BEYOND CONTRACT LAW: ASSESSING THE NEED FOR A DEDICATED FRANCHISE LAW IN INDIA

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ABSTRACT

Franchising has become a significant mode of business expansion in India, yet the relationship between franchisor and franchisee is governed by no dedicated statute. Courts and litigants rely on the Indian Contract Act, 1872, supplemented by the Trade Marks Act, 1999, the Competition Act, 2002, and consumer, tax, and foreign-exchange legislation, none of which was designed with franchising in mind. This paper asks whether contract law, so supplemented, can adequately govern the franchise relationship or whether India needs a dedicated franchise law. It argues that franchising is a relational, investment-specific, and structurally asymmetric arrangement whose characteristic risks, namely pre-contractual information asymmetry, standard-form terms, opportunistic termination or non-renewal, encroachment, and the awkward treatment of post-term restraints, fall largely outside the competence of general contract doctrine and of ex post remedies. Drawing on the experience of the United States, Canada, Australia, France, the European Union, and several Asian jurisdictions, and on the UNIDROIT Model Franchise Disclosure Law, the paper contends that India should enact a calibrated, disclosure-centred statute with a short list of relational protections, rather than either leaving the field to contract or adopting a heavy registration regime. It outlines the principal features of such a statute and answers objections grounded in freedom of contract, regulatory cost, and legislative competence.

Keywords: Franchising; Franchise Regulation; Contract Law; Pre-Contractual Disclosure; Competition Law; India

I. INTRODUCTION

Franchising has become one of the most visible modes of business expansion in contemporary India. Quick-service restaurants, apparel and footwear retailers, coaching institutes, diagnostic laboratories, fitness chains, salons, and convenience stores increasingly reach consumers through independently owned outlets that operate under a common brand and business format. The model allows a franchisor to grow without matching capital outlay, and it allows a franchisee, often an individual or a small family enterprise, to enter business with a tested name, system, and support. It has also been a principal vehicle through which foreign brands enter the Indian market, and official policy circles have taken note of the sector, regarding India's growing middle class and entrepreneurial culture as fertile ground for franchising.[1]

Yet India has no statute that defines a franchise, prescribes what a franchisor must tell a prospective franchisee before accepting the franchisee's money, or lays down standards on which a franchise may be terminated or renewed. India has neither a comprehensive national franchise law nor a central regulator for the sector, and the resulting landscape of varied contracts has been associated with disputes and exploitation, particularly of small local franchisees who face acute information asymmetry.[2] Franchise agreements are instead governed by the general law of contract, read with a patchwork of intellectual property, competition, consumer, tax, and foreign-exchange legislation.

This paper asks a deliberately narrow question: is contract law, so supplemented, adequate to govern franchising in India, or does the relationship call for a dedicated law? The argument is that general contract law presupposes parties who are adequately informed, broadly comparable in bargaining position, and able to contract around the risks they face. The franchise relationship frequently fails each of these assumptions, and it does so systematically rather than accidentally. The paper therefore contends that India should enact a calibrated franchise statute centred on pre-contractual disclosure and a small set of relational protections, while avoiding the heavy licensing and eligibility rules that some jurisdictions have adopted.

The inquiry is doctrinal and comparative. It is confined to business-format franchising, in which the franchisor licenses a brand and an operating system and exercises continuing control,

[1]Amit Kapoor & Navya Kumar, *Need for Franchising Laws in India* (Econ. Advisory Council to the Prime Minister, Working Paper, May 2024), https://eacpm.gov.in/wp-content/uploads/2024/05/Need-for-Franchising-Laws-in-India.pdf.
[2]Kapoor & Kumar, *supra* note 1.

and it does not attempt a full treatment of the tax or foreign-investment dimensions of franchising. Part II conceptualises franchising and explains why it is a distinctive legal relationship. Part III maps the Indian legal framework that currently applies. Part IV identifies the points at which contract law falls short. Part V examines comparative models. Part VI addresses objections to legislation, and Part VII sketches a proportionate statutory framework. Part VIII concludes.

II. CONCEPTUALISING FRANCHISING

A. MEANING AND CHARACTERISTICS

No Indian statute defines "franchise" for general legal purposes. The nearest approximation was fiscal. When franchise services were brought within the service tax net, the Finance Act, 1994 described a franchise as an agreement under which the franchisee is granted a representational right to sell or manufacture goods, provide services, or undertake any process identified with the franchisor.[3] That definition served a taxing purpose, and with the subsumption of service tax into the goods and services tax regime it no longer supplies even that.

