ARBITRATION CLAUSES IN ONLINE CONTRACTS: ENFORCEABILITY UNDER INDIAN LAW

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ABSTRACT

Most people who shop, stream, or sign up for an app online never read the contract they are agreeing to. Buried inside that contract is often an arbitration clause, a term that decides where and how any future dispute will be resolved, long before any dispute exists. This article looks at whether such clauses can actually be enforced under Indian law, working through the Arbitration and Conciliation Act, 1996, the Information Technology Act, 2000, the Indian Contract Act, 1872, and the Consumer Protection Act, 2019. The central argument is that the law works reasonably well when both sides are businesses, but falls short when one side is an ordinary consumer who clicked 'I Agree' without any real chance to understand what they were giving up. Courts have stretched the meaning of consent to cover clicks and continued use of a website, but a click is not the same as informed agreement, and the law has not fully grappled with that gap. The article proposes three changes: a requirement that arbitration clauses be shown clearly rather than buried in a linked document, a direct statutory duty on platforms to tell consumers about their right to approach a consumer forum regardless of any arbitration clause, and minimum standards for the online platforms that are meant to resolve these disputes. None of these changes would be radical. They would simply make the 'I Agree' button mean what it claims to mean.

Keywords: Arbitration Clause; Online Contracts; Enforceability; Indian Law; Standard Form Contracts; Consumer Protection; Online Dispute Resolution.

I. Introduction

India now has more than 800 million internet users[1], and the law has not kept pace with how quickly that number has grown. Every time someone downloads an app, signs up for a streaming service, or buys something online, they enter into a contract. Usually this happens by clicking a button marked 'I Agree,' or simply by continuing to use a website whose terms sit somewhere on a separate page. These contracts tend to be long, written in dense legal language, and almost never read. Yet buried inside them are arbitration clauses that carry real consequences. They decide which forum will hear a dispute, which city the proceedings will happen in, and in some cases, whether a person can get meaningful access to justice at all.

The enforceability of these clauses sits at the meeting point of three separate statutes: the Arbitration and Conciliation Act, 1996 (the Arbitration Act), the Information Technology Act, 2000 (the IT Act), and the Indian Contract Act, 1872 (the Contract Act). The picture becomes more complicated once the Consumer Protection Act, 2019 (the CPA) enters the frame. This article asks a simple question: do arbitration clauses formed through online contracts actually satisfy what these statutes require? The answer, in short, is that the current framework works tolerably well for business transactions but leaves consumers exposed in ways the law has not properly addressed. The final part of the article sets out three specific changes that would close that gap.

II. Online Contracts: Varieties and Vulnerabilities

Before looking at the law itself, it helps to separate out the different ways online contracts actually get formed, because the analysis changes depending on how a person's agreement gets recorded.

The most familiar type is the click-wrap agreement. The user has to actively click a button such as 'I Agree' or 'Accept' before they can move forward, and the terms are at least visible or accessible at that point. A close cousin is the sign-in-wrap agreement, where a user is told during registration that finishing the sign-up process means accepting terms that sit behind a hyperlink. Both of these leave behind some record that a court can actually look at: a click, a

[1]Telecom Regulatory Authority of India, 'Telecom Subscription Data' (TRAI, March 2024) <https://www.trai.gov.in> accessed May 2025.

checkbox, a logged action.

Browse-wrap agreements are a different matter. Nothing needs to be clicked at all. The terms live somewhere on the site, often in small text at the bottom of a page, and simply continuing to use the site counts as acceptance. Many users never visit that page, let alone read it. An arbitration clause sitting inside a browse-wrap contract is, in any honest sense, a term the user never consciously agreed to.

Click-wrap and sign-in-wrap contracts can usually meet the formal requirements of the Arbitration Act without much difficulty. Browse-wrap contracts test how far the idea of agreement can be stretched, and that question matters most when what is being agreed to is the right to go to a civil court.

III. The Statutory Framework

A. The Arbitration and Conciliation Act, 1996

Section 7 of the Arbitration Act sets out what counts as an arbitration agreement, and it is the starting point for any enforceability question.[2] Section 7(3) requires the agreement to be in writing. Section 7(4) explains what that means in practice: a document signed by both parties, an exchange of letters, telexes, telegrams, or other means of communication, including electronic means, that records the agreement, or an exchange of claim and defence statements where one party alleges the agreement exists and the other does not deny it.

The words 'including electronic means' were added by the 2015 amendment to the Act,[3] a recognition that commercial relationships were already moving online. The change brought Indian law roughly in line with Option I of Article 7 of the UNCITRAL Model Law, which already allowed for arbitration agreements formed electronically.[4] In practice, this means an arbitration clause sitting in an email exchange, a digital subscription form, or a click-through agreement can satisfy Section 7, provided the other conditions for a valid arbitration agreement are also met.

