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CLICKWRAP AGREEMENT AND DIGITAL ARREST: RETHINKING CONSENT AND FREEDOM OF CONTRACT IN DIGITAL ECONOMY

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I. Freedom of Contract and the Transformation of Consent in the Digital Economy

Freedom of contract is traditionally understood as the principle that individuals should be at liberty to decide whether to enter into contractual relationships and to determine the terms regulating those relationships. The principle is based upon the concept of contractual autonomy: where parties willingly accept an agreement , the law should ordinarily respect their choice. However, the traditional understanding of freedom of contract presumes, at least to some extent, that parties have genuine freedom of choice and an opportunity to shape the terms of their relationship. The extensive use of standard-form contracts has challenged this assumption. Contemporary contracting often involves terms drafted in advance by one party and presented to the other without room for negotiation.[1]

This tension is especially relevant in the digital economy. Online platforms commonly rely on standard-form agreements to regulate access to websites, applications, social-media platforms, software, and digital marketplaces. The user ordinarily has no opportunity to negotiate individual terms ; instead, acceptance may be expressed through a single click. Srishti Aishwarya Shrivastava observes that clickwrap and browsewrap agreements raise questions concerning both bargaining power and contracts of adhesion, particularly where consumers are required to accept pre-

[1] Michelle Cumyn, Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?, 73 *Am. J. Compar. L.* 129, 129–30 (2025).

formulated terms to obtain access to digital services.[2] Therefore, although the digital process of acceptance may be technically straightforward, the contractual relationship resulting from that acceptance may involve significant structural inequality.

Indian contract law specifically recognises the importance of consent. Section 13 of the Indian Contract Act, 1872 states consent as an agreement upon "the same thing in the same sense," whereas section 14 stipulates that such consent be free.[3] Section 10 further identifies free consent as one of the requirements for a valid contract.[4] These provisions indicate that contractual consent is not separate from the terms in which agreement is obtained. However, the statutory framework was established before the development of modern digital platforms and therefore does not specifically address the particular manner in which online consent is obtained.

The problem becomes more clearer when a distinction is made between formal assent and meaningful assent. Formal assent may be demonstrated where a user expressly clicks an "I Agree" button. Meaningful assent, however, presents a separate question: whether the user had a reasonable opportunity to understand the terms and make an informed choice about accepting them. Recent scholarship on standard-form contracting has challenged the proposition that assent necessarily demonstrates meaningful consent. Michelle Cumyn argues that modern standard forms have produced a form of "blanket assent" in which contractual terms may be treated as binding even though the adhering party could not reasonably be expected to read or understand them.[5] Her analysis is especially relevant to clickwrap agreements because the technical act of clicking may provide evidence of acceptance without necessarily establishing understanding of the terms accepted.[6]

The empirical and behavioural dimensions of digital consent further complicate the traditional model. Daniel D. Haun and Eric P. Robinson note that users routinely accept online terms without reading them and argue that psychological factors may contribute to uninformed acceptance of

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[2] Srishti Aishwarya Shrivastava, The Enforceability of Electronic Click Wrap and Browse Agreements, 2 *NLIU L. Rev.* 98 (2016).

[3] Indian Contract Act, No. 9 of 1872, § 13–14 (India).

[4] Id. § 10.

[5] Cumyn, supra note 1, at 129–31.

[6] Id. at 159–61 (discussing the distinction between assent and actual opportunity to read and understand standard contractual terms).

clickwrap agreements.[7] Similarly, Jonathan A. Obar and Anne Oeldorf-Hirsch contend that clickwrap mechanisms can encourage users to move rapidly through consent materials rather than engage meaningfully with the rights and obligations contained within them.[8] These studies do not necessarily show that every clickwrap agreement is without valid consent; instead, they indicate why the mere occurrence of an affirmative click should not by itself be treated as definitive evidence of informed contractual choice.

The question of bargaining power is equally important. In *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*, the Supreme Court of India recognised that contractual freedom may be significantly weakened where parties possess unequal bargaining power and one party has little meaningful alternative but to accept the terms imposed by the stronger party.[9] Although the case concerned a non-digital standard-form contract, its reasoning provides a useful conceptual basis for analysing digital platforms. The contemporary user may formally possess the ability to refuse a platform's terms, yet the practical consequences of refusal may be substantial where the service has become difficult to replace or where the user has accumulated data, relationships, or other forms of digital dependency.

