the defendant *purposefully availed* itself to the Indian forum. This would mean that the foreign company have intentionally targeted the Indian market. This would perish the defence that the website is incidentally accessible in India.

The ruling from *Banyan Tree Holding (P) Ltd. v. Murali Krishna Reddy*<sup>36</sup> established an important distinction used to evaluate clickwrap agreements: the Active vs. Passive Test.

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<sup>34</sup> Francesco G. Mazzotta, A Guide to E-Commerce: Some Legal Issues Posed by E-Commerce for American Business Engaged in Domestic and International Transactions, 24 Suffolk Transnat'l L. REV. 249 (2001).

<sup>35</sup> Desai & Kroll, supra note 24, at 1.

<sup>36</sup> *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341.

- a) **Active Websites:** A website becomes *active* when it seeks to conclude a commercial transaction. If a clickwrap agreement and interface of a foreign company specifically target Indian customers, the company has purposefully availed itself to the Indian market.
- b) **Passive Websites:** A website that merely provides information is considered *passive*. Mere accessibility in India is insufficient to grant jurisdiction of an Indian court.

Indicators of *purposeful availment* include:

- a) Displaying prices in Indian Rupees (INR).
- b) Providing local delivery options or logistics within India.
- c) Integrating Indian payment gateways
- d) Offering customer support via Indian toll-free numbers.

The significance of the *purposeful availment* test in the context of conflict of laws is profound. If a foreign entity is found to be *active* in the Indian market, it cannot hide behind a foreign exclusive jurisdictional clause to escape the authority of the Indian courts. By targeting Indian consumers to generate profit, the corporation is deemed to have submitted to the legal sovereignty of India. In such cases, the *conflict* is resolved in favour of the *Lex Fori* (Indian Law), as the company's intentional commercial entry into India overrides the ouster clauses buried in their clickwrap agreements.

#### 4. CHOICE OF LAW: DETERMINING THE GOVERNING STATUTE

In the digital ecosystem, a clickwrap agreement includes a choice of law clause, stipulating that the contract is governed by the laws of a foreign jurisdiction. The freedom of parties to choose these laws against the protective mandate of Indian statutes should be balanced.

##### **4.1 The Principle of Party Autonomy: Lex Loci Voluntatis**

The freedom with the parties to choose the law governing their contract is known as *Lex Loci Voluntatis*. In the digital ecosystem, this choice is exclusively dictated by the foreign corporation. By clicking “I Agree”, the user ostensibly *chooses* the law of the headquarters of service provider. (e.g., California or Singapore).

The Supreme Court of India solidified this in *National Thermal Power Corporation (NTPC) v. Singer Company (1992)*<sup>37</sup>, holding that the *proper law of the contract* is the law which the parties intended to apply. If the intention is expressed in the contract, the court will generally give it effect.

In the context of clickwrap, this *autonomy* is a legal fiction. True autonomy assumes equal bargaining power; however, clickwrap agreements are take-it-or-leave-it instruments where the *will* of the user is restricted to mere adherence<sup>38</sup>.

##### **4.2 The “Closest Connection” Test: Filling the void**

In instances where the clickwrap agreement is silent on the choice of law, or where the chosen law is invalidated by the court, Indian jurisprudence applies the *Doctrine of Closest Connection*.

The court seeks to identify the legal system with which the transaction has its *closest and most real connection*.

For an Indian consumer residing in India, purchasing a digital service to be consumed in India and paid for Indian Rupees (INR), the connecting factors heavily favour Indian law.

In *British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries (1990)*<sup>39</sup>, the court emphasised that in the absence of an express choice, the court must look at the *place of performance* and the *residence of the parties* to determine the governing law.

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<sup>37</sup>*NTPC. V. Singer Co., (1992) 3 SCC 551: 1992 SCC OnLine SC 406.*

<sup>38</sup> Adam Gatt, Electronic Commerce- Click wrap Agreements: The enforceability of Click Wrap Agreements, University of Melbourne Computer Law & Security Report Vol. 18 no. 6 2002.

<sup>39</sup> *British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries (1990) 3 SCC 481.*

#### **4.3 Limitations on Choice: The Colourable Device Rule**

Indian courts do not permit the choice of foreign law if it is used as a *colourable device* to evade the mandatory provisions of Indian law.

A foreign corporation cannot use a clickwrap agreement to bypass the Consumer Protection Act, 2019 or the Digital Personal Data Protection Act, 2023.

Under the Section 23 of the Indian Contract Act, 1872<sup>40</sup>, any choice of law that is opposed to Indian public policy, such as a law that waives fundamental right of a consumer to a remedy is considered to be void. If the chosen law of the foreign corporation denies the Indian user protections guaranteed under the Indian statutes, the court will override the contract and apply the *Lex Fori*(law of the land)<sup>41</sup>.