In commercial usage, business-format franchising has four recurring features. The franchisor grants the franchisee a licence to use its trademarks and other intellectual property. The franchisor provides, and the franchisee must follow, a prescribed operating system covering products, presentation, training, and quality standards. The franchisee pays for these rights through an initial fee and continuing payments such as royalties and advertising contributions. And the franchisee owns and operates the outlet as a separate legal entity, bearing its own commercial risk. Arrangements vary in form, from single-unit grants to master franchises and area development agreements under which a sub-franchisor develops a territory. Franchising is thus distinct from a simple distributorship, an agency, or a bare trademark licence, because the franchisee is integrated into a system that the franchisor continues to control.

B. THE ECONOMICS OF THE RELATIONSHIP

Economic analysis explains why franchising generates legal difficulty. A franchisee typically makes substantial investments that are specific to the brand, such as fit-out, equipment,

[3]Finance Act, 1994, No. 32 of 1994, § 65(47), India Code (1994) (since omitted).

training, and lease commitments. These are largely sunk, and they have little value outside the system. Once they are made, the franchisee is exposed to the franchisor's later conduct, because the franchisor may be able to extract value through changed terms, higher supply prices, or termination, without the franchisee being able to redeploy its assets. This is the classic problem of opportunistic "hold-up."[4]

The franchisor, for its part, has a legitimate interest in control. Because customers treat the outlets of a system as interchangeable, one franchisee's poor performance damages the brand for all, and franchisors therefore monitor quality, standardise offerings, and reserve rights to enforce standards.[5] Franchise contracts are also long-term and inevitably incomplete. They cannot anticipate every change in technology, consumer taste, or competitive conditions, so they commonly reserve to the franchisor broad discretion to modify the system. Hadfield's analysis shows that this reservation of discretion is a rational response to incompleteness, but also that it leaves the franchisee dependent on the franchisor's good conduct in ways that ordinary contract doctrine is poorly equipped to police.[6]

Finally, the parties are unequally informed. The franchisor knows the unit economics of its outlets, its rate of closures and disputes, and its plans for expansion in the franchisee's territory. The prospective franchisee, frequently a first-time entrepreneur investing life savings or borrowed funds, knows little of this. Standard-form agreements, which franchisors use for sound reasons of system uniformity, further limit the scope for individual negotiation. None of this shows that franchisors act improperly. It shows that the conditions under which contract law ordinarily legitimates the outcome, namely informed consent and meaningful ability to bargain, are often thin in franchising. The question for law is therefore not whether franchisors should have control, which they plainly should, but whether the legal system supplies safeguards where private ordering cannot.

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[4]Benjamin Klein, Robert G. Crawford & Armen A. Alchian, *Vertical Integration, Appropriable Rents, and the Competitive Contracting Process*, 21 J.L. & ECON. 297 (1978); Benjamin Klein, *Why Hold-Ups Occur: The Self-Enforcing Range of Contractual Relationships*, 34 ECON. INQUIRY 444 (1996).

[5]Paul H. Rubin, *The Theory of the Firm and the Structure of the Franchise Contract*, 21 J.L. & ECON. 223 (1978); Benjamin Klein & Lester F. Saft, *The Law and Economics of Franchise Tying Contracts*, 28 J.L. & ECON. 345 (1985).

[6]Gillian K. Hadfield, *Problematic Relations: Franchising and the Law of Incomplete Contracts*, 42 STAN. L. REV. 927 (1990). On relational contracts generally, see Ian R. Macneil, *The Many Futures of Contracts*, 47 S. CAL. L. REV. 691 (1974); Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J.L. & ECON. 233 (1979).

III. THE EXISTING INDIAN LEGAL FRAMEWORK

A. THE INDIAN CONTRACT ACT, 1872

The Indian Contract Act, 1872 supplies the doctrinal foundation. A franchise agreement is formed under the ordinary rules of offer, acceptance, consideration, and free consent. Consent is vitiated by coercion, undue influence, fraud, or misrepresentation, and agreements whose object or consideration is unlawful or opposed to public policy are void.[7] Two further provisions bear directly on franchise terms. Section 27 declares void any agreement by which a person is restrained from exercising a lawful profession, trade, or business, and section 74 limits recovery on a stipulated sum to reasonable compensation not exceeding the amount named.[8]

These doctrines are not negligible. In *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*, the Supreme Court held that unfair and unreasonable terms imposed by a party in a dominant position on a party with no real choice are contrary to public policy under section 23, and in *Life Insurance Corp. of India v. Consumer Education & Research Centre* it treated standard-form contracts with comparable suspicion.[9] Both decisions, however, concerned public bodies, and the reasoning drew substantially on the constitutional obligations of the State. Indian courts have not extended the principle in any settled way to wholly private commercial bargains, where a franchisee, as a businessperson, is presumed to have contracted at arm's length.

