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CLICK “I AGREE”- LOSE YOUR RIGHTS?: HOW STANDARD FORM CONTRACTS UNDERMINE PRIVACY CONSENT

~Adv. Rajnandini Tukaram Gadage

I download an app. Before I can even open it, a screen pops up: “Agree & Continue.” Somewhere on that Screen is a small link to the terms and conditions. Technically, I can read them. Practically, I have only two choices accept, or don’t use the app at all.

The terms usually run several pages long, written in language most people never use in everyday life. Buried inside them are permissions to access contacts, location photos, and browsing data. As someone trained in law, I can make some sense of it. But in that same moment, I think of people who cannot like my own parents, for instance, or anyone without a legal background. They face same screen with none of the tools to understand it, and they click “agree” anyway, because there is no other way to use the app.

That one click opens the door not just to a service, but to a company collecting and using a large amount of personal data. And that is really the question this piece is tries to answer. It is not whether someone clicked “I Agree.” It is whether that click can honestly be called informed, meaningful consent, or whether it’s just a box people tick because they have no real alternative.

WHY IS IT ALWAYS “ TAKE IT OR LEAVE IT”?

To answer that, we need to look at what kind of contract we are actually agreeing to. A regular contract is something two people sit down and negotiate. A standard-form digital contract works differently: the company draft every term alone, and the user only accept it or walk away.¹

¹ Shubham Singh , *Contract of adhesion*, iPleaders (Sep. 28, 2026, 7:47 PM), <https://blog.iplayers.in/contract-of-adhesion/>.

This is not careless drafting. From a business standpoint, it is rational design choice. A platform serving millions of users cannot negotiate terms with each one, and Standard terms reduces cost, helps services to scale quickly.² This is why nearly every digital platform relies on the same “click to agree” model.

But that efficiency has a cost. When one party writes everything and the other can only accept or leave, the click no longer proves the terms were understood. It only proves that the user wished to proceed.³ Legal scholars call this the “assent-comprehension gap.”⁴ A gain in efficiency for the company can quietly become a consent problem for the user.

DOES INDIAN LAW SEE THIS PROBLEM?

It does. Under Section 13 of the Contract Act, consent means two people agreeing to the same thing in the same sense.⁵ Section 14 says it must be free from pressure, fraud, or misrepresentation.⁶ On paper, clicking “I Agree” seems to tick every box.

But the Supreme Court has looked beyond the click. In *Brojo Nath Ganguly*, it held that an unfair contract between parties of unequal bargaining power can be void as unconscionable.⁷ In *LIC v. Consumer Education and Research Centre case*, it struck down an unfair condition in a standard-form policy, recognizing that the citizen could only take it or leave it.⁸ Simply put, agreeing is not always the same as choosing.

THE “ONE BUTTON” PROBLEM

Now try using an app without pressing “Agree & Continue.” You Can’t. This take-it-or-leave-it design leaves users little room to negotiate any clause or refuse unnecessary data collection. For companies, the reason is often practical: one button makes onboarding quick and frictionless. But it also squeezes several separate choices into a single click, and the problem grows when access is bundled with data the service does not need.

² Chandrachud Sahi, *The Assent-Comprehension Gap: Rethinking Meaningful Assent in Digital Standard-Form Contracts*, 9 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES V, 353 (2026), <https://ijlmh.com/article/view/assent-comprehension-gap-meaningful-assent-digital-standard-form-contracts/1093>.

³ Shubham, *supra* note 1.

⁴ Chandrachud, *supra* note 2.

⁵ Contract Act, 1872, § 13, No. 9, Acts of Parliament, 1872 (India).

⁶ Contract Act, 1872, § 14, No. 9, Acts of Parliament, 1872 (India).

⁷ *The Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly*, (1986) 2 SCR 278.

⁸ *L.I.C. of India & Anr. v. Consumer Education & Research Centre & Ors.*, (1995) 5 SCC 482.

Section 6 of the Digital Personal Data Protection (DPDP) Act, 2023 speaks to this. Consent must be free, specific, informed and unconditional, and limited to the data necessary for the stated purpose.⁹

WHAT IF THE POLICY IS RIGHT THERE, BUT NOBODY CAN UNDERSTAND IT?

