Page 531 - 538 **DOI:** *https://doi.org/10.63108/IJLMH.12859*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 5

2026

Is Traditional Contract Law Obsolete for Modern Commerce in India?

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ABSTRACT

The Indian Contract Act, 1872 – the country's oldest commercial statute and the bedrock of its law of obligations – draws much of its architecture from nineteenth-century English common law. This paper asks whether such a colonial, paper-based framework can adequately govern the realities of twenty-first-century commerce, marked by digital innovation, artificial-intelligence-driven transactions and ubiquitous, micro-level contracting. Taking as its point of departure the Attorney General's recent call to "give a decent goodbye" to the existing contract law, the paper traces the statute's colonial genesis, examines how Indian courts have judicially stretched a Victorian text to accommodate telephones, telex and email, and situates the debate within India's aspiration to become a multi-trillion-dollar economy and a Vikasit Bharat by 2047. It argues that the question is no longer whether the law of contract must change, but whether India needs measured, provision-by-provision reform or a wholesale re-imagination of its contractual code. Drawing on comparative and international instruments – from the UNCITRAL Model Law on Electronic Commerce to the UNIDROIT Principles of International Commercial Contracts – the paper concludes that contemporary reform of the law of contracts is the need of the hour if India is to sustain its economic ambitions and its aspiration to be a global rule-maker rather than a rule-taker.

Keywords: *Contract Law, Indian Contract Act 1872, Legal Reform, Ease of Doing Business, Digital Commerce, Vikasit Bharat*

I. INTRODUCTION

Can a law written before the telephone was invented still govern the age of ubiquitous, micro-level contracting? The question is implicit in the Attorney General's recent remark that it is time to "give a decent goodbye" to our existing contract law.[1] Coming from the chief legal advisor to the Government of India – an office of constitutional standing under Article 76 of the Constitution[2] – the observation has reignited a long-standing debate: whether India's oldest commercial statute needs outright replacement, or merely reform, to remain relevant in a rapidly

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1 Pallavi Saluja & S.N. Thyagarajan, *India Bashing Over Arbitration Should Stop: Attorney General R Venkataramani*, BAR & BENCH (Aug. 28, 2026), https://www.barandbench.com/news/india-bashing-over-arbitration-should-stop-attorney-general-r-venkataramani.

2 INDIA CONST. art. 76.

 [ISSN 2581-5369]

evolving economic landscape. It also spotlights a deeper anxiety, that a law much of whose foundation was borrowed from nineteenth-century English common law may no longer be equipped for the realities of twenty-first-century commerce.

"Every era writes its own economy, and every economy demands its own laws."

This paper takes that provocation seriously. It proceeds in six movements. It first revisits the colonial genesis and enduring architecture of the Indian Contract Act, 1872. It then examines how the judiciary has stretched a Victorian text to accommodate successive waves of technological change, and how the legislature has patched it from the outside. It situates the reform debate within India's emergence as a digital and artificial-intelligence-driven economy, before weighing the arguments that connect contract-law reform to the ease of doing business. It asks, finally, whether India needs reform or replacement, drawing on comparative and international signposts, and offers a short conclusion. The wager throughout is a simple one: to delay the modernisation of India's contract law is to ask a twenty-first-century economy to run on nineteenth-century rails.

II. The Colonial Genesis and Continuing Architecture of the Act

The Indian Contract Act, 1872 was among the earliest codifying statutes enacted for British India.[3] Conceived in the great codification project of the nineteenth century and modelled substantially on the English common law of contract as it stood in the mid-Victorian period, the Act reduced to accessible statutory form the principles of proposal and acceptance, consideration, capacity, free consent, the legality of object, and the consequences of breach.[4] For its time, the codification was a considerable achievement. It lent certainty and coherence to a body of law that in England itself remained scattered across judicial precedent, and it gave merchants, administrators and courts a single, portable text. That very strength, however, has become a source of present concern. The commercial world for which the Act was drafted was one of merchants, letters, bills of exchange and the telegraph; its implicit model of contracting is bilateral, deliberate, and paper-based, with a perceptible interval between offer and acceptance.

