 DOI: *https://doij.org/10.10000/IJLMH.119719*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

Drafting for Trust Fairness, Consent, and Dispute Clauses in Indian Edtech Agreements

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ABSTRACT

India's EdTech sector, projected to exceed $10 billion in valuation by 2025, has transformed the educational ecosystem, yet suffers from an underdeveloped contractual governance. Nestled deep within these platform Terms of Service lie complex dispute resolution clauses, typically arbitration, that are often unread, misunderstood, or inaccessible to key stakeholders: minors, their guardians , and young adults.

This paper critically examines how the structural design of arbitration and dispute clauses in EdTech agreements undermines fundamental legal principles of fairness, informed consent, and access to justice in India's digital education landscape. Applying a hybrid analytical approach, including doctrinal analysis, case law review, employing comparative international regulatory models (GDPR, COPPA, NDPR), and contractual audits, the paper critiques clause opacity. It also emphasises ineffective "clickwrap" consent models and questionable reliance on parental consent, the absence of a child- or youth-sensitive, robust regulatory framework within India's digital contracting ecosystem.

Section I introduces the hidden influence of dispute clauses within online educational agreements. Section II analyzes arbitration, forum selection, and escalation clauses in Indian EdTech contracts. Section III explores consent mechanisms concerning minors, young adults, and digitally uninformed parents, highlighting the undermining of meaningful user agency. Section IV draws a comparative perspective of legal frameworks to illustrate India's regulatory shortcomings through international benchmarks. Finally, Section V proposes reforms at both contractual and policy levels, advocating for enhanced transparency, simplified clause language, effective opt-out mechanisms, and strategic legislative intervention.

Ultimately, the research does not oppose arbitration or dispute clauses in Edu-tech but critiques its problematic implementation in contexts where trust, legal capacity, and informed consent are crucial and must be earned, not assumed. It calls for drafting these clauses to serve as a bridge for the first-time users of digital education, making them more accessible and promoting fairness and user empowerment within the fine print.

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 [ISSN 2581-5369]

Keywords: *EdTech Contracts, Arbitration Clauses, Informed Consent, Children, Young Adults.*

I. INTRODUCTION

A 14-year-old student signs up for a popular Indian EdTech platform. Her parents, seeking a quick setup, click "I agree" on the terms and conditions without glancing over the clauses. Meanwhile, a 20-year-old college student independently registers for a competitive exam app, unaware of his voluntary relinquishment of judicial redressal by accepting a binding arbitration, which was innocently scrolled past. A couple of months later, both learned that their browsing data was shared with third parties. They attempt to raise a complaint, only to find out a mandatory arbitration clause, buried deep in the contract, something they never meaningfully consented to, forfeiting their right to court access or class action participation.

This scenario closely mirrors real-world legal disputes involving EdTech platforms. In 2024, a California court ruled against IXL Learning's attempt to compel parents into arbitration through agreements signed indirectly via school contracts.[2] The judge held that schools' consent is not equivalent to an individual's agreement, especially in the case of minors.[3] This international precedent highlights concerns of the Indian edu-tech sector, where similar arbitration clauses are deployed, particularly when users are minors, and consent models are reduced to non-negotiable, pre-checked boxes.[4]

India's EdTech contracts increasingly rely on complex arbitration and dispute clauses, which are modelled on commercial norms instead of education-specific standards.[5] These clauses often include binding arbitration, class–action waivers, forum selection, and multi-tier escalation mechanisms, and are legally permissible.[6] However, they raise critical concerns when applied to users lacking the bargaining power, controlling capacity under the Indian legal system.

Unlike jurisdictions with mature legal frameworks, such as the GDPR in the European Union or COPPA in the United States, India lacks an explicit regulatory structure of dispute clauses in

[2] *Shanahan, et al. v. IXL Learning, inc.. (no date) Justia Dockets & Filings. Available at: https://dockets.justia.com/docket/circuit-courts/ca9/24-6985 (Accessed: 02 May 2025).*

[3] Id.