Accordingly, the key question in digital contracting is not merely whether a user clicked "I Agree," but whether that act should, in the circumstances, be treated as a sufficiently meaningful expression of contractual autonomy. The digital economy therefore calls for a reassessment of the connection **between** formal assent, genuine choice, and freedom of contract. This does not mean that clickwrap agreements should generally be regarded as invalid. Instead , it indicates that the legal weight given to a user's assent should consider factors including notice, accessibility of terms, bargaining power, complexity, and the practical effects of refusing or exiting the digital relationship.

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[7] Daniel D. Haun & Eric P. Robinson, Do You Agree?: The Psychology and Legalities of Assent to Clickwrap Agreements, 28 *Rich. J.L. & Tech.* 623, 623–24 (2024).

[8] Jonathan A. Obar & Anne Oeldorf-Hirsch, The Clickwrap: A Political Economic Mechanism for Manufacturing Consent on Social Media, 4 *Soc. Media + Soc.* 1, 1–2 (2018).

[9] *Cent. Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 S.C.C. 156, 222–23 (India).

II. Clickwrap Agreements and the Legal Construction of Digital Consent

The rapid expansion of digital transactions has significantly transformed the manner in which contractual consent is expressed. In traditional contracts, consent is commonly manifested through a written signature, oral agreement, or exchange of communications between the parties. In contrast, digital contracts frequently rely upon electronic mechanisms through which a user indicates acceptance by clicking an "I Agree" button. Such agreements are commonly referred to as "clickwrap agreements." A clickwrap agreement is generally one in which the user is presented with contractual terms and is required to affirmatively indicate acceptance before proceeding with the transaction or accessing the relevant service.[10]

Clickwrap agreements must be distinguished from browsewrap agreements. In a clickwrap agreement, the user is generally required to take an affirmative step indicating acceptance of the contractual terms. In a browsewrap agreement, however, the terms are usually made available through a hyperlink, with the website purporting to bind the user merely through continued use or browsing of the website.[11]This distinction is significant because an affirmative act of acceptance provides stronger evidence of contractual assent than passive use of a website. Nevertheless, the existence of an affirmative click does not by itself resolve whether the user had adequate notice of the terms to which they were supposedly agreeing.

The legal validity of clickwrap agreements has therefore developed around the principle of manifestation of assent. Courts have generally examined whether the user had reasonable notice of the contractual terms and whether the user's conduct objectively demonstrated an intention to be bound by them. In *Specht v. Netscape Communications Corp.*, the United States Court of Appeals for the Second Circuit refused to enforce contractual terms where users were not adequately informed that downloading the software would subject them to those terms.[12] The court emphasised that a person should not ordinarily be considered to have assented to contractual

[10] Srishti Aishwarya Shrivastava, The Enforceability of Electronic Click Wrap and Browse Agreements, 2 NLIU L. Rev. 98, 99–101 (2016).
[11] Id. at 99–102.

[12] *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17, 30–31 (2d Cir. 2002).

provisions of which there was insufficient notice.[13] The decision established an important principle for digital contracting: the existence of terms on a website is not necessarily sufficient; the manner in which those terms are presented may determine whether assent can reasonably be inferred.

Subsequent judicial decisions have further developed this approach. In *Meyer v. Kalanick*, the Second Circuit considered the enforceability of an arbitration clause contained within Uber's registration process. The court concluded that the design of the registration interface provided sufficient notice of the contractual terms and that the user's continued interaction with the registration process constituted an objective manifestation of assent.[14] Conversely, in *Nguyen v. Barnes & Noble Inc.*, the Ninth Circuit refused to enforce browsewrap terms because the website did not provide sufficient evidence that the consumer had actual or constructive knowledge of those terms.[15] These decisions illustrate that the legal question is not simply whether contractual terms were technically available online, but whether the circumstances surrounding the transaction provided a reasonable basis for attributing assent to the user.

The Indian legal framework similarly recognises the validity of contracts formed through electronic means. Section 10A of the Information Technology Act, 2000 provides that a contract shall not be considered unenforceable merely because electronic means were used in its formation.[16] This provision establishes that the electronic nature of a contract does not, by itself, undermine its legal validity. However, electronic contracting remains subject to the general principles of contract law. In particular, section 10 of the Indian Contract Act, 1872 requires, among other things, the presence of free consent for an agreement to constitute a valid contract.[17] Consequently, recognition of electronic contracts does not eliminate the requirement that contractual consent satisfy the substantive requirements of Indian contract law.