More than a century and a half later, the core of the Act remains substantially as enacted. Successive expert bodies have urged its revision. As early as 1958 the Law Commission of India, in its Thirteenth Report, undertook a comprehensive examination of the Act and

[3] The Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India).
[4] Frederick Pollock & Dinshaw Fardunji Mulla, The Indian Contract and Specific Relief Acts (17th ed. 2024).

recommended numerous amendments to modernise and clarify its provisions.[5] Many of those recommendations were never carried into law. The consequence is a statute whose skeleton is Victorian even as the transactions it governs have become instantaneous, cross-border, machine-mediated and, increasingly, automated. The doctrinal vocabulary of the Act – "proposal", "communication", "acceptance", "post", "revocation" – carries within it the assumptions of an age of physical distance and delay. It presumes that parties negotiate at arm's length, that each reads and understands the terms, and that the moment of agreement can be located in time and space. Whether those assumptions can bear the weight of algorithmic, platform-based and mass-market commerce is precisely the question the Attorney General has forced back onto the national agenda. The point is not that the Act has failed – it has proved remarkably resilient – but that resilience achieved through constant reinterpretation is a poor substitute for a text designed for the conditions it must govern.

III. The Judicial Stretching of a Nineteenth-Century Statute

For much of the past century it has fallen to the courts, rather than to Parliament, to keep the Act abreast of technological change. The pattern is instructive. When the telephone displaced the letter as a medium of commercial negotiation, the Supreme Court in *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.* had to decide where and when a contract concluded by instantaneous communication comes into being.[6] Holding that the postal rule did not extend to telephonic conversations, the Court reasoned that acceptance by an instantaneous medium is complete only when, and where, it is heard by the offeror. The judges were, in effect, reading a mid-twentieth-century technology into a nineteenth-century text – an act of interpretive improvisation that the statute itself did not anticipate, and one that turned on the fine distinctions of Sections 3 and 4 of the Act concerning the communication of acceptance.

The arrival of electronic commerce posed the same challenge in sharper form. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, the Supreme Court held that a binding contract had been concluded through an exchange of e-mails, notwithstanding the absence of a formal signed agreement, because the essential terms had been agreed and acceptance was unequivocal.[7] *Trimex* confirmed that the general principles of the 1872 Act could accommodate contracts formed in cyberspace; but it did so by judicial extension rather than by any provision drafted with electronic dealing in mind. The legislature's own response came obliquely, through

[5] Law Comm'n of India, Rep. No. 13, *Contract Act, 1872* (1958).
[6] *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, AIR 1966 SC 543 (India).
[7] *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1 (India).

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the Information Technology Act, 2000, whose Section 10A – inserted by amendment in 2008 – provides that a contract shall not be deemed unenforceable solely on the ground that electronic means were used in its formation.[8] That provision itself drew on the UNCITRAL Model Law on Electronic Commerce, which had urged states to remove formal obstacles to electronic contracting and to give legal recognition to data messages and automated transactions.[9] The architecture of Indian contract law is, in consequence, a patchwork: a Victorian core, judicially stretched and legislatively supplemented from adjacent statutes rather than from within the code itself.

The strain is not confined to questions of form. The rise of mass, standardised and "take-it-or-leave-it" contracting has tested the Act's thin protections against unfairness. In *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*, the Supreme Court invoked the public-policy limb of Section 23 to strike down an unconscionable clause imposed through gross inequality of bargaining power.[10] In *Life Insurance Corporation of India v. Consumer Education & Research Centre*, it read requirements of fairness and reasonableness into standard-form contracts affecting the public.[11] These decisions are creative and welcome; yet they underline how little express guidance the 1872 Act offers on the characteristic problems of modern contracting, where consent is signalled by a click on terms few read and none negotiate. The Law Commission recognised as much in its 199th Report, which recommended a dedicated legislative framework to control unfair procedural and substantive terms in contracts.[12] That recommendation, like many before it, awaits enactment. Judicial ingenuity has papered over the gaps, but ingenuity exercised case by case is not a substitute for a coherent, contemporary and predictable statutory code.

IV. India at the Threshold of a New Economy

India today stands at the threshold of digital innovation and artificial-intelligence-driven commerce, yet it continues to govern its commercial promises through a statute conceived for a colonial, paper-based past. The scale of the transformation is not merely rhetorical. According to a study by the Ministry of Electronics and Information Technology and the Indian Council for Research on International Economic Relations, India's digital economy accounted for

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[8] The Information Technology Act, 2000, § 10A, No. 21, Acts of Parliament, 2000 (India) (§ 10A inserted by the Information Technology (Amendment) Act, 2008, No. 10, Acts of Parliament, 2009 (India)).
[9] UNCITRAL Model Law on Electronic Commerce, G.A. Res. 51/162, U.N. Doc. A/RES/51/162 (Dec. 16, 1996), https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce.
[10] *Central Inland Water Transp. Corp. v. Brojo Nath Ganguly*, (1986) 3 SCC 156 (India).
[11] *Life Ins. Corp. of India v. Consumer Educ. & Research Ctr.*, (1995) 5 SCC 482 (India).
[12] Law Comm'n of India, Rep. No. 199, *Unfair (Procedural and Substantive) Terms in Contract* (2006), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081093-2.pdf.

roughly 11.74 per cent of national income in 2022–23 – some ₹31.64 lakh crore, or about USD 402 billion – and has been growing at nearly twice the pace of the wider economy.[13] India now ranks among the most digitalised economies in the world.[14] Every day, hundreds of millions of contracts are formed at the tap of a screen: a ride hailed, a meal ordered, a payment authorised, a subscription renewed, a loan disbursed. Many are concluded not between two deliberating human beings but between a user and an interface, and increasingly between automated systems executing standing instructions without contemporaneous human involvement.