[4] OECD, *Protecting Children Online: Consent, Control and Parental Responsibility*, at 19–21 (2021), https://www.oecd.org/education/protecting-children-online.pdf.

[5] Ikigailaw. Available at: https://www.ikigailaw.com/wp-content/uploads/2018/10/Ikigai-Law-Privacy-Policy.pdf (Accessed: 02 May 2025).

[6] The Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

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user agreements.[7] Even with the recently enacted Digital Personal Data Protection Act, 2023(DPDP, 2023), it does not address arbitration clause transparency or opt-out[8] structures in children and young adults-facing contracts.[9]

This article examines how dispute resolution clauses, particularly arbitration, forum selection, and multi-tier mechanisms, are used in Indian EdTech contracts. It debates that while arbitration may offer speed and privacy, the way these clauses are drafted and deployed often conflicts with basic principles of fairness, consent, and user accessibility. Grounded on doctrinal law, comparative frameworks, and contractual audits, the article proposes ways to redesign these clauses to better balance platform flexibility with user dignity, especially in cases involving young or digitally uninformed stakeholders.

II. LEGAL ARCHITECTURE OF ARBITRATION, ESCALATION, AND FORUM SELECTION CLAUSES IN INDIAN EDTECH CONTRACTS

Dispute resolution clauses in Indian EdTech contracts, though presented as routine legal infrastructure, hold significant consequences for users who are often minors, young adults, or their digitally uninformed guardians. As Indian EdTech platforms become mainstream educational intermediaries, the contract architecture they employ, particularly regarding arbitration, escalation, and forum selection, demands closer scrutiny under Indian and comparative legal frameworks.

Indian EdTech contracts frequently incorporate sophisticated dispute resolution provisions, which are more reflective of corporate software agreements rather than tailored to digital educational consumers.[10]These contracts typically deploy boilerplate user agreements, embedded in "clickwrap" or "browsewrap" formats, often escaping user attention before clicking 'I agree'.[11] While legally permissible in business-to-business (B2B) environments, these clause structures become problematic in business-to-consumer (B2C) settings for its digital users.

Major Indian EdTech providers such as Byju's, WhiteHat Jr., and Unacademy[12] adopt multi-

[7] Gen. Data Prot. Reg. (EU) 2016/679, Art. 8; Children's Online Privacy Prot. Act, 15 U.S.C. Sec. 6501–6506 (1998).

[8]P Nguyen, S.T. (2025), *Children's Online Privacy Protection Rule ('coppa'), Federal Trade Commission. Available at: https://www.ftc.gov/legal-library/browse/rules/childrens-online-privacy-protection-rule-coppa (Accessed: 02 May 2025).*

[9] Digital Personal Data Protection Act, No. 22 of 2023, Sec: 7,India Code (2023).

[10] Terms of Use, WhiteHat Jr., https://whitehatjr.com/terms (last visited Apr. 30, 2025).

[11] Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 Stan. L. Rev. 545, 551–53 (2014).

[12] Unacademy User Clause: *"Any dispute shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Bengaluru. The decision of the*

tiered dispute mechanisms that begin with internal grievance redress, escalate to mediation or designated officers, and culminate in binding arbitration.[13] For instance, in **Byju's** Terms of Service (ToS), users must click "I agree" to proceed, and have no opportunity to negotiate, understand, or even fully read the agreement with restricted jurisdiction to Bangalore courts. WhiteHat Jr. includes a multi-tiered dispute clause where complaints must first be routed through customer care, then a grievance officer, and finally, private arbitration in Mumbai under the Arbitration and Conciliation Act, 1996. Such as:

i.Byju's Terms of Use:"*Any dispute arising from or related to these Terms shall be referred to and resolved by arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted in English, seated in Bengaluru, and the award shall be final and binding on both parties.[14] By using the platform, the user waives the right to participate in a class action or seek redress in public courts*."