The Supreme Court of India has also recognised the possibility of establishing contractual consensus through electronic communications. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, the Court accepted that a binding contractual relationship could arise through

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[13] Id. at 35.

[14] *Meyer v. Kalanick*, 806 F.3d 66, 79–80 (2d Cir. 2015).

[15] *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1177–79 (9th Cir. 2014).

[16] Information Technology Act, No. 21 of 2000, § 10A (India).

[17] Indian Contract Act, No. 9 of 1872, §§ 10, 13–14 (India).

correspondence exchanged electronically, even in the absence of a formally executed traditional agreement.[18] The decision demonstrates that Indian contract law is capable of recognising technological forms of contracting where the conduct of the parties objectively establishes agreement. However, *Trimex* primarily concerns the formation of contractual consensus between commercial parties and does not completely resolve the distinct problems associated with mass-market clickwrap agreements, where one party unilaterally determines the contractual terms.

The principal difficulty with clickwrap agreements therefore lies in the distinction between formal assent and meaningful consent. A user's affirmative click provides evidence that the user performed a particular action, but it does not necessarily demonstrate that the user understood the contractual terms or appreciated the legal consequences of accepting them. This distinction has been highlighted in academic literature examining the enforceability and psychology of online contracting. Srishti Aishwarya Shrivastava argues that the enforceability of clickwrap agreements depends significantly upon the manner in which contractual terms are presented and whether the consumer has a genuine opportunity to review those terms.[19]

Similarly, research concerning users' behaviour online indicates that consumers frequently accept contractual terms without reading them. Jonathan A. Obar and Anne Oeldorf-Hirsch found that users commonly fail to read lengthy online privacy policies and contractual documents, raising questions about whether the formal process of clicking “I Agree” can genuinely be equated with informed consent.[20] Daniel D. Haun and Eric P. Robinson further demonstrate that the psychological dimensions of clickwrap acceptance complicate the assumption that an affirmative click necessarily reflects informed decision-making.[21] These findings do not mean that every clickwrap agreement lacks valid consent. Rather, they demonstrate that the existence of a click should not automatically be treated as conclusive evidence of meaningful contractual autonomy.

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[18] *Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 S.C.C. 1, 14–16 (India).

[19] Shrivastava, supra note 1, at 101–06.

[20] Jonathan A. Obar & Anne Oeldorf-Hirsch, The Clickwrap: A Political Economic Mechanism for Manufacturing Consent on Social Media, 4 Soc. Media + Soc. 1, 1–8 (2018).

[21] Daniel D. Haun & Eric P. Robinson, Do You Agree?: The Psychology and Legalities of Assent to Clickwrap Agreements, 28 Rich. J.L. & Tech. 623, 623–24 (2024).

This issue becomes particularly significant because clickwrap agreements are generally standard-form contracts. The user ordinarily has little or no opportunity to negotiate individual provisions and must either accept the predetermined terms or decline access to the relevant service. Michelle Cumyn's analysis of standard-form contracting highlights the broader problem of "blanket assent," whereby individuals may become legally bound by contractual provisions without having meaningfully considered or understood them.[22] The digital environment intensifies this problem because contractual acceptance can be completed almost instantaneously and may be incorporated into the design of a platform's user interface.

The issue of bargaining power further complicates the analysis. In *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*, the Supreme Court of India recognised that the classical notion of freedom of contract may be weakened where there is significant inequality of bargaining power and one party has little meaningful choice but to accept the terms imposed by the stronger party.[23] Although the case did not concern digital contracts, its reasoning provides a useful framework for analysing standard-form digital agreements. A user may technically possess the freedom to refuse a platform's terms, while practically having very limited alternatives if the service is difficult to replace or if leaving the platform entails significant economic or technological costs.

Thus, the legal construction of digital consent presents a tension between efficiency and autonomy. Clickwrap agreements provide an efficient mechanism for concluding large numbers of transactions and offer clearer evidence of assent than passive forms of online contracting. Nevertheless, efficiency in contract formation should not automatically be equated with meaningful consent. The circumstances in which the click occurs—including the visibility of contractual terms, the user's opportunity to review them, the complexity of the agreement, the

[22] Michelle Cumyn, Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?, 73 Am. J. Compar. L. 129, 129–31 (2025).