> A robust, contemporary law of contracts is no longer a legislative luxury for India – it is the need of the hour. As the nation strides towards becoming a global economic power, it cannot afford to carry the legal vocabulary of a bygone century into the commerce of tomorrow.

This is the environment in which questions the 1872 Act never contemplated now arise as a matter of routine. When does a "smart contract" that executes itself upon the occurrence of a coded condition become binding, and how is its performance to be excused where circumstances change? Who bears the risk when an algorithm, rather than a person, communicates an acceptance, or does so in error? How is free consent – the Act's central safeguard – to be assessed where terms are presented by a recommender system engineered to secure agreement, and where the "negotiation" consists of a single, unavoidable button? What of the gig worker or the small enterprise that contracts on a platform's non-negotiable terms, its consent real in form but hollow in substance? The Act's silence on these matters is not a defect of drafting but of era: no Victorian codifier could have imagined them, and no amount of purposive interpretation can wholly supply what the text does not contain. To delay the modernisation of India's contract law is therefore to ask a twenty-first-century economy to run on nineteenth-century rails. The urgency is not born of academic curiosity but of practical necessity.

V. The Case for Reform: Ease of Doing Business

India is determined to become a *Vikasit Bharat* – a developed nation – by 2047, the centenary of its independence, sustaining a multi-trillion-dollar economy along the way. That ambition depends on attracting and retaining investment, and investment in turn depends on the ease of doing business: on legal certainty, swift and reliable enforcement, and low transaction costs. A

[13] Ministry of Electronics & Info. Tech. & Indian Council for Rsch. on Int'l Econ. Rels., *Estimation and Measurement of India's Digital Economy* (2025), https://www.meity.gov.in/static/uploads/2025/01/5ff397f9e8152d5562ed4cef1a6b767b.pdf.

[14] Indian Council for Rsch. on Int'l Econ. Rels., *State of India's Digital Economy 2026* (2026), https://icrier.org/publications/state-of-indias-digital-economy-side-report-2026/.

contract law fit for that purpose is not a peripheral concern but a precondition, for the contract is the elementary unit of commerce and the instrument through which capital is deployed and risk allocated. It was in this spirit that the Attorney General urged that India look towards a "global common good", calling for a global common good cooperation legislation rather than a continued reliance on the contractual forms inherited from the colonial past.[15]

The reform impulse is already visible, if piecemeal. The Specific Relief (Amendment) Act, 2018 recalibrated the law of remedies, making specific performance a general rule rather than a discretionary exception, introducing substituted performance, and providing for the expeditious disposal of contractual suits – a significant modernisation of the enforcement side of contract.[16] The Jan Vishwas (Amendment of Provisions) Act, 2023 decriminalised 183 provisions across 42 central enactments, replacing imprisonment with monetary penalties in order to reduce the compliance burden on business and to foster a more trust-based regulatory environment.[17] The Consumer Protection Act, 2019, with its dedicated regime for electronic commerce and its provisions against unfair contract terms, spoke directly to the digital marketplace that the 1872 Act could not have foreseen.[18] Even the repeated modernisation of arbitration, through successive amendments to the Arbitration and Conciliation Act, 1996, reflects the same underlying drive to make India a credible venue for the resolution of commercial disputes.[19] Each of these reforms is welcome; but each is, in the end, a patch upon a garment whose fabric was woven in 1872.

If the ease of doing business is the objective, the question naturally arises whether procedural streamlining should extend to the substantive law itself. Could India not, for instance, move towards a genuine single-window legal-clearance system, in which a business obtains all requisite licences, government approvals and legal permissions from a single digital platform, rather than navigating a thicket of departments and forms? Such a system would lower the cost and delay of entry, particularly for the micro, small and medium enterprises on which employment and innovation depend. Yet the Attorney General has been careful to caution that measures to improve the ease of doing business must extend beyond administrative mechanisms such as single-window clearances and reach the substantive law that governs commercial relationships.[20] That is the deeper reform the moment demands: not merely faster processing of

[15] Saluja & Thyagarajan, *supra* note 1 (Attorney General R Venkataramani: "I think it is time we give a goodbye, a decent goodbye, to our existing contract law. We need to look at a global common good cooperation legislation.").
[16] The Specific Relief (Amendment) Act, 2018, No. 18, Acts of Parliament, 2018 (India).
[17] The Jan Vishwas (Amendment of Provisions) Act, 2023, No. 18, Acts of Parliament, 2023 (India).
[18] The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).
[19] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

the old law, but a reconsideration of the law itself, so that the rules of contract keep pace with the manner in which contracts are actually made.