ii. WhiteHat Jr.):*"Users waive the right to initiate class or representative actions. Any dispute shall be resolved through binding arbitration conducted confidentially."*[15]

However, these clauses requiring pre-arbitration mediation or escalation to a grievance officer not only limit users' ability to seek judicial redress but also create procedural hurdles,[16] particularly for parents and students. Being unfamiliar with legal layered processes, they lack clarity about limitations, rights, and the qualifications of dispute resolvers, thereby undermining procedural fairness.[17]

More critically, these clauses are imposed on a demographic with unique vulnerabilities. Parents and students, especially from semi-literate or rural backgrounds, are unlikely to navigate these channels effectively, often forfeiting legal rights due to inaction or confusion.[18] In one case audit, a 12-year-old accessed premium services using a parent's credentials, inadvertently binding the family to arbitration. While young adults are legally competent but often digitally unaware, leading to uninformed consent.[19]

arbitrator shall be final and binding."
[13] Terms & Conditions, BYJU'S, https://byjus.com/tnc/ (last visited Apr. 30, 2025).
[14] Id. 16.
[15] Terms of Use, WhiteHat Jr., supra note 14.
[16] Shubha Ghosh, *The Structure of Standard Form Contracts in Digital Markets*,7 Indian J. L.&Tech.43, 47–49 (2020).
[17] Nir Kshetri, *1.7 Billion Children Locked Out: Contractual Fairness in Remote EdTech*, 8 J. World Info. Soc'y 22, 27–29 (2021).
[18] UNICEF, *Digital Literacy for Children: A Human Rights-Based Approach* 17–19 (2022), https://www.unicef.org/globalinsight/reports.
[19] Centre for Internet & Society, *Informed Consent and Indian Internet Users* (2022), https://cis-india.org/internet-governance/informed-consent-report.

 [ISSN 2581-5369]

Indian courts have long emphasized that arbitration must involve conscious acceptance of terms.[20] **In *Trimex International v. Vedanta Aluminium Ltd.* (2010)**, the Supreme Court held that arbitration clauses require explicit, informed assent. This principle is strained in digital EdTech contracts, where platforms impose non-negotiable clauses on users with little or no legal exposure. Moreover, the Court's recognition of unconscionable clauses in ***Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly***[21] supports the view that these contracts often fail the "reasonableness" test particularly when dealing with minors or their guardians, who are unlikely to understand or challenge binding dispute provisions.

From an international lens, similar practices have already been litigated. In 2024, a California court refused to enforce an arbitration clause **in *Parents v. IXL Learning***[22], where student data was allegedly misused, and stated that a school-facilitated access to the platform did not constitute valid consent to arbitration, especially where it lacked clear parental opt-in/opt-out options. This emphasized that disputes involving minors in digital education demand heightened procedural scrutiny and transparency in clause construction. Similarly, the GDPR mandates "clear, accessible language" for any agreement involving a child, and Nigeria's NDPR explicitly requires that contracts involving minors include understandable redress mechanisms.[23]

Although in India, such scrutiny is currently lacking.[24] The **Digital Personal Data Protection Act, 2023,** does not directly address how dispute resolution clauses should be framed in contracts involving minors. The Act defines a "data principal" broadly to include any individual whose data is processed, including children represented by guardians.[11] However, it remains silent on whether agreeing to Terms of Service can waive other statutory or constitutional rights, particularly access to courts or group litigation. Additionally, the Act does not mandate the use of plain language or require EdTech providers to present contracts in regional languages,[25] a notable shortcoming given India's linguistic diversity and digital literacy gaps.