[23] *Central Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 S.C.C. 156, 222–24 (India).

parties' relative bargaining power, and the practical consequences of refusing the terms—may all affect the quality of contractual choice.

The significance of this distinction becomes even greater when considering the phenomenon described in this paper as **"**digital arrest." The initial click may establish the formal contractual relationship, but continued dependence upon a digital platform may subsequently restrict the user's practical ability to exit that relationship. Users may accumulate data, contacts, transaction histories, subscriptions, or other digital assets that make switching to another platform costly or inconvenient. Consequently, the question of consent cannot be confined to the moment at which the user clicks "I Agree." It must also consider whether the user retains meaningful freedom to leave the contractual relationship after entering it.

Clickwrap agreements therefore demonstrate the need to reconsider the relationship between consent, autonomy, and freedom of contract in the digital economy. The objective should not be to reject electronic contracting or to treat every clickwrap agreement as inherently unfair. Rather, the law must distinguish between a technically valid manifestation of assent and circumstances in which contractual acceptance may occur without meaningful choice. This distinction provides the foundation for examining whether digital platforms can, through contractual terms and technological dependency, create a form of practical constraint that may be described as "digital arrest."

III. Digital Arrest, Digital Lock-In and the Limits of Freedom of Choice

The problem of digital consent does not end once a user has accepted a clickwrap agreement. In the digital economy, the more significant question may arise afterwards: how freely can the user leave the contractual relationship? This question is particularly relevant where users become dependent upon a particular digital platform and face substantial costs or inconvenience when attempting to switch to an alternative. This phenomenon is commonly described as digital lock-in**.**

Digital lock-in occurs when previous investments in a platform make switching to another service costly or difficult. Such investments may include personal data, transaction histories, social connections, accumulated content, subscriptions, reputation, or familiarity with the platform's interface. Dan Prud'homme identifies data embeddedness and barriers to switching as important

mechanisms through which digital businesses can create and maintain customer lock-in.[24] The problem is intensified by network effects: the value of certain digital services increases with the number of other users participating in the same network. Consequently, leaving a platform may mean losing not only access to one's own accumulated information but also access to the network of people or businesses connected through it.[25]

It is in this context that the concept of "digital arrest" can be used as an analytical extension of digital lock-in. Digital arrest does not imply that a user is literally deprived of legal liberty. Rather, it describes a situation in which the user's formal contractual freedom to exit exists, but practical barriers make exercising that freedom increasingly difficult. The concept therefore shifts attention from the moment of contractual formation to the continuing ability of the user to exercise choice after entering the digital relationship.

This distinction is important because traditional freedom of contract largely focuses upon the parties' freedom to enter into an agreement. Digital platforms, however, often create relationships that continue indefinitely and become integrated into users' everyday activities. A user who has accumulated years of photographs, professional contacts, financial records, or social relationships within a particular ecosystem may technically remain free to terminate the relationship, while practically finding exit extremely burdensome. Recent scholarship on digital markets similarly identifies accumulated data and network effects as significant sources of platform lock-in.[26]

The resulting problem is therefore one of substantive rather than merely formal freedom. If leaving a platform requires the user to sacrifice significant amounts of data, relationships, functionality, or accumulated benefits, the existence of an alternative platform does not necessarily mean that the alternatives are equally accessible. The Law Commission of Ontario, for example, identifies

[24] Dan Prud'homme, How Digital Businesses Can Leverage the High Cost for Consumers to Switch Platforms, LSE Bus. Rev. (Sept. 24, 2019).

[25] Centre on Regulation in Europe, *Digital Markets and Online Platforms: New Perspectives on Regulation and Competition Law* 23 (2020).

[26] See Maryna Kalashlinska, *Lock-in Effects and Switching Costs in Digital Territories: Path Dependence in Platform Management*, 12 *Eur. J. Econ. & Mgmt.* 5, 5–8 (2026).

interoperability, data portability, and the difficulty of exporting accumulated information as factors that may contribute to platform lock-in and reduce effective consumer choice.[27]

This has direct implications for contractual autonomy. A user may have freely clicked "I Agree" at the beginning of the relationship, but that initial decision cannot necessarily be understood in isolation from the conditions that develop afterwards. The longer a user remains within a digital ecosystem, the greater the possibility that switching costs will accumulate. Consequently, the contractual relationship may gradually move from voluntary entry towards practical dependency.