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<sup>40</sup> Indian Contract Act, 1872, § 23, No.9, Acts of Parliament, 1872 (India).

<sup>41</sup> Anuja Saraswat, Click Wrap Agreements and Enforceability, IP And Legal Fillings, Vol. 21 no 7 of 2017

## 5. CONSUMER PROTECTION AND DIGITAL SOVERIGNTY

While the party autonomy serves as the general rule in the international contracting, it is not absolute. Indian jurisprudence has increasingly adopted a *statutory shield* approach, where specific domestic legislations act as an impenetrable barrier against oppressive foreign clickwrap terms. These statutes represent assertion of digital sovereignty of India, ensuring that local citizens are not stripped of their legal protections by the mere click of a button.

### 5.1 The Consumer Protection Act, 2019

[The Consumer Protection Act, 2019](#) reimagines consumer rights as non-waivable statutory entitlements.

The Consumer Protection Act, 2019 is a welfare legislation designed to correct the power imbalance in B2C (Business-to-Consumer) transactions. Indian courts have consistently held that a consumer cannot “*contract out*” of the protections offered by the Act<sup>42</sup>.

Section 2(47) of the Consumer Protection Act, 2019<sup>43</sup> classifies terms that exclude the jurisdiction of local courts or impose unreasonable obligations on consumers as *unfair contracts*.

Even if a clickwrap agreement mandates that “all disputes be settled under the laws of the New York”, an Indian consumer retains the statutory right to approach a District Commission under Section 34, which allows for filing complaints where the consumer resides. The statute *breaks* the party autonomy rule to prevent the denial of justice<sup>44</sup>.

### 5.2 The Digital Personal Data Protection Act, 2023

[The Digital Personal Data Protection Act, 2023](#) serves as a primary override to any choice of law clause regarding data privacy.

Under Section 3, the act applies to the processing of digital personal data outside India if such processing is in connection with any activity related to offering goods or services to data principles(users) within the territory of India<sup>45</sup>.

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<sup>42</sup> Sanjay, *supra* note 4, at 3.

<sup>43</sup> Consumer Protection Act, 2019, § 2(47), No. 35, Acts of the Parliament, 2019 (India).

<sup>44</sup> Consumer Protection Act, 2019, § 34, No. 35, Acts of the Parliament, 2019 (India).

<sup>45</sup> Digital Personal Data Protection Act, 2023, § 3, No. 22, Acts of the Parliament, 2023 (India).

A clickwrap agreement for a social media platform may state it is “Governed by the laws of Ireland.” However, if that platform processes the data of a resident in India, it must comply with the Indian law regarding notice, consent and erasure.

Any contractual clause that attempts to lower the standard of data protection below the thresholds set by the DPDP Act, 2023 is *void ab initio*. The requirements of the Act for *clear and plain language* and *granular consent* override the standard form architecture of global clickwrap templates<sup>46</sup>.

These statutes function as overriding mandatory provisions. In the conflict between *Lex Loci Voluntatis*, these acts ensure that the *Lex Fori* prevails whenever fundamental rights, such as privacy or consumer fair dealing are at stake.

This transition marks a shift from *Caveat Emptor* (Buyer Beware) to a sphere of digital guardianship. The state actively invalidates the tyranny of the click to protect the digital interest of its subjects<sup>47</sup>.

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<sup>46</sup> Sushruti Verma, A Global Review of Digital Rights: Lessons for India’s Personal Data Protection Act (June 5, 2024), available at SSRN: <https://ssrn.com/abstract=4855530> (last visited May 08, 2026).

<sup>47</sup> Graham Greenleaf, “Global Tables of Data Privacy Laws and Bills 2023”, available at SSRN <https://ssrn.com/abstract=4405514> (last visited May 08, 2026).

## 6. CHALLENGES AND GLOBAL COMPARISONS

As digital commerce transcends borders, the international community has sought to create a uniform regime for jurisdictional certainty. The primary instrument in this pursuit is the [Hague Convention of 30 June 2005 on Choice of Court Agreements \(HCCA\)](#).

### **6.1 The Hague Convention of 30 June 2005 on Choice of Court Agreements**

It is designed to provide for civil litigation. Its core mandate is to ensure that exclusive jurisdiction agreements between parties are respected. It is ensured that resulting judgments are recognised and enforced across all contracting states. In the context of clickwrap agreements, the convention would theoretically mandate that an Indian court stay its proceedings if a valid exclusive jurisdiction clause points elsewhere.