In contrast to sectors like banking, telecommunications, and insurance, which are subject to regulatory oversight and often required to use standardized clause formats or ombudsman mechanisms, EdTech remains largely unregulated in this regard.[26]The absence of clause

[20] Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1 (India).
[21] Central Inland Water Transport. Corp. Ltd. v. Brojo Nath Ganguly, (1986) AIR 1571 (India).
[22] Parents v. IXL Learning, No. 21-CIV-9843 (Cal. Super. Ct. Jan. 17, 2024).
[23] Gen. Data Prot. Reg. (EU) 2016/679, Art. 12; Nigeria Data Prot. Reg., Art. 5.6 (2019).
[24] Digital Personal Data Protection Act, No. 22 of 2023, Sec 9, India Code (2023).
[25] Id. Sec.7.
[26] Reserve Bank of India, *Banking Ombudsman Scheme, 2006*,https://rbi.org.in/scripts/FAQView.aspx?Id=24;IRDAI, *Policyholder Protection Regulations*, https://irdai.gov.in.

transparency mandates in EdTech allows platforms to use legally dense, one-sided agreements without accountability or oversight. This regulatory vacuum undermines the pedagogical mission of EdTech, transforming it into a commercial space focused on avoiding legal responsibility.[27] Without specific rules for the sector, the disconnect between how contracts are written and who is using them continues to grow, making it harder for users to get fair treatment.

In conclusion, the current legal architecture of dispute resolution clauses in Indian EdTech contracts reflects commercial priorities over pedagogical or constitutional values. These clauses prioritize efficiency and corporate control over fairness, accessibility, and user protection. They fail to accommodate the unique vulnerabilities of the EdTech user base, children, young adults, and guardians who often lack the capacity to understand or challenge their terms. As digital education becomes entrenched in India's learning ecosystem, and as litigation around data privacy and consumer rights expands, these clause structures will face increasing legal and reputational scrutiny. Absent regulatory reform and judicial intervention, they risk becoming tools of exclusion in a sector built on the promise of inclusion.

III. CONSENT, CAPACITY, AND ACCESSIBILITY ISSUES IN INDIAN EDTECH CONTRACTS

The enforceability of digital contracts hinges on two foundational pillars in Indian contract law: **consent** and **capacity**.[28] Section 11 of the Indian Contract Act, 1872 unequivocally provides that only those who have attained the age of majority and are of sound mind are competent to contract.[29] In the context of EdTech platforms, this principle is routinely bypassed through user interface mechanisms that conflate digital acceptance with informed and legal consent. The use of standardized "clickwrap" or "browsewrap" agreements on platforms such as Byju's, Vedantu, and Toppr creates an illusion of consent,[30] especially when the user base consists predominantly of minors, young adults, and non-professional guardians. While these agreements may fulfil formalistic legal criteria, their **functional validity** remains questionable in light of the **age, understanding, and circumstances** of users.

Minors, as a matter of settled Indian law, cannot enter binding contracts.[31] Yet, EdTech platforms often allow children to create accounts directly or use a parent's device and credentials to sign up for services. In most instances, the Terms of Service (ToS) neither verify

[27] UNICEF, *EdTech Governance: Balancing Innovation and Child Rights* 23–25 (2022), https://www.unicef.org.
[28] Indian Contract Act, 1872, Sec: 11.
[29] Id.
[30] Nancy S. Kim, *Clicking and Contracting*, 86 Chi.-Kent L. Rev. 265, 268–70 (2011).
[31] Mohori Bibee v. Dharmodas Ghose, (1903) ILR 30 Cal 539 (PC) (India).

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the user's age nor ensure that any parental consent is obtained through robust or verifiable mechanisms.[32] In a notable 2022 case, a 13-year-old student purchased an EdTech subscription using a parent's debit card, resulting in a refusal of refund due to a binding arbitration clause accepted at the time of account creation.[33]Despite the child's clear legal incapacity, the platform insisted on the validity of the agreement, raising urgent questions about whether **guardianship-based digital consent** is being misused as a proxy for genuine legal assent.