The concept of digital arrest therefore highlights a gap between legal freedom and practical freedom**.** Legally, the user may be permitted to terminate an account or move to another provider. Economically and technologically, however, the user may face substantial obstacles to doing so. This does not mean that every instance of platform dependency constitutes coercion or renders a contract invalid. Rather, it raises a broader question about whether traditional understandings of freedom of contract are adequate where digital platforms can make exit increasingly costly over time.

Accordingly, the relevance of digital lock-in to clickwrap agreements lies in its ability to challenge the assumption that contractual choice occurs only at the moment of acceptance. In digital markets, freedom of contract should arguably be examined both at the point of entry and at the point of ex**it**. The user's ability to understand and accept contractual terms remains important, but so does the user's continuing ability to leave the relationship without disproportionate practical consequences. This provides the basis for reconsidering whether existing principles of contractual autonomy adequately protect users in an economy increasingly structured around persistent digital dependency.

IV. Indian Legal Framework Governing Digital Contracts

The legal regulation of digital contracts in India does not depend upon a single statute. Instead, electronic contracting is governed through the combined operation of the *Indian Contract Act, 1872, the Information Technology Act, 2000, and consumer-protection legislation*. Together, these

[27] Law Commission of Ontario, *Consumer Protection in the Digital Marketplace* 85 (2025).

laws provide the basic framework for determining when an electronically concluded agreement can be recognised and when contractual terms may be challenged.

The Indian Contract Act, 1872 remains the principal foundation. Section 10 provides that an agreement becomes a contract when it is made by competent parties with free consent, for a lawful consideration and lawful object, and is not expressly declared void.[28] Sections 13 and 14 further distinguish between consent and free consent. These provisions remain applicable to digital contracts because the electronic form of an agreement does not alter the fundamental requirements for contractual validity.

The Information Technology Act, 2000 specifically facilitates electronic contracting. Section 10A provides that a contract shall not be considered unenforceable merely because its formation involved electronic means.[29] This provision is particularly relevant to clickwrap agreements because it prevents the absence of a traditional written or signed document from becoming, by itself, a ground for denying contractual validity. The provision therefore establishes technological neutrality: the law recognises that contractual intention may be expressed electronically.

However, section 10A should not be interpreted as creating an independent rule that every electronically accepted term is automatically enforceable. It validates the use of electronic means in contract formation but does not dispense with the substantive requirements of contract law. Consequently, questions concerning consent, free consent, capacity, legality, fraud, misrepresentation, or unconscionable terms may still arise in digital transactions.[30]

The Consumer Protection Act, 2019 provides an additional layer of protection where digital contracts involve consumers. The Act recognises "unfair contracts" and permits scrutiny of contractual terms that impose excessive security deposits, disproportionate penalties, unilateral termination, or other conditions that may cause significant disadvantage to consumers.[31] This is particularly relevant to digital platforms because users generally have limited ability to negotiate

[28] Indian Contract Act, No. 9 of 1872, § 10 (India).

[29] Information Technology Act, No. 21 of 2000, § 10A (India).

[30] See Indian Contract Act, No. 9 of 1872, §§ 13–19A (India).

[31] Consumer Protection Act, No. 35 of 2019, § 2(46) (India).

standard-form terms. The statutory framework therefore introduces a degree of substantive scrutiny into relationships that might otherwise be governed primarily by the principle of freedom of contract.

The regulation of digital contracts has also been influenced by the development of Indian data-protection law. *The Digital Personal Data Protection Act, 2023* regulates the processing of digital personal data and establishes requirements concerning consent, notice, and the rights and obligations of data principals and data fiduciaries.[32] Although data protection consent and contractual consent are legally distinct concepts, they frequently coexist within digital transactions. A user may simultaneously accept contractual terms and provide consent for the processing of personal data. This overlap makes transparency particularly important because users may not always distinguish between the contractual consequences of accepting platform terms and the consequences of consenting to data processing.