VI. Reform or Replacement? Comparative and International Signposts

Granting the need for change, its form remains genuinely contested. One view favours careful, provision-by-provision reform: amend the definitions of communication and acceptance to embrace electronic and automated dealing; codify protections against unfair and unconscionable terms along the lines the Law Commission has already recommended; and further modernise the remedial architecture. The virtue of this path is continuity. A century and a half of judicial interpretation would not be discarded, and the commercial expectations built around settled doctrine would be preserved. The opposing view, closer to the Attorney General's, favours a more fundamental re-imagination – a contemporary code designed from first principles for digital, cross-border and machine-mediated commerce, rather than a Victorian statute perpetually retrofitted at its edges. Its virtue is coherence: a law that speaks the language of the economy it governs, rather than translating that economy back into an older idiom.

International practice offers signposts for either path. The UNCITRAL Model Law on Electronic Commerce and the United Nations Convention on the Use of Electronic Communications in International Contracts provide tested templates for recognising electronic offers, acceptances, and automated message systems, and for locating the time and place of dispatch and receipt in a networked world.[21] The UNIDROIT Principles of International Commercial Contracts offer a modern, transnational restatement of contract doctrine – on formation, validity, interpretation, performance and remedies – upon which many jurisdictions have drawn in reforming their domestic law.[22] Comparative experience is equally instructive. The Attorney General himself suggested that India, Singapore and the United Kingdom might jointly examine the scope of a common framework;[23] Singapore, in particular, has paired a modern contract and commercial law with a reputation for efficient enforcement to become a

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[20] Saluja & Thyagarajan, *supra* note 1 (reporting the Attorney General's caution that measures to improve the ease of doing business must extend beyond administrative mechanisms such as single-window clearances).

[21] UNCITRAL Model Law on Electronic Commerce, *supra* note 9; United Nations Convention on the Use of Electronic Communications in International Contracts, G.A. Res. 60/21, U.N. Doc. A/RES/60/21 (Nov. 23, 2005), https://uncitral.un.org/en/texts/ecommerce/conventions/electronic_communications.

[22] Int'l Inst. for the Unification of Priv. Law, UNIDROIT Principles of International Commercial Contracts (2016).

[23] Saluja & Thyagarajan, *supra* note 1 (reporting the Attorney General's suggestion that India, Singapore and the United Kingdom examine the scope and structure of such a framework).

preferred seat for Asian commerce. India's aspiration to be a rule-maker in the global economy, rather than a rule-taker, argues for active engagement with these instruments rather than isolation from them.

Whichever path is ultimately chosen, certain design commitments seem unavoidable. A modern Indian law of contract will need to speak natively about electronic and automated formation; to provide principled and predictable controls on unfair and unconscionable terms in an age of standard-form and platform contracting; to align its remedial provisions with the commercial expectation of swift and certain enforcement; and to remain interoperable with the international instruments that govern cross-border trade. Reform and replacement are, in truth, less a binary than a spectrum, and a sensibly sequenced programme might begin with targeted amendment while working towards a consolidated code. But the direction of travel is not in doubt, and the cost of drift – measured in legal uncertainty, deterred investment and litigation over questions the statute never answered – grows with every year of delay.

VII. Conclusion

It is the need of the hour to reform the contemporary law of contracts. The Indian Contract Act, 1872 has served the country with remarkable durability, and the ingenuity of its judges has kept it serviceable through the successive ages of the telephone, the telex and the e-mail. But durability is not the same as adequacy, and improvisation is not the same as design. As India aspires to become an economic powerhouse and a *Vikasit Bharat* by 2047, it cannot carry the legal vocabulary of a bygone century into the commerce of tomorrow. Whether the chosen path is measured, provision-by-provision reform or a bolder replacement, the destination is the same: a robust, contemporary law of contract that matches the ambitions of a twenty-first-century economy, protects the weaker party without stifling enterprise, and speaks fluently to a world of digital and automated exchange. Every era writes its own economy, and every economy demands its own laws. It is time India wrote the law that its new economy demands.

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