B. THE SPECIFIC RELIEF ACT, 1963

Remedies are shaped by the Specific Relief Act, 1963, as amended in 2018. Specific performance is now the general rule rather than a discretionary exception, but section 14 withholds it from, among others, contracts that involve a continuous duty the court cannot supervise and contracts that are in their nature determinable.[10] Franchise agreements, which impose continuing mutual obligations and almost invariably contain termination rights, fit

[7]Indian Contract Act, 1872, No. 9 of 1872, §§ 10, 14–19A, 23, India Code (1872) [hereinafter Indian Contract Act].
[8]Indian Contract Act §§ 27, 74.
[9]*Cent. Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 SCC 156 (India); *Life Ins. Corp. of India v. Consumer Educ. & Rsch. Ctr.*, (1995) 5 SCC 482 (India).
[10]Specific Relief Act, 1963, No. 47 of 1963, §§ 10, 14(b), 14(d), India Code (1963), *as amended by* Specific Relief (Amendment) Act, 2018, No. 18 of 2018 [hereinafter Specific Relief Act].

these exceptions readily, with consequences examined in Part IV.

C. THE TRADE MARKS ACT, 1999

The Trade Marks Act, 1999 recognises licensed use of a mark through the registered user mechanism and provides that permitted use is deemed to be use by the proprietor.[11] The statute thus protects the franchisor's brand and enables the licensing structure on which franchising depends. It is silent, however, on the franchisee's interests. Nothing in it addresses the accuracy of pre-contractual statements, the conditions of termination, or the fate of the franchisee's investment. The same is true of copyright and of the protection of confidential information, which rest on statute and equity and on the terms of the contract itself.

D. THE COMPETITION ACT, 2002

The Competition Act, 2002 reaches certain franchise practices. Section 3(4) subjects tie-in arrangements, exclusive supply and exclusive distribution arrangements, refusals to deal, and resale price maintenance to scrutiny where they cause or are likely to cause an appreciable adverse effect on competition in India, and section 4 prohibits abuse of dominant position.[12] Mandatory sourcing from designated suppliers, territorial exclusivity, and controls over pricing may therefore attract the Act. At the same time, section 3(5)(i) preserves the right to impose reasonable conditions necessary to protect rights under the intellectual property statutes, a carve-out that franchisors can be expected to invoke.[13]

Competition law, however, has a different object. It asks whether competition in a market is harmed, not whether a particular franchisee has been treated fairly. A franchisee who was induced to invest by inflated earnings claims, or whose franchise was terminated opportunistically, has no remedy under the Act unless the conduct also harms competition in a relevant market. Competition law and franchise regulation are complements, not substitutes.

E. THE CONSUMER PROTECTION ACT, 2019

The Consumer Protection Act, 2019 is of limited help. Its definition of a consumer excludes a person who obtains goods for resale or for a commercial purpose, or who avails of services for

[11]Trade Marks Act, 1999, No. 47 of 1999, §§ 2(1)(r), 48(1)–(2), India Code (1999).
[12]Competition Act, 2002, No. 12 of 2003, §§ 3(4), 4, India Code (2003) [hereinafter Competition Act].
[13]Competition Act § 3(5)(i).

a commercial purpose, and the Supreme Court has applied a test that looks to the dominant purpose of the transaction.[14] A franchisee acquiring a franchise in order to conduct business will ordinarily fall outside the statute, and with it the Act's provisions on unfair contracts and unfair trade practices.[15]

F. REGULATORY OVERLAY

A further layer of legislation touches franchising incidentally. Royalties and fees paid to foreign franchisors engage the Foreign Exchange Management Act, 1999 and its subordinate rules, and the structure of foreign investment is conditioned by the Consolidated FDI Policy.[16] Franchise fees are subject to goods and services tax,[17] the handling of customer data across a franchise network engages the Digital Personal Data Protection Act, 2023,[18] and sectoral regimes such as food safety and legal metrology impose obligations on the operators of outlets.[19] Each of these regulates franchising only as an incident of some other concern. None addresses the relationship between franchisor and franchisee.

G. DISPUTE RESOLUTION

Franchise disputes are channelled principally to arbitration under the Arbitration and Conciliation Act, 1996, or to the commercial courts. Parliament has, notably, listed franchising agreements among the commercial disputes that fall within the jurisdiction of the commercial courts, and the Supreme Court has held pre-institution mediation under section 12A of the Commercial Courts Act, 2015 to be mandatory where no urgent interim relief is sought.[20] The legislature has thus recognised franchising as a distinct category for the purposes of forum, while leaving its substantive law to the general principles described above. That asymmetry is the starting point of this paper's argument.