The judicial approach to electronic contracting further demonstrates that Indian law is generally willing to recognise technologically mediated forms of agreement. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, the Supreme Court held that a binding contract could arise from electronic correspondence where the communications demonstrated consensus between the parties.[33] The decision is significant because it confirms that contractual formation does not depend upon adherence to traditional physical forms when the conduct of the parties objectively establishes agreement.

Nevertheless, the existing framework leaves an important question unresolved. The law largely establishes whether electronic contracts can be legally formed, but the more difficult issue is whether the circumstances surrounding digital acceptance provide sufficient protection for meaningful contractual autonomy. Section 10A of the Information Technology Act answers the question of technological validity, while the Contract Act and consumer-protection principles provide mechanisms for examining consent and unfairness. Yet none of these provisions, by

[32] Digital Personal Data Protection Act, No. 22 of 2023, §§ 4–13 (India).

[33] *Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 S.C.C. 1, 14–16 (India).

themselves, fully addresses the structural problems created by platform dependency, complex standard-form terms, and digital lock-in.

This creates a gap between recognising a digital contract as legally valid and determining whether the user's contractual choice was substantively meaningful**.** The challenge for Indian contract law is therefore not necessarily to create an entirely separate law of digital contracts, but to determine whether existing principles of consent, fairness, and consumer protection can adequately respond to the distinctive conditions of digital markets.

V. Rethinking Freedom of Contract in the Digital Economy

The preceding discussion demonstrates that the principal difficulty with digital contracting is not the absence of legal recognition. Indian law recognises electronic contracts, while courts have accepted electronic communications as capable of establishing contractual consensus.[34]The more fundamental issue is whether the traditional understanding of freedom of contract remains adequate when contractual relationships are formed within digital environments characterised by standardised terms, unequal bargaining power, and switching costs**.**

Classical freedom of contract is based on the assumption that parties exercise meaningful autonomy when deciding whether to enter into an agreement. In digital markets, however, the user's choice is often limited to accepting the terms drafted by the platform or refusing access to the service altogether. This is particularly problematic where the service has become commercially or socially significant to the user. The formal existence of a choice does not necessarily establish that the alternatives available to the user are practically equivalent. The prevalence of standard-form contracts has long raised concerns about whether contractual assent represents genuine negotiation or merely acceptance of predetermined terms.[35]

This does not mean that every standard-form or clickwrap agreement should be regarded as unfair. Standardisation serves legitimate purposes in the digital economy. Platforms must often contract with millions of users, making individual negotiation impractical. Standard terms can reduce

[34] *Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 S.C.C. 1, 14–16 (India).

[35] Michelle Cumyn, Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?, 73 *Am. J. Compar. L.* 129, 129–31 (2025).

transaction costs and enable services to be provided efficiently and consistently.[36] The problem arises when efficiency becomes the primary justification for terms that users have little realistic ability to understand, negotiate, or reject.

A more appropriate approach would therefore distinguish between contractual efficiency and contractual autonomy**.** The law need not abandon the principle of freedom of contract, but it may need to interpret that principle in a manner that accounts for the realities of digital markets. Factors such as the clarity of contractual terms, prominence of important clauses, bargaining power, availability of alternatives, switching costs, and the practical ability to terminate the relationship may be relevant in assessing the quality of contractual choice.[37]

The idea **of** meaningful consent is particularly useful in this context. A user's consent should not necessarily be considered meaningful merely because the user performed the required technical action. Instead, meaningful consent requires an opportunity to understand the nature and consequences of the agreement and, where appropriate, a realistic possibility of refusing it. Research on clickwrap agreements demonstrates that users frequently accept online terms without reading or understanding them, thereby challenging the assumption that an affirmative click necessarily represents informed contractual decision-making.[38]

The concept of digital arrest developed in this paper reinforces this argument. If a user becomes increasingly dependent upon a platform after accepting its terms, the user's freedom cannot be assessed solely at the moment of entry. The ability to exit should also form part of the analysis. Data portability, interoperability, reasonable termination mechanisms, and protection against disproportionate contractual penalties may reduce the possibility that users become effectively trapped within a digital ecosystem.[39]

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[36] Richard A. Epstein, *Browse-Wrap Agreements: A New Battle in the Fight for Consumer Rights*, 28 *Loy. Consumer L. Rev.* 217, 220–22 (2016).

[37] See *Central Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 S.C.C. 156, 222–24 (India) (recognising the relevance of unequal bargaining power in assessing contractual fairness).