India is a longstanding member of the Hague Conference on Private International Law (HCCH). It has sided away from ratifying the HCCA. In the absence of this treaty, the enforcement of foreign judgments in India remains governed by the domestic law that is by Section 44A of the Code of Civil Procedure (CPC), 1908<sup>48</sup>. This provision limits the *automatic* execution of foreign decrees only to *reciprocating territories* notified by the Central Government. It leaves a vast majority of global digital service providers outside the scope of enforcement.

The non-signatory status creates a belief of *judicial unpredictability* for foreign corporations. From the perspective of a global entity, Indian courts are seen as prone to ignoring *ouster clauses* in favour of its citizens. Conversely, from the Indian perspective, this flexibility is a necessary safeguard.

### **6.2 UNCITRAL and International Commercial Contracts**

The United Nations Commission on International Trade Law (UNCITRAL) has been pivotal in shaping the global landscape of contract law. Its work addresses the challenges posed by divergent national legal systems. It ensures that international contracts whether for trade, construction, or arbitration, are governed by principles of uniformity, fairness and predictability.

Its legal guide on drawing up international contracts for the construction of industrial works provides a flexible framework that balances risk allocation, dispute resolution, and procedural

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<sup>48</sup> Code of Civil Procedure, 1908, §44A, No. 5, Acts of the Parliament, 1908 (India).

clarity. This is particularly relevant in long-term, high-risk project where contractual imbalances often arise.

Its model law on international commercial arbitration has been adopted by many countries, including India, through the Arbitration and Conciliation Act, 1996. This alignment modernised arbitration system of India. It reduced judicial intervention, and enhanced party autonomy. These has made India a more attractive venue for international arbitration.

Beyond technical uniformity, its framework empowers businesses and individual reducing uncertainty in cross-border dealings. For example, small enterprises benefit from clearer rules on credit access and dispute resolution, while multinational corporations gain confidence in enforceable arbitration awards.

Therefore, it highlights how international harmonisation is not just theoretical but deeply practical. It ensures that contracts are not merely legal documents but instruments of trust, cooperation and economic growth<sup>49</sup>.

### ***6.3 Framing the Hesitation: Judicial Sovereignty vs. Global Uniformity***

India's hesitation to ratify the HCCA is not a matter of administrative delay, but a strategic assertion of *Judicial Sovereignty*.

The strict enforcement rules would require Indian judges to surrender their discretion to protect *weaker parties*. If India were to ratify the convention without significant declarations, it could be forced to respect clickwrap clauses that compel Indian consumers to litigate in foreign forums, effectively bypassing the protection granted under the **Consumer Protection Act, 2019**. By maintaining its current stance, India preserves the power of its judiciary to intervene in *unconscionable* contracts, ensuring that the *statutory shield* remains intact against the global pressure for contractual uniformity<sup>50</sup>.

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<sup>49</sup> Bobyarta, Egit & Hardjomuljadi, Sarwono & Sami'an, Dr & Kunantiyorini, Anik. ,The Role of UNCITRAL in Standardising International Project Contracts and Its Implementation in Indonesia, Vol. 5 , No. 2 , JOSR , 742, 743 – 744 (2026).

<sup>50</sup> Nupur Kumar & Gaurav Arora, *Execution of Foreign Decrees / Judgments of Reciprocating Territories in India and the Issue of Limitation*, Mondaq (Sept. 23, 2020), <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/987678/execution-of-foreign-decrees-judgments-of-reciprocating-territories-in-india-and-the-issue-of-limitation>.

## CONCLUSION

The evolution of digital commerce has transformed the clickwrap agreement into a ubiquitous tool for cross-border transactions. This convenience shades a profound structural imbalance. These digital contracts are framed in commercial autonomy to operate as instruments of adhesion. When a user clicks “I Agree”, they surrender their fundamental legal protections in exchange for service access.

There is presence of critical tension between the doctrine of party autonomy and the necessity of domestic oversight. Indian jurisprudence demonstrates a sophisticated and albeit protective approach to this conflict. By refusing to blindly follow exclusive jurisdictional clauses that lead to *manifest justice*, the judiciary ensures that foreign corporations cannot use jurisdictional clause to create a *legal vacuum* for Indian consumers.

The deliberate choice is to proliferate outside certain international conventions on court agreements. This highlights an assertion of digital sovereignty. It prioritises the protection of weaker party over the pursuit of global contractual uniformity. Ultimately, clickwrap agreements should no longer be viewed as simple contracts. It must be viewed as regulated interactions. This will ensure true justice in the digital age. The law must continue to shift from a *buyer beware* mindset to one of digital guardianship.