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[14]Consumer Protection Act, 2019, No. 35 of 2019, § 2(7), India Code (2019); *Lilavati Kirtilal Mehta Med. Tr. v. Unique Shanti Devs.*, (2020) 2 SCC 265 (India).
[15]Consumer Protection Act § 2(46)–(47).
[16]Foreign Exchange Management Act, 1999, No. 42 of 1999, India Code (1999); Foreign Exchange Management (Current Account Transactions) Rules, 2000; Dep't for Promotion of Indus. & Internal Trade, Consolidated FDI Policy Circular of 2020 (Oct. 15, 2020).
[17]Central Goods and Services Tax Act, 2017, No. 12 of 2017, India Code (2017).
[18]Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 2, India Code (2023).
[19]Food Safety and Standards Act, 2006, No. 34 of 2006, India Code (2006); Legal Metrology Act, 2009, No. 1 of 2010, India Code (2010).
[20]Arbitration and Conciliation Act, 1996, No. 26 of 1996, India Code (1996); Commercial Courts Act, 2015, No. 4 of 2016, §§ 2(1)(c), 12A, India Code (2016); *Patil Automation Pvt. Ltd. v. Rakheja Eng'rs Pvt. Ltd.*, (2022) 10 SCC 1 (India).

IV. WHERE CONTRACT LAW FALLS SHORT

A. PRE-CONTRACTUAL DISCLOSURE

The most serious gap concerns what the franchisee is told before committing. Indian contract law has no general duty to disclose. The Contract Act provides that mere silence as to facts likely to affect a party's willingness to contract is not fraud, unless the circumstances impose a duty to speak or the silence is, in itself, equivalent to speech.[21] Moreover, even where consent is induced by misrepresentation or by fraudulent silence, the contract is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.[22] These rules reflect a caveat emptor approach suited to commercial parties who can investigate for themselves. A prospective franchisee, however, cannot readily verify a franchisor's closure rates, litigation history, supplier rebates, or earnings projections, and the law does not require the franchisor to volunteer them.

Remedies, when the franchisee later discovers the truth, are costly and uncertain. The franchisee must prove fraud or misrepresentation, usually against a franchisor who relies on an entire-agreement clause and on written disclaimers of any reliance on earnings statements, and who may be located abroad. Rescission requires restitution, and by the time of discovery the franchisee's capital has typically been spent.[23] The point is not that Indian law lacks a remedy for outright fraud. It is that a remedy of this kind operates after the loss, on the franchisee's evidence and at the franchisee's expense, whereas the harm is better prevented by requiring standardised information to be given at the right time.

B. STANDARD TERMS AND UNEQUAL BARGAINING POWER

The doctrine of *Brojo Nath* offers a principled basis for scrutinising one-sided terms,[24] but its reach in private commercial franchising is uncertain, and its application is necessarily case-by-case. The Law Commission of India examined the broader problem of unfair terms in standard contracts and proposed legislation, but that proposal has not been enacted.[25] The unfair-contract provisions of the Consumer Protection Act, as noted, protect consumers rather than business

[21]Indian Contract Act § 17, expl.
[22]*Id.* § 19, exception.
[23]Indian Contract Act §§ 19, 64.
[24]*Brojo Nath*, (1986) 3 SCC 156, *discussed supra* note 9.
[25]Law Comm'n of India, Rep. No. 199, *Unfair (Procedural & Substantive) Terms in Contract* (2006).

franchisees. The result is that terms which allow a franchisor unilaterally to vary system standards, to impose capital expenditure on re-fitting outlets, or to terminate on short notice are policed, if at all, by the general bar on terms contrary to public policy.

C. TERMINATION, NON-RENEWAL, AND HOLD-UP

The termination of a franchise is where the structural weakness of contract law is most evident. In *Indian Oil Corp. v. Amritsar Gas Service*, the Supreme Court held that a distributorship agreement terminable on notice is a contract determinable in its nature, which cannot be specifically enforced, and that the distributor's remedy lies in damages.[26] That reasoning is now reinforced by section 14 of the Specific Relief Act, as amended.[27] The practical consequence is that a franchisee wrongfully terminated, or simply not renewed on expiry, cannot ordinarily obtain restoration of the franchise. It must prove loss of profits for the remaining term, a speculative exercise for an outlet that may have been operating for only a short time, and it cannot recover the value of investment made in reliance on the expectation of continuity if the contract permitted the franchisor to end the arrangement on notice.

