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YOU CLICKED "I AGREE" WITHOUT READING THE TERMS -CAN YOU STILL CHALLENGE THE CONTRACT?

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Meta Description: Clicked "I Agree" without reading the terms? Learn whether online agreements are legally binding, your consumer rights, and when unfair terms may be challenged.

When was the last time you actually read the terms and conditions before you clicked “I Agree?” From signing up for an app, to accepting software updates, to signing up for an online service, nearly everyone clicks down the middle of the screen - or doesn't even scroll down the middle - towards that “Agree” button. It's more of a reflex now.

What, then, if one of those terms, hidden in that covenant, is unfair, unforeseen, or something you would not have agreed to if you had read it? Can you still contest it later or is it just that you've got to accept whatever you don't click "I Agree"?

WHAT YOU MAY FIND IS THAT CLICKING “I AGREE” USUALLY DOES FORM A BINDING CONTRACT. THE UNCOMFORTABLE TRUTH IS THAT, USUALLY, ONCE YOU CLICK "I AGREE," YOU'RE MAKING A CONTRACT.

The validity of an agreement under Indian contract law does not depend on the use of a handwritten signature as a valid sign of acceptance (such as clicking a button) as long as all the elements of the contract are fulfilled: offer, acceptance, consideration, and intention to create legal obligations.

These online contracts are known as "clickwrap agreements" and are typically presented in the form of a "I Agree" or "Check This Box" box that you have to check or click before you go any further. These have been deemed to be valid and binding for a variety of reasons, which have been generally accepted by the courts, notably because they were presented to you with a genuine opportunity to read them and that you acted anyway.

So, I didn't read it is not a good legal defence in itself to avoid a contract you've agreed to.

THAT DOESN'T MEAN THAT EVERY CLAUSE IN THE CONTRACT IS ENFORCEABLE, THOUGH.

It's here, in fact, where it becomes more complex- and more useful to consumers. A contract is not a contract until it meets the requirements for the contract to be valid and enforceable, but not all of the provisions of a contract are automatically valid and enforceable. There are some provisions in Indian law that can still be used against such agreements (or clauses of the agreement).

1. **Unfair or Unconscionable Terms**

Consumer protection law is generally consistent with the general law of contract that a term can be challenged if it is unfair, is one-sided, or is unconscionable (that is, it tends to unreasonably benefit the business and to harm the consumer, and it would be a surprise to any ordinary man or woman of sense to have consented to it).

Consumer Protection Act, 2019 specifically deals with ‘unfair contracts', and defines what categories of terms are available for challenge, including the following:

- Excessive Security Deposit to perform contractual obligations.
- Enforcing undue penalties for a minor loss for failure to meet a standard that is not driven by the size of the loss.
- Failure to make payment on terms of a contract to redeem debts on the due date, even though debt is payable as early as that time and such a payment would result in imposition of penalty.
- Giving one party the right to terminate the contract if they wish, without providing a valid reason.
- Allowing one party to place the contract on another party's side without the agreement of the other party, which ultimately harms the other party.

Any unreasonable imposition of a charge, obligation or condition which clearly disadvantages the consumer

Even when you click "I Agree" to terms, if one provision of the terms is in a category such as these, it may be legally actionable.

2. **A failure to have a "real chance" to read the terms.**

If the terms are not clearly visible, not in a reasonable place to access before accepting, or in very fine print, courts could inquire whether you actually had a fair opportunity to read them. The general rule is that companies should make key terms clear and easy to access (not hide).

3. **Terms Not Specifically raised for Your Attention**

Some clauses are very restrictive, may have very high penalties, or give the company unusually wide powers, and they should be highlighted and explained to you in detail and precisely, rather than be buried in lengthy paragraphs. An unusual clause that wasn't reasonably brought to your attention might be more open to challenge.

4. **Misrepresentation or Fraud**

As long as your "button" was clicked, the contract (or the part of it) can be attacked on these traditional contract law grounds if the company presented you with false information or had a contract that was obtained by false information, deceptive statements or concealing information that is important.

5. **Violation of Consumer Protection Laws**

In addition to the contract law itself, if the contract terms or practices are in breach of certain consumer protection laws, which are not limited to misleading advertisements, unfair trade practices or failure to provide key information, then you may have a separate complaint under those laws, not based on the contract itself.

6. **Breach of statutory rights**

Some rights can't be waived by any kind of private agreement, regardless of what you sign. For example, if the company tries to exclude liability arising out of gross negligence or if it tries to High Court circumvent statutory protections, such as the obligations under India's data protection regime, the same may not be upheld, as private agreements are generally not allowed to abrogate a statutory protection intended to protect the public.

IF YOU THINK A TERM IS UNFAIR, WHAT SHOULD YOU DO?

If you find that you have a term that you think is unreasonable or unfair, there's a smart way to go about it:

1. **Read the specific clause carefully and find out exactly what it is saying and how it is impacting you.** General unease is not as easy to pursue as is a clear identifiable problem clause.
2. **Speak to the company's customer support or grievance officer first.** Many conflicts can be settled by addressing the issue head-on, particularly when the word is out of alignment with the service's actual marketing to you.
3. **Fill out a consumer complaint.** If direct communication is not successful, a complaint can be filed with the Consumer Disputes Redressal Commission at the district, state or national level depending on the value involved, particularly if the term is deemed to be ‘unfair' under the Consumer Protection Act.
4. **For large disputes, get a lawyer's advice**. When real monetary damage is at stake, a lawyer will be able to determine if the provision is legally actionable and which court to use (civil court, consumer forum, etc.).
5. **Document everything.** Save the terms you agreed to, any promotional material or promises made before you signed up and all other communication that follows; this can all be useful as evidence if there is any dispute with them later.

STEPS TO TAKE TO PROTECT YOURSELF IN THE FUTURE

You don't have to read through every single terms-and-conditions page, but there are some habits you can have that will make a big difference in minimizing your risk:

1. **Don't sign any major agreements** (Subscriptions, loans, big purchases) until you have read through some of the important clauses (Cancellation, refunds, penalties, dispute resolution).
2. **If you're pressed for time, use "Ctrl+F"** or search functions to rapidly identify particular terms that you may have concerns about such as "non-refundable," "penalty," "waiver," or "arbitration.
3. T**ake investments, subscription services** with auto-renewal and loan applications with a grain of salt.
4. If the terms are important for a transaction, **take a screen cap** of the terms at the time of agreeing to it, as terms may sometimes be changed or updated without notice.

THE BOTTOM LINE

The "I Agree" button most often forms an actual contract in India- it's just best to at least skim over the important part before clicking that button. However, when a business signs a contract, it does not have the authority to enforce anything that is written in the contract. Even if accepted, unfair, hidden, unconscionable, or violating consumer protection laws terms are still subject to challenge. Often when you are faced with an unpalatable provision that you have merely accepted without paying close attention to, you don't have to "take your chances" because you may well have legal grounds to hold out.