[38] Daniel D. Haun & Eric P. Robinson, Do You Agree?: The Psychology and Legalities of Assent to Clickwrap Agreements, 28 *Rich. J.L. & Tech.* 623, 623–24 (2024); Jonathan A. Obar & Anne Oeldorf-Hirsch, The Clickwrap: A Political Economic Mechanism for Manufacturing Consent on Social Media, 4 *Soc. Media + Soc.* 1, 1–8 (2018).

[39] See Law Commission of Ontario, *Consumer Protection in the Digital Marketplace* 85–89 (2025) (discussing switching barriers, interoperability, and data portability in digital markets).

This suggests that the future development of digital contract law should focus less on whether electronic contracts are valid merely because they are electronic, and more on whether the contractual relationship operates within acceptable boundaries of fairness and autonomy. Section 10A of the Information Technology Act, 2000 establishes that a contract cannot be considered unenforceable merely because electronic means were used in its formation.[40] However, technological validity does not necessarily answer questions concerning the substantive fairness of contractual terms or the circumstances in which consent was obtained.

Ultimately, freedom of contract in the digital economy should be understood as involving three stages of autonomy: the freedom to enter, the freedom to understand, and the freedom to exit**.** Clickwrap agreements primarily address the first through an affirmative act of acceptance. The challenge for contemporary contract law is to ensure that the second and third are not overlooked. A user's decision is most meaningful when the user has adequate information about the terms and retains a realistic ability to discontinue the relationship without disproportionate consequences.

Accordingly, the objective should not be to replace freedom of contract with extensive regulation. Rather, the law should seek to preserve the principle of contractual autonomy while recognising that digital markets can create forms of dependency that were less prominent in traditional contracting. Rethinking freedom of contract therefore means adapting its application to the realities of the digital economy, so that formal consent and technological efficiency remain compatible with meaningful individual choice**.**

VI. Recommendations and Conclusion

The analysis of clickwrap agreements and digital lock-in demonstrates that the central challenge in the digital economy is not whether electronic contracts should be recognised, but whether the traditional understanding of contractual consent adequately protects meaningful individual choice. Indian law already recognises electronic contracting through section 10A of the Information Technology Act, 2000, while the Indian Contract Act, 1872 continues to provide the foundational requirements of consent and free consent.[41] The need, therefore, is not to create an entirely separate

[40] Information Technology Act, No. 21 of 2000, § 10A (India).

[41] Indian Contract Act, No. 9 of 1872, §§ 10, 13–14 (India); Information Technology Act, No. 21 of 2000, § 10A (India).

regime for every form of digital contract, but to strengthen the application of existing principles to the realities of digital transactions.

First, greater emphasis should be placed on conspicuous and comprehensible contractual terms**.** A user should not have to navigate excessively lengthy or complicated terms merely to understand significant obligations such as arbitration clauses, automatic renewals, unilateral modification rights, or termination provisions. Research on online contracting demonstrates that the mere availability of terms does not necessarily ensure that consumers understand them.[42] Important provisions should therefore be presented in a manner that allows users to identify their practical consequences before accepting the agreement.

Second, the law should pay greater attention to the user's ability to exit a digital contractual relationship**.** Freedom of contract should not be viewed solely as the freedom to enter into an agreement. Where users accumulate substantial data, content, or social and commercial connections within a platform, the practical cost of leaving may become significant. Mechanisms such as data portability and interoperability can reduce these switching barriers and strengthen genuine consumer choice.[43]

Third, greater scrutiny may be justified where digital platforms impose terms through substantial bargaining-power asymmetry. The Supreme Court's reasoning in *Central Inland Water Transport Corp. v. Brojo Nath Ganguly* demonstrates that contractual freedom may be limited where one party possesses overwhelming bargaining power and the weaker party has little meaningful choice.[44] This principle can provide a useful foundation for examining particularly oppressive digital contractual terms without treating standard-form digital contracts as inherently invalid.

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[42] Daniel D. Haun & Eric P. Robinson, Do You Agree?: The Psychology and Legalities of Assent to Clickwrap Agreements, 28 *Rich. J.L. & Tech.* 623, 623–24 (2024)

[43] See Law Commission of Ontario, *Consumer Protection in the Digital Marketplace* 85–89 (2025).