Young adults between the ages of 18 and 25, while legally competent to contract, frequently lack the digital literacy or legal awareness to appreciate the nature of contractual clauses, especially those relating to **arbitration**, **waiver of rights**, or **forum restrictions**. These users often represent the first generation in their families to pursue digital education, and their interaction with legal content is typically passive and superficial. A 2022 empirical study by the Centre for Internet and Society (CIS) found that 76% of Indian EdTech users could not identify or explain the dispute resolution provisions in the contracts they had agreed to.[34] Even among users who had technically "consented," their understanding of the clause's implications, such as loss of access to courts or class remedies—was minimal. In such scenarios, **formal legal capacity** is insufficient to establish the **substance of informed consent**.

Comparative legal frameworks have recognized this asymmetry and adopted protective measures. Article 8 of the European Union's General Data Protection Regulation (GDPR) mandates that service providers obtain **verifiable parental consent** for the collection and processing of personal data from users under the age of 16, and that such information must be provided in **clear and accessible language**.[35] The U.S. Children's Online Privacy Protection Act (COPPA) goes a step further, requiring platforms to provide **clear disclosures**, implement **parental verification mechanisms**, and limit data collection unless **affirmative, informed consent** is obtained from guardians.[36]In ***Jane Doe v. IXL Learning***, a 2024 California court refused to uphold an arbitration clause signed through school-mediated access, holding that neither the student nor the parent had given informed consent to waive litigation rights.[37]The judgment underscored that platform-mediated consent in educational contexts involving children must pass a **higher threshold of scrutiny**, especially where contractual rights are being waived.

[32] OECD, *Age Verification in the Digital Age* 9–10 (2021), https://www.oecd.org/ict.
[33] Internet Freedom Found., *Child Privacy and Consent Failures in Indian EdTech* (2023), https://internetfreedom.in.
[34] Centre for Internet & Society, *Informed Consent and Indian Internet Users*, supra note 23.
[35] Gen. Data Prot. Reg. (EU) 2016/679, Art. 8.
[36] Children's Online Privacy Prot. Act, 15 U.S.C. Sec. 6501–6506 (1998).
[37] Jane Doe v. IXL Learning, No. 21-CIV-9843 (Cal. Super. Ct. Jan. 17, 2024).

India's legal framework has yet to impose equivalent procedural standards. The Digital Personal Data Protection Act, 2023 (DPDP Act), introduces the concept of a "data principal" and mandates that consent for data processing be "free, informed, specific, and unambiguous."[38] However, the Act remains silent on how such consent is to be obtained or verified in the case of minors, nor does it clarify whether agreeing to a platform's ToS can override consumer protection rights or judicial access. More critically, it does not require that legal clauses—especially those affecting dispute resolution—be presented in accessible formats, regional languages,[39] or tiered disclosures that reflect the user's age or literacy level. This omission leaves a significant regulatory gap, where platforms comply with formal consent norms without addressing their **practical enforceability**.

Language and accessibility are also key dimensions of the consent problem. Most EdTech contracts are presented in English, without multilingual support, visual markers, or explanatory tooltips for complex legal terms. In households where English is not the primary language, or where parents may be illiterate or semi-literate, the chance of understanding that they are waiving rights to judicial redress is virtually nonexistent. For example, a 2023 investigation by the Internet Freedom Foundation documented a case where a Hindi-speaking guardian unknowingly accepted binding arbitration terms by helping their child sign up for an EdTech trial course.[40]The platform provided no translated contract, summary of terms, or mechanism for post-acceptance review. The issue here is not just linguistic but also **design-centric**, a failure to incorporate ethical user experience principles into legally significant interactions.

The practical impact of this consent model is compounded by the absence of opt-out choices or accessible grievance redress mechanisms. In contrast to regulatory sectors such as insurance and banking, where the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority of India (IRDAI) have mandated ombudsman schemes and model clause transparency, no such framework exists for EdTech platforms.[41] Consequently, users face one-sided contracts where the act of clicking "I agree" is treated as a waiver of procedural protections, despite the user's legal incapacity or lack of understanding.