The franchisor's liquidated damages clauses are likewise subject only to the general standard of reasonable compensation under section 74, which courts apply to both parties.[28] These rules are not tailored to a relationship in which the franchisee has sunk capital into a franchisor-specified outlet, where the economic cost of exit is far greater than the stipulated sum and the franchisor retains the benefit of the improvements and goodwill built at the franchisee's expense.

D. POST-TERM RESTRAINTS

Contract law also produces an unsatisfactory result from the franchisor's side. The Supreme Court has held that negative covenants operating during the subsistence of an agreement are not restraints of trade within section 27. In *Gujarat Bottling Co. v. Coca Cola Co.*, which concerned a bottling franchise, it accordingly upheld a restriction on dealing in competing products during the term and enforced it by injunction.[29] After the agreement ends, however,

[26] *Indian Oil Corp. Ltd. v. Amritsar Gas Serv.*, (1991) 1 SCC 533 (India).
[27] Specific Relief Act § 14(b), (d).
[28] *Fateh Chand v. Balkishan Dass*, AIR 1963 SC 1405 (India); *Kailash Nath Assocs. v. Delhi Dev. Auth.*, (2015) 4 SCC 136 (India).
[29] *Gujarat Bottling Co. v. Coca Cola Co.*, (1995) 5 SCC 545 (India); *see also Niranjan Shankar Golikari v. Century Spinning & Mfg. Co.*, AIR 1967 SC 1098 (India); Specific Relief Act § 42.

restrictions on trade are void under section 27, and the Court has refused to recognise a reasonableness exception.[30] This approach protects franchisees against onerous post-term covenants, but it also leaves a franchisor with no ready means of protecting know-how and customer relationships against a departing franchisee who sets up a near-identical competing outlet. The consequence is that neither party's legitimate interest is addressed with any precision. A dedicated statute could define the circumstances and the limits within which narrowly drawn post-term protections tied to confidential know-how are permissible, in exchange for the safeguards that franchisees need on termination.

E. THE ABSENCE OF A DUTY OF GOOD FAITH

Many legal systems address discretion in relational contracts through a duty of good faith in performance. Canadian law, for instance, recognises an organising principle of good faith and a duty of honest performance, a development that arose in a dealership dispute.[31] Indian contract law has not developed a settled general doctrine of this kind, and the Contract Act contains no express provision requiring it. Where the franchisor holds contractual discretion to approve transfers, to designate suppliers, to set standards, or to relocate territories, the franchisee has no clear legal basis to demand that the discretion be exercised honestly and for the purposes for which it was conferred. Scholars have argued that franchisors should owe their franchisees at least a duty of care in the drafting and administration of the system.[32]

F. ENCROACHMENT, SUPPLY, AND SYSTEM CHANGE

Other recurrent sources of dispute are similarly beyond contract law's ready reach. A franchisor may open a competing outlet, or sell through online channels, in a territory the franchisee regarded as its own, and unless the contract grants clear exclusivity the franchisee has no recourse. Franchisors may require purchases from nominated suppliers at prices that include undisclosed rebates, and may mandate periodic re-imaging of outlets at the franchisee's cost. Competition law may intervene where these practices distort markets, but the underlying question of fairness between the parties is, again, left to the terms of an agreement that the

[30] *Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan*, (2006) 4 SCC 227 (India); *Superintendence Co. of India (P) Ltd. v. Krishan Murgai*, (1981) 2 SCC 246 (India).
[31] *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494 (Can.).
[32] Robert W. Emerson, *Franchise Contract Clauses and the Franchisor's Duty of Care Toward Its Franchisees*, 72 N.C. L. REV. 905 (1994).

franchisee did not draft.

G. ENFORCEMENT CAPACITY AND INFORMATION

Finally, there is no institution with responsibility for the sector. A franchisee with a grievance must either arbitrate or sue, at a cost out of proportion to the amounts typically at stake, against a franchisor with greater resources. No agency receives complaints, publishes guidance, or collects data on franchise failures, so policy is made without evidence and prospective franchisees cannot benefit from the experience of earlier ones. Voluntary codes of ethics adopted by industry associations are useful but cannot bind non-members.[33]

V. COMPARATIVE PERSPECTIVES

A. THE UNITED STATES

The United States adopted a federal disclosure regime early. The Federal Trade Commission's Franchise Rule, first promulgated in 1978 and substantially revised in 2007, requires a franchisor to furnish a prospective franchisee with a disclosure document containing twenty-three prescribed items, including litigation history, fees, supplier restrictions, and outlet turnover, and to do so at least fourteen calendar days before the franchisee signs or pays.[34] The Rule is enforced by the Commission, and it is supplemented by state statutes. Some states require registration of the disclosure document and impose private rights of action for misrepresentation,[35] and some regulate the relationship itself by restricting termination and non-renewal except for good cause.[36] The American model therefore combines a disclosure rule, applied uniformly nationwide, with relationship protections that vary by state, and it has endured for decades, notwithstanding persistent debate about its costs.