[2]Arbitration and Conciliation Act 1996, s 7(3)-(4).
[3]Arbitration and Conciliation (Amendment) Act 2015, inserting the words 'including electronic means' into s 7(4)(b).
[4]UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006), art 7, Option I.

B. The Information Technology Act, 2000

Section 10A of the IT Act, added in 2008,[5] says that a contract formed electronically cannot be denied legal effect purely because it was formed electronically. The point of the provision was to remove any lingering doubt about electronic contracts as a category, and that includes arbitration clauses contained within them. A person trying to resist an online arbitration clause cannot simply point to the fact that the contract was electronic. They need a stronger argument than that.

C. The Indian Contract Act, 1872

Online contracts still need to meet the basic requirements of any contract: offer, acceptance, consideration, capacity, and free consent. Of these, consent is the one most often contested in the online arbitration context. Section 14 of the Contract Act defines free consent as consent that has not been affected by coercion, undue influence, fraud, misrepresentation, or mistake.[6] The take-it-or-leave-it structure of most online contracts does not sit comfortably with that classical picture of negotiated agreement. Indian courts have generally been unwilling to strike down standard-form contracts on consent grounds alone. That reluctance makes sense when both sides are sophisticated businesses. It is harder to defend when one side is an ordinary consumer who never had any real chance to negotiate.

IV. The Question of Consent

At its heart, the problem with arbitration clauses in online contracts is a problem about what consent actually means. An arbitration clause is not like a price term or a warranty. It decides where and how a dispute will be resolved, and the practical stakes, cost, location, procedural complexity, and the loss of access to ordinary courts, can be considerable. Yet people agree to these clauses in seconds, without reading them, simply because they want or need to use a service.

Indian courts have read the writing requirement in Section 7 fairly broadly. In *Trimex International FZE Ltd v Vedanta Aluminium Ltd*[7], the Supreme Court held that an arbitration agreement does not need to live in a single signed document. A series of emails that together

[5]Information Technology Act 2000, s 10A, inserted by the Information Technology (Amendment) Act 2008.
[6]Indian Contract Act 1872, s 14.
[7]Trimex International FZE Ltd v Vedanta Aluminium Ltd (2010) 3 SCC 1.

recorded the parties' agreement, including an arbitration clause, was enough to satisfy Section 7. That decision widened what counts as a written arbitration agreement, and it has since been applied to online contracts with growing frequency.

On the separate question of incorporation by reference, which matters when a platform's arbitration clause sits inside a terms-of-service document reached only through a hyperlink, the Supreme Court in *Inox Wind Ltd v Thermocables Ltd*[8] confirmed that an arbitration clause can be incorporated this way, but only through a clear reference. The Court was careful to require that the reference point specifically to that clause, not just generally to the external document. This matters a great deal for browse-wrap contracts.

A hyperlink at the bottom of a webpage, unlabelled or marked only 'Terms,' is not much of a foundation for arguing that a user knowingly agreed to an arbitration clause buried inside it. No Indian court has yet ruled directly on a browse-wrap arbitration clause, but the reasoning in Inox Wind suggests that courts would look closely at whether the notice given was actually adequate. What counts as adequate notice online, whether the link needs to be prominent, whether the user must have actually opened the terms page, whether the arbitration clause itself needs to be flagged separately, remains an open question, and that gap is creating avoidable uncertainty for businesses and consumers alike.

V. Judicial Treatment: Patterns and Implications

The Supreme Court's earlier ruling in *Smita Conductors Ltd v Euro Alloys Ltd*[9] established that incorporation by reference has to be direct and unambiguous, a principle first developed for paper contracts that applies with at least equal force online. If anything, the ease with which terms can be hidden inside linked documents on the internet makes the case for clear, specific notice stronger, not weaker.

The Delhi High Court, in a series of commercial disputes involving digital platforms, has shown a willingness to enforce click-wrap arbitration clauses where the evidence shows the user saw the terms before completing registration and took some clear affirmative step to accept them. This mirrors the approach taken in other common law jurisdictions: clarity of presentation and a genuine act of acceptance are what matter, and where both exist,

[8]Inox Wind Ltd v Thermocables Ltd (2018) 2 SCC 519.
[9]Smita Conductors Ltd v Euro Alloys Ltd (2001) 7 SCC 728.

enforcement tends to follow.

Where those two things are missing, where the clause sits only in a linked document never specifically drawn to the user's attention, where no affirmative act was required, or where the clause is buried among dozens of other terms without any prominence, enforceability becomes far less certain. That uncertainty is not just a theoretical concern. A large share of agreements between Indian platforms and their users fall into exactly this grey area, and the cost of that uncertainty tends to fall on individual users rather than on the platforms themselves.