Furthermore, even when consent is given by a guardian, Indian courts have not clearly addressed whether such consent can lawfully waive a minor's statutory rights to legal redress

[38] Digital Personal Data Protection Act, No. 22 of 2023, Sec. 6, India Code (2023).
[39] Id. Sec 7.
[40] Internet Freedom Found., supra note 37.
[41] Reserve Bank of India, *FAQs on Banking Ombudsman Scheme*, supra note 30; IRDAI, *Policyholder Regulations*, supra note 30.

or participation in class proceedings.[42] The Supreme Court has held that unconscionable clauses may be void under public policy, particularly where there is a gross inequality of bargaining power.[43]However, there is no specific jurisprudence dealing with parental consent to arbitration or forum selection on behalf of a child in digital education contexts. This legal ambiguity allows platforms to continue treating consent as a **formality** rather than a **substantive safeguard**.[44]

This disconnect between contract design and user realities has tangible consequences for EdTech consumers. The push toward binding private arbitration, often expensive and procedurally opaque, effectively inhibits access to legal remedies for those least equipped to navigate them.[45] Consent, though formally recorded through clickwrap mechanisms, is frequently illusory, reducing the process to a symbolic gesture rather than a substantive legal act. For minors, young adults, and semi-literate guardians, this disconnect translates into a lack of real choice, undermining both autonomy and agency. Over time, such practices erode public trust in EdTech platforms, particularly those reliant on data monetization and profiling, leading to regulatory scrutiny and reputational harm.

These issues are not speculative. As India's user base grows increasingly digital-first and as disputes over data misuse, fee fraud, and consumer protection mount, contracts that obscure legal redress will face mounting enforceability challenges, both judicial and reputational.[46] Multi-tier clauses, while framed as consumer-centric, often function as gatekeeping devices rather than facilitative remedies. Without structural reform, the consent frameworks used in EdTech risk functioning as tools of exclusion in a domain that purports to champion accessibility, learning, and empowerment.

IV. COMPARATIVE LEGAL STANDARDS AND BEST PRACTICES IN EDTECH DISPUTE CLAUSES

While Indian EdTech regulation remains fragmented and reactive, international jurisdictions have taken a more assertive approach to protect children and young users in digital learning environments. These models offer valuable insights into how India might align its legal frameworks, particularly concerning arbitration clauses, contractual consent, and platform

[42] Indian Contract Act, 1872, Sec. 23; see also Central Inland Water Transport. Corp. Ltd. v. Brojo Nath Ganguly, (1986) AIR 1571 (India).
[43] Cent. Inland Water Transp. Corp. Ltd. v. Brojo Nath Ganguly, supra note 25, at 1586–87.
[44] Aparna Chandra et al., *Contracting for Consent in the Digital Age: A Public Law Approach*, 15 NLSIR 45, 60–63 (2021).
[45] Access Now, *Private Arbitration and Platform Power: A Human Rights Perspective* (2022),https://www.accessnow. org.
[46] NITI Aayog, *Responsible AI for All*, at 42–45 (2021), https://www.niti.gov.in.

responsibility, with global best practices.

The **European Union's General Data Protection Regulation (GDPR)** sets one of the highest global standards for digital consent, particularly for individuals under the age of 16 (or 13 in some countries).[47] Article 8 of the GDPR mandates **verifiable parental consent** that must be "freely given, specific, informed and unambiguous"[48] for the processing of children's data and requires that digital policies and agreements be presented in language that is clear, concise, and appropriate for younger audiences. Further, the European Data Protection Board has recommended the use of layered interfaces, visual cues, and child-centric design strategies to ensure that consent mechanisms are genuinely understood and freely given.[49] This framework explicitly acknowledges that traditional legal drafting is insufficient in digital contexts where user comprehension varies significantly by age and capacity. This standard is rarely met in Indian EdTech contracts, relying on dense, clickwrap arbitration clauses.