Supposed the information is available, but written in complex legal English. Can Consent still be called informed?

Bailey, Parsheera, Rahman and Sane studied the privacy policies of five popular services in India and found them poorly drafted, often more about box-ticking than informing the user.¹⁰ In a survey of 155 university students, the average quiz score was about 5.3 out of 10, and terms like “third party” and “affiliate” caused confusion.¹¹ These were educated, English-speaking students. If this relatively privileged group struggled, ordinary users may struggle even more.¹²

WHAT IS ACTUALLY AT STAKE?

The information behind that click is not trivial. Location, contacts, photographs, health records, financial details, behavioural data and device information can reach reveal where a person goes, whom they know, what they buy, and even what they are likely to do next.

In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognized privacy as a fundamental right under Article 21¹³ and affirmed informational autonomy, meaning a person’s control over how their personal information is collected and used.¹⁴ Consent to an app is therefore not a formality. It is an exercise of that constitutional control. For organizations, collecting and using such information creates not only a privacy obligation but also obligation but also data-governance responsibility.

DESIGN DECIDES EVERYTHING

⁹ Digital Personal Data Protection Act, 2023, § 6, No. 22, Acts of Parliament, 2023 (India).

¹⁰ Rishab Bailey, Smriti Parsheer, Faiza Rahman, Renuka Sane, *Disclosures in Privacy Policies: Does "Notice and Consent" Work?*, 33 Loy. Consumer L. Rev. 1, 1 (2021), <https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=2068&context=lclr>.

¹¹ *Id.* At 32.

¹² *Id.*

¹³ INDIA CONST. art. 21.

¹⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

But the law's standard depends on how consent is actually presented. Compare two screen.

Screen One: unticked checkboxes let you accept the Terms and the Privacy Policy separately, with the key points visible in plain language.

Screen two: a single "Agree & Continue" button sits above terms buried behind several links.

This is a UX design choice, but not a merely technical one. Product managers, designers, compliance teams and lawyers together decided how much users see before accepting. Where an interface makes "accept" bright and obvious and "decline," faded into the background, regulator call it a dark pattern.¹⁵ Yet a hyperlink alone does not prove that consent was understood. Section 6(3) of the DPDP Act requires it to be clear and plain.¹⁶

A privacy *policy* may be legally drafted, but consent is ultimately experienced through a product the organizations designs. Legal, compliance, product and UX teams, and management, must build consent around what users can actually understand.

CAN A CONTRACT STAND IN FOR REAL CONSENT?

Not necessarily. Contractual acceptance shows that a user agreed to the terms of a service. Data-processing consent must show that the user agreed to the use of their personal data for specific purpose.

Form a management perspective, meaningful consent should therefore be treated as part of privacy governance, not merely a checkbox to complete registration. Responsible consent management means clear notice in understandable language, separate consent where appropriate, meaningful choices, a distinction between necessary and optional data, and accessible privacy information. Section 6 of the DPDP Act asks for exactly this. Good consent management is legal compliance, understandable communication and responsible product design working together.

CONCLUSION

A click on "I Agree" satisfies the Contract Act on paper, but courts in Brojo Nath Ganguly and the LIC case recognized that take-it-or-leave-it assent is not always genuine choice.

¹⁵ Abhishek Gope, *The Illusion of 'I Agree': Unmasking Consent in Clickwrap Agreements in India*, Khurana & Khurana (Sep. 28, 2026, 8:43 PM), <https://www.khuranaandkhurana.com/the-illusion-of-i-agree-unmasking-consent-in-clickwrap-agreements-in-india>.

¹⁶ Digital Personal Data Protection Act, 2023, §§ 6(3), No. 22, Acts of Parliament, 2023 (India).

Puttaswamy makes informational autonomy part of Article 21, and Section 6 of the DPDP Act demands Consent that is free, specific, informed and unconditional. Because organizations design the screen users see, meaningful consent is their responsibility. The button is not the problem; using it as a substitute for understanding is. Real consent is measured by comprehension, not speed.