VI. The Consumer Law Exception

Whatever the position under the general law, the consumer context looks quite different. In *Emaar MGF Land Ltd v Aftab Singh*[10], a Constitution Bench of the Supreme Court held that disputes that fall within the jurisdiction of the statutory consumer fora cannot be sent to arbitration under a pre-existing private agreement. The Court recognised that consumer protection law exists to give people without the resources or legal knowledge of a commercial party a remedy that is actually accessible, and that letting a private arbitration clause override that remedy would defeat the purpose of the law.

Section 100 of the Consumer Protection Act, 2019[11] gives this position direct statutory backing. It says the Act applies in addition to, not instead of, any other law in force. Read alongside Emaar MGF, this means a pre-dispute arbitration clause in a consumer contract cannot be enforced against a consumer who chooses to go to the consumer forum instead. The consumer can still choose to arbitrate if they want to, but they cannot be forced into it by a clause sitting somewhere in a set of standard-form online terms, however clearly that clause may have been drafted.

This protection is real, but how useful it is depends heavily on whether the consumer actually knows it exists, and that is no small limitation in a country where people using digital services range enormously in legal literacy and financial means. The protection also only reaches disputes that qualify as 'consumer disputes' under the CPA's own definition. Any other dispute between the same parties under the same online agreement still falls back on the general

[10]Emaar MGF Land Ltd v Aftab Singh (2019) 12 SCC 751 (Constitution Bench).
[11]Consumer Protection Act 2019, s 100.

arbitration framework, with all the uncertainty described above.

VII. Proposals for Reform

Three changes would meaningfully strengthen the law in this area.

First, online standard-form contracts should be required to present arbitration clauses clearly, not bury them in a linked document that most users never open. This could mean bold or highlighted text, or a separately confirmed step before the user finishes signing up or completing a purchase. Research from the United States Consumer Financial Protection Bureau found that most consumers bound by mandatory arbitration clauses had no idea such clauses existed.[12] That finding is strong evidence of exactly the kind of information gap a conspicuousness requirement is meant to fix. A person cannot meaningfully agree to something they had no real chance of noticing.

Second, the Consumer Protection Act, 2019 should be amended to address pre-dispute arbitration clauses in online consumer contracts directly, rather than relying on the indirect protection that currently comes from Section 100 and the Emaar MGF ruling. That protection only works if the consumer knows to invoke it. A clearer rule, requiring platforms offering services to consumers to display a plain notice telling users about their right to go to a consumer forum regardless of any arbitration clause in the terms, would turn a legal technicality into something a person could actually use. The cost of including such a notice is close to nothing. The cost of leaving it out is a remedy that Parliament clearly intended consumers to have.

Third, the development of regulated online dispute resolution platforms, already flagged as a policy goal in the Ministry of Law and Justice's 2023 ODR Policy Plan,[13] should come with enforceable minimum standards covering cost, accessibility, language, and fair procedure. An arbitration clause that sends a consumer dispute to an expensive institutional platform is not really offering dispute resolution. It is putting up a practical barrier dressed up as procedure. Minimum standards would make sure that when people are directed to online arbitration, it is a process they can actually use, not one that exists on paper while shutting them out in practice.

[12]Consumer Financial Protection Bureau, 'Arbitration Study: Report to Congress' (March 2015).
[13]Ministry of Law and Justice, Government of India, 'Designing the Future of Dispute Resolution: The ODR Policy Plan for India' (October 2023).

VIII. Conclusion

Arbitration clauses in online contracts sit in an unsettled part of Indian law. For businesses contracting with each other online, the framework, updated by the 2015 amendment to the Arbitration Act and supported by Section 10A of the IT Act, works reasonably well, and courts have generally enforced these clauses where there is clear evidence of informed agreement. For consumers, the Consumer Protection Act, 2019 offers real protection, but only to the extent that consumers know it exists, and many simply do not.

The deeper issue here is structural. Indian arbitration law was built around a world of carefully negotiated, formally signed agreements between parties who understood what they were agreeing to. Online contracting has made that assumption mostly fictional. When agreement is reduced to a single click on a document almost nobody reads, and the legal effect of that click includes giving up access to ordinary courts, the law owes people more than technical compliance with a writing requirement. Consent, if it is going to mean anything, has to be connected to some real awareness of what is being agreed to.

As more of India's population contracts online, the law needs to catch up with that reality in specific, practical ways, not in the abstract. The three changes proposed here, a conspicuousness requirement, a direct consumer disclosure duty, and minimum standards for ODR platforms, are modest and workable. But they would go some real distance toward making sure the 'I Agree' button actually carries the weight it currently only pretends to.