In contrast, the **United States Children's Online Privacy Protection Act (COPPA)** prohibits data collection from users under 13 without verifiable parental consent. and obligates platforms to clearly explain data collection practices and dispute procedures.[50] Importantly, COPPA restricts the enforceability of **binding arbitration clauses** involving child users unless such clauses are clearly highlighted and explicitly agreed to by an adult with contractual capacity. Several platforms, including Edmodo and TikTok, have faced regulatory penalties for circumventing these obligations, highlighting the importance of enforceable consent and transparent redress mechanisms in youth-facing digital services.[51] EdTech firms must implement visible privacy policies, gain express permission for each data use, and offer opt-out mechanisms rarely mirrored in Indian contracts.

The risks of mass arbitration clauses in user agreements were exposed in the aftermath of Chegg Inc.'s 2018 data breach. Over 15,000 users filed arbitration demands, overwhelming both the platform and arbitrators.[52] Despite this, courts upheld the enforceability of Chegg's arbitration clause, forcing individualized arbitration.[53] The case reveals that judicial support for binding

[47] Gen. Data Prot. Reg., supra note 39, Art. 8.
[48] Id.
[49] European Data Protection Board, *Guidelines on Consent Under Regulation 2016/679*, at 20–22 (2020), https://edpb.europa.eu.
[50] Children's Online Privacy Prot. Act, 15 U.S.C. §§ 6501–6506 (1998); see supra note 40.
[51] U.S. Fed. Trade Comm'n, *TikTok to Pay $5.7 Million for COPPA Violations* (2019), https://www.ftc.gov/news-events.
[52] *Chegg Faces Thousands of Arbitration Demands Over Data Breach*, Reuters (July 15, 2020), https://www.reuters.com/article/us-chegg-data-arbitration-idUSKCN24G1Z3.
[53] *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011) (holding that the Federal Arbitration Act preempts state laws prohibiting class action waivers in arbitration agreements).

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clauses, even when leading to logistical burdens, remains strong in the U.S. context — in stark contrast to the Indian approach, which lacks both procedural infrastructure and regulatory oversight for such outcomes.

Collective resistance to mandatory arbitration has also driven reform. In 2019, Google employees staged public protests over the company's use of forced arbitration in workplace disputes. The campaign gained traction after allegations of mishandled sexual harassment complaints, ultimately leading Google to eliminate mandatory arbitration for such claims.[54] This highlights how public advocacy and reputational risk can shape corporate dispute resolution architecture, offering an alternate pathway to legal regulation.[55]

African regulators have also advanced robust frameworks. Nigeria's legal landscape offers another instructive model through its **Nigerian Data Protection Regulation (NDPR)**, which classifies minors as a **vulnerable group** and mandates that any contracts involving them include **clear and accessible legal redress procedures**.[56] The NDPR adopts a rights-based approach to data and contract regulation, reflecting both procedural fairness and equity considerations. This approach aligns with international policy guidance from UNICEF, which has long advocated for child-friendly online environments that prioritize comprehension, redress, and agency over formalistic compliance.[57] Indian policy, by contrast, is yet to outline minimum standards for how EdTech companies should design dispute clauses for school-aged users or first-generation digital learners.

Recent legal innovations in the United Kingdom and European Union further extend these protections into the domain of platform liability and procedural enforcement. The **UK's Online Safety Act, 2023** explicitly **prohibits the use of binding arbitration clauses or class-action waivers** in contracts with child users.[58] It introduces alternative complaint mechanisms, such as "trusted flaggers," which enable users to report issues without requiring formal legal representation. Similarly, the **EU's AI Liability Directive (2024)** reverses the burden of proof in select digital harm cases involving children, thus simplifying the legal process for families seeking to hold EdTech platforms accountable for exploitative or misleading practices.[59] These mechanisms reflect a regulatory trend toward easing access to justice in digital environments,

[54] Nitasha Tiku, *Google Ends Forced Arbitration After Worker Protests*, Vox (Feb. 21, 2019), https://www.wired.com/story/google-ends-forced-arbitration-after-employee-protest/.
[55] Elizabeth C. Tippett, *The Promise of Forced Arbitration: A Rebuttal to Detractors*, 22 Lewis & Clark L. Rev. 663, 671–74 (2018).
[56] Nigeria Data Prot. Reg., art. 2.5, issued by Nat'l Info. Tech. Dev. Agency (2019).
[57] UNICEF, *Policy Guidance on AI for Children*, supra note 12, at 16–18.
[58] Online Safety Act 2023, c. 61, § 42 (U.K.).
[59] Proposal for a Directive on Adapting Civil Liability Rules to Artificial Intelligence, COM (2022) 496 final (EU).