B. CANADA

Ontario's Arthur Wishart Act (Franchise Disclosure), 2000, and similar legislation in other provinces, couples a disclosure obligation with an express statutory duty of fair dealing in the performance and enforcement of every franchise agreement, a statutory right of franchisees to

[33] *See* Kapoor & Kumar, *supra* note 1.
[34] Franchise Rule, 16 C.F.R. §§ 436.2(a), 436.5 (2025); *see* Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15,444 (Mar. 30, 2007).
[35] *E.g.*, Cal. Corp. Code § 31000 *et seq.* (West 2025).
[36] *E.g.*, Cal. Bus. & Prof. Code §§ 20020, 20025 (West 2025); N.J. Stat. Ann. § 56:10-5 (West 2025).

associate, and graduated remedies. A franchisee who does not receive a disclosure document within the prescribed period may rescind within a short time after eventual receipt, or within two years if disclosure was never made, and may sue for damages for misrepresentation in the document.[37] Ontario courts have treated a disclosure document that is materially deficient as equivalent to no disclosure for purposes of rescission.[38] The Canadian approach is instructive because it joins the ex ante and the relational: disclosure rules and a duty of fair dealing, backed by remedies that do not depend on proving common-law fraud.

C. AUSTRALIA

Australia regulates franchising through a mandatory industry code, the Franchising Code of Conduct, prescribed under the Competition and Consumer Act 2010 and enforced by the Australian Competition and Consumer Commission. The Code requires disclosure before entry, imposes an obligation of good faith, regulates the grounds and procedure for termination, and requires dispute resolution processes.[39] The Australian model illustrates a regulator-led approach in which the content of the law is set by delegated legislation that can be adjusted as experience accumulates.

D. FRANCE AND THE EUROPEAN UNION

France was among the first European states to adopt a pre-contractual information rule. The *Loi Doubin* of 1989, now incorporated in the Commercial Code, requires a party that makes available a trade name or trademark to provide the other party with a document containing prescribed information, a minimum period before signing.[40] At the European Union level, by contrast, there is no harmonised franchise disclosure law. EU law regulates the competition effects of franchising. In *Pronuptia*, the Court of Justice held that provisions necessary to protect the franchisor's know-how and the identity and reputation of the network do not fall within the prohibition on restrictive agreements, and the current Vertical Block Exemption Regulation continues to govern the treatment of franchise restraints.[41] The European

[37]Arthur Wishart Act (Franchise Disclosure), 2000, S.O. 2000, c. 3, §§ 3–7 (Can. Ont.).
[38]*See Shelanu Inc. v. Print Three Franchising Corp.* (2003), 64 O.R. (3d) 533 (Can. Ont. C.A.).
[39]Competition and Consumer Act 2010 (Cth) pt IVB (Austl.); Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (Cth) sch 1 (Austl.) (Franchising Code of Conduct), cl 6.
[40]Loi n° 89-1008 du 31 décembre 1989 [Law No. 89-1008 of Dec. 31, 1989] (Fr.); Code de commerce [C. com.] art. L330-3 (Fr.).
[41]Case 161/84, *Pronuptia de Paris GmbH v. Pronuptia de Paris Irmgard Schillgallis*, 1986 E.C.R. 353; Commission Regulation 2022/720 of 10 May 2022 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices, 2022 O.J. (L

experience confirms the point made in Part III: competition rules and disclosure rules answer different questions, and mature systems have both.

E. ASIA

Asian jurisdictions illustrate the range of regulatory intensity. Malaysia's Franchise Act 1998 establishes a registration system administered by a Registrar of Franchises, supplemented by disclosure requirements and prohibitions on certain contract terms.[42] Indonesia requires a franchise prospectus and registration of franchise agreements.[43] China imposes both filing and disclosure requirements and, more unusually, eligibility conditions on franchisors, including a requirement that a franchisor have operated a minimum number of its own outlets for a minimum period before franchising.[44] The Chinese model is the most prescriptive of these and, for a market in which many franchisees are small and many franchisors are young, it may also be the most burdensome.

F. THE UNIDROIT MODEL LAW

At the international level, the UNIDROIT Model Franchise Disclosure Law of 2002 offers a deliberately restrained template. It concentrates on pre-contractual disclosure and on remedies for non-disclosure or misstatement, and it leaves the substantive terms of the relationship to the parties.[45] The Model Law is significant for India because it demonstrates that a disclosure-centred statute can be adopted without imposing the licensing, eligibility, or content-regulation requirements that raise the cost of compliance.