[44] *Central Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 S.C.C. 156, 222–24 (India).

Finally, the concept of **"**digital arrest**"** proposed in this paper should be understood as a conceptual tool rather than an established legal doctrine. It describes situations in which formal contractual freedom exists but practical dependence on a digital platform significantly restricts the user's ability to leave. Recognising this distinction can help shift legal analysis from the isolated moment of clicking "I Agree" towards the entire life cycle of the digital contractual relationship.

CONCLUSION

The transformation of contracting from physical signatures to digital interfaces has made contractual transactions faster and more efficient, but it has also complicated the meaning of consent. Clickwrap agreements provide clear evidence of affirmative acceptance, yet an affirmative click does not necessarily establish that a user understood the terms or possessed meaningful bargaining power. The distinction between formal assent and meaningful consent is therefore central to understanding contractual autonomy in the digital economy.

The problem becomes more significant when initial consent is followed by increasing dependence upon a digital platform. Switching costs, accumulated data, network effects, and limited alternatives may make the user's theoretical freedom to leave considerably different from their practical ability to do so. The concept of digital arrest captures this tension between legal freedom and practical freedom**.**

The future of digital contract law should consequently seek to preserve the efficiency of electronic contracting while ensuring that efficiency does not come at the expense of meaningful autonomy. Freedom of contract should remain an important principle, but its application must recognise the distinctive conditions under which digital agreements are formed and maintained. Ultimately, the legitimacy of digital contracting should depend not merely upon whether a user clicked "I Agree," but upon whether the contractual environment provides adequate information meaningful choice, and a realistic possibility of exit**.**

REFERENCES

A. CASES

1. *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*, (1986) 3 S.C.C. 156 (India).
2. *Meyer v. Kalanick*, 806 F.3d 66 (2d Cir. 2015).
3. *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171 (9th Cir. 2014).
4. *Specht v. Netscape Communications Corp.*, 306 F.3d 17 (2d Cir. 2002).
5. *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 S.C.C. 1 (India).

B. STATUTES

1. *Consumer Protection Act, No. 35 of 2019 (India).*
2. *Digital Personal Data Protection Act, No. 22 of 2023 (India).*
3. *Indian Contract Act, No. 9 of 1872 (India).*
4. *Information Technology Act, No. 21 of 2000 (India).*

C. JOURNAL ARTICLES

1. *Cumyn, Michelle. "Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?" 73* American Journal of Comparative Law *129 (2025).*
2. *Epstein, Richard A. "Browse-Wrap Agreements: A New Battle in the Fight for Consumer Rights." 28* Loyola Consumer Law Review *217 (2016).*
3. *Haun, Daniel D., & Eric P. Robinson. "Do You Agree?: The Psychology and Legalities of Assent to Clickwrap Agreements." 28* Richmond Journal of Law & Technology *623 (2024).*
4. *Obar, Jonathan A., & Anne Oeldorf-Hirsch. "The Clickwrap: A Political Economic Mechanism for Manufacturing Consent on Social Media." 4* Social Media + Society *1 (2018).*
5. *Shrivastava, Srishti Aishwarya. "The Enforceability of Electronic Click Wrap and Browse Wrap Agreements." 2* NLIU Law Review *98 (2016).*

D. REPORTS AND OTHER SOURCES

1. *Law Commission of Ontario.* Consumer Protection in the Digital Marketplace. *2025.*
2. *Prud'homme, Dan. "How Digital Businesses Can Leverage the High Cost for Consumers to Switch Platforms."* LSE Business Review, *September 24, 2019.*

E. IMPORTANT ONLINE SOURCES

1. *Michelle Cumyn, "Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?"* American Journal of Comparative Law *(2025).* https://academic.oup.com/ajcl/article/73/1/129/821062

2. *Daniel D. Haun & Eric P. Robinson, "Do You Agree?: The Psychology and Legalities of Assent to Clickwrap Agreements."* Richmond Journal of Law & Technology *(2024).* https://scholarship.richmond.edu/jolt/vol28/iss4/1/

3. *Srishti Aishwarya Shrivastava, "The Enforceability of Electronic Click Wrap and Browse Wrap Agreements."* NLIU Law Review *(2016).* https://nliulawreview.nliu.ac.in/the-enforceability-of-electronic-click-wrap-and-browse-agreements/