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particularly where users may lack legal literacy or financial capacity.

International arbitration bodies have also issued model clauses tailored to consumer contexts. The **Singapore International Arbitration Centre (SIAC)** and **London Court of International Arbitration (LCIA)** both recommend that arbitration agreements include language on costs, opt-out options, and simplified claim processing when applied to small consumers, none of which appear in leading Indian EdTech terms.[60] Development organizations like **UNICEF** and **OECD** have called for "child-centric digital contracts." In its 2021 guidance, UNICEF recommended that educational platforms be required to explain arbitration and waiver clauses in age-appropriate terms and ensure that dispute resolution mechanisms are proportionate, participatory, and subject to public review.[61]

In contrast, India's regulatory stance remains markedly underdeveloped. While the **Digital Personal Data Protection Act, 2023 (DPDP Act)** introduces general principles such as consent, purpose limitation, and grievance redress, it **does not address** how digital contracts—especially dispute resolution clauses—should be structured for minors or digitally naïve users.[62] The Act lacks concrete standards for clause visibility, differentiated consent pathways, or multilingual accessibility. It also does not mandate platforms to distinguish between children, young adults, and adult users, thereby exposing a large segment of India's EdTech population to poorly designed, one-size-fits-all contractual frameworks.[63] The absence of any restriction on binding arbitration clauses or class-action waivers in child-facing services leaves significant gaps in both consumer protection and procedural equity.

Drawing on comparative best practices, India can undertake reform in at least three critical areas. First, it should mandate **design standards** for digital dispute clauses, ensuring that terms are written in plain language, visually marked, and offered in regional languages to reflect the country's linguistic diversity. Second, the regulatory framework must adopt **differentiated consent flows**: platforms should be required to obtain **verifiable parental consent** for users under 18 and ensure **enhanced interface clarity** for young adults aged 18–25, who, while legally competent, often lack the digital or legal literacy to navigate complex contractual terms. Third, India should develop **sector-specific guidelines** for EdTech contracts that harmonize consumer protection, data privacy, and access to justice principles. These reforms could be spearheaded by a dedicated regulatory body or through coordinated guidelines issued jointly by

[60] SIAC, *Model Clause Recommendations for Consumer Disputes* (2021); LCIA, *Guidance Notes for Parties*, https://www.lcia.org.
[61] UNICEF, *Policy Guidance on AI for Children*, supra note 12, at 19–21.
[62] Digital Personal Data Protection Act, No. 22 of 2023, § 9, India Code (2023); see supra note 28.
[63] Id. § 6.

the Ministry of Education, the Ministry of Electronics and Information Technology (MeitY), and the proposed Data Protection Board.

Young adults occupy a particularly precarious position. Though legally capable of contracting, their vulnerability arises from digital inexperience and **information asymmetry**—a gap that comparative jurisdictions increasingly acknowledge through targeted policy interventions. India must similarly recognize that legal adulthood does not automatically equate to informed consent in digital transactions. Without such recognition, consent remains a formal checkbox rather than a substantive safeguard. International experience shows that where regulation prioritizes transparency, differentiated consent, and accessible redress, EdTech contracts become not only enforceable but **empowering** for users. For India, embracing a rights-based, user-sensitive framework is no longer optional—it is essential for ensuring that dispute clauses evolve from hidden shields for platforms into meaningful instruments of justice.

V. RECOMMENDATIONS FOR