G. LESSONS

Four lessons emerge. First, nearly every system that regulates franchising begins with pre-contractual disclosure, which is the least intrusive intervention and addresses the central information asymmetry. Second, intensity varies widely, from disclosure alone to registration, eligibility rules, and substantive restrictions on termination. Third, relational protections, such as good-cause termination and fair dealing, are less uniform, but they are found in the systems

134) 4. *See generally* Mark Abell, THE LAW AND REGULATION OF FRANCHISING IN THE EU (2013).
[42]Franchise Act 1998 (Act 590) (Malay.).
[43]Peraturan Pemerintah Nomor 42 Tahun 2007 tentang Waralaba [Government Regulation No. 42 of 2007 on Franchise] (Indon.).
[44]Commercial Franchise Administration Regulations (promulgated by the State Council, Feb. 6, 2007, effective May 1, 2007), art. 7 (China).
[45]Int'l Inst. for the Unification of Priv. L. [UNIDROIT], *Model Franchise Disclosure Law* (2002).

with the most developed franchise sectors. Fourth, none of these systems treats competition law as a substitute for franchise regulation. A well-designed Indian statute should be located at the lighter end of the spectrum and should be adapted to local conditions, in particular to the prevalence of small and first-time franchisees.

VI. OBJECTIONS TO A DEDICATED LAW

A. FREEDOM OF CONTRACT

The first objection is that franchisees are business people who choose to enter franchise relationships and who should bear the consequences. This objection is weakest when applied to disclosure, which restricts no term and instead protects the informed consent on which freedom of contract itself rests. It has more force against substantive restrictions on termination, and that is a reason for confining such restrictions to a minimum and for limiting them to franchisees who lack the sophistication or the size to protect themselves. Both purposes can be served by thresholds, as discussed in Part VII.

B. REGULATORY COST AND CHILLING EFFECT

A second objection is that regulation raises the cost of franchising, deters start-up franchisors, and discourages foreign brands. The concern is legitimate. Disclosure documents require preparation, audited information, and periodic updating, and these costs weigh more heavily on small franchisors. The answer is proportionality. A statute can scale its requirements, exempt large and sophisticated franchisees, provide model forms, phase in obligations, and avoid pre-approval or merits review of franchise offers. It should be noted that the same information asymmetry that harms franchisees also harms good franchisors, since credible franchisors cannot easily distinguish themselves from opportunistic ones. Standardised disclosure lowers the cost of signalling quality.

C. SUFFICIENCY OF EXISTING LAW

A third objection is that the Competition Act, the Contract Act, and the commercial courts already provide adequate protection. Part IV has explained why they do not. Each operates after the fact, each answers a different question, and none gives a franchisee the information needed to decide whether to invest in the first place. It may also be argued that the courts can develop good faith and unconscionability doctrines incrementally. They may, and a statute

would not displace that process. But incremental development is slow and uncertain, depends on franchisees' willingness to bear the cost of test litigation, and cannot supply institutional mechanisms such as standardised disclosure or a complaints body.

D. SELF-REGULATION

Industry self-regulation, through association codes of ethics and voluntary standards, is a fourth alternative. It has value, and a statute should build on it. But participation is voluntary, sanctions are weak, and the firms least likely to adhere to a code are those whose conduct most needs regulation.

VII. A PROPOSED FRAMEWORK

The foregoing analysis suggests a statute guided by three principles: it should be disclosure-first, because information is the precondition of informed consent; it should be proportionate, so as not to impede the growth of small franchisors; and it should be enforced largely through existing institutions, rather than through a new bureaucracy. Its principal features might be as follows.

A. SCOPE AND DEFINITION

The statute should define a franchise by reference to its essential elements: a right to use the franchisor's trademark or brand; a prescribed marketing plan or system, or significant control or assistance by the franchisor; and a required payment to the franchisor. It should expressly exclude employment, ordinary distribution, and bare trademark licences lacking those elements, and it should treat master franchises and area development agreements explicitly. A definition built on function, rather than on labels, would prevent avoidance through the relabelling of arrangements.

B. PRE-CONTRACTUAL DISCLOSURE

A franchisor should be required to deliver, a fixed minimum time before the franchisee signs or pays, a disclosure document in a prescribed form. The content should be drawn from established models and might include the franchisor's business experience and litigation history, the fees and total initial investment, restrictions on sources of supply and any rebates received from suppliers, territorial rights, the terms governing renewal, termination, and

transfer, and the number of outlets opened, transferred, closed, and not renewed in recent years. The last of these, outlet turnover, is perhaps the most informative single item for a prospective franchisee. Where earnings or financial performance representations are made, the statute should require that they have a reasonable basis, be accompanied by the underlying assumptions, and be made only in the disclosure document.

C. REMEDIES

The statute should provide that a franchisee who does not receive the disclosure document in time, or who receives a materially deficient one, may rescind within a defined period and recover its investment, and that a franchisee may recover damages for misstatements in the document, subject to a defence of reasonable diligence by the franchisor. Remedies of this kind would operate independently of the common-law proof of fraud required under the Contract Act, and, as in Ontario, the entitlement to rescind would not depend on proof of reliance. Contractual waivers of these rights, and entire-agreement clauses purporting to negate them, should be ineffective.

D. FAIR DEALING, TERMINATION, AND RENEWAL

The statute should impose on each party a duty to act fairly and honestly in the performance and enforcement of the agreement, thereby filling the gap identified in Part IV. It should require that termination before expiry be for good cause, defined to include material breach that remains uncured after written notice and a reasonable opportunity to cure, with immediate termination permitted only in serious cases such as insolvency or conduct that damages the brand. On expiry, a franchisor that declines to renew should be required to give reasonable advance notice. In cases where the franchisee has made specified investments at the franchisor's insistence and the franchisor then declines to renew, the statute might require repurchase of inventory and equipment, or otherwise provide a transition period.

In exchange, the statute might clarify that reasonable post-term restrictions tied to the protection of confidential know-how, limited in time and territory, are not void merely because they operate after the end of the agreement. This would require careful drafting in light of section 27 and the Supreme Court's decisions, and the better course may be an express statutory exception, so that the restriction on trade doctrine is modified only for franchise relationships and only to the extent necessary.

E. ASSOCIATIONS AND TERRITORY

The statute should protect the freedom of franchisees to form and join associations, which allows them to bargain collectively and to share information. Scholars have long identified collective organisation as a significant mechanism for balancing power within franchise systems.[46] It should also require disclosure of whether the franchisee will receive exclusive territory and whether the franchisor or its affiliates may compete through other channels, including online sales, so that encroachment is a matter of informed agreement rather than surprise.

F. INSTITUTIONS AND DISPUTE RESOLUTION

Institutionally, the statute should avoid creating a new licensing authority. A nodal department, which could be the Department for Promotion of Industry and Internal Trade, might be designated to issue model disclosure forms, receive filings of disclosure documents for record and transparency purposes without any merits review, receive complaints, and publish aggregate data. Enforcement of civil remedies would remain with the commercial courts and with arbitration, supplemented by a requirement of good-faith mediation before termination disputes escalate. A statute of this kind would be consistent with the existing treatment of franchising agreements as commercial disputes. It should also apply regardless of a foreign governing law or seat where the franchised business operates in India, so that the protections are not avoided through the choice of law.

G. LEGISLATIVE FORM AND COMPETENCE

Parliament has competence to enact such a law, since contracts fall within the Concurrent List, and the legislation would be justified as a reasonable restriction in the interests of the general public on the freedom to practise a trade or business.[47] A free-standing Franchise Act is preferable to amending the Contract Act, because the Contract Act is a general statute whose structure would be distorted by sector-specific provisions, and because the instrument needs delegated powers to prescribe disclosure forms and thresholds. A statutory review after a fixed period would allow the framework to be recalibrated in light of experience.

[46]Robert W. Emerson, *Franchising and the Collective Rights of Franchisees*, 43 VAND. L. REV. 1503 (1990).
[47]India Const. art. 246(2), sched. VII, List III, entry 7; *id.* art. 19(1)(g), 19(6).

VIII. CONCLUSION

Contract law remains the foundation of franchising in India, and nothing in this paper suggests otherwise. But the franchise relationship is one in which the premises of contract law are routinely strained: the franchisee decides on the basis of limited information, signs a standard-form agreement, invests capital that cannot be redeployed, and depends thereafter on the franchisor's exercise of broad discretion. The general law offers remedies for fraud and breach after the fact, supplemented by intellectual property, competition, and other regimes whose purposes lie elsewhere. It does not supply the information, the fair-dealing standards, or the institutional support that the relationship requires.

The comparative record shows that the answer lies not in heavy regulation but in carefully targeted legislation, beginning with disclosure. A statute of the kind outlined here would give prospective franchisees the information they need, give honest franchisors a credible means of signalling quality, reduce the burden on courts and the Competition Commission, and place franchising in India on a footing commensurate with its economic importance. The question is no longer whether franchise regulation is feasible, which other jurisdictions have shown it to be, but whether India will craft it deliberately or continue to leave its franchisees to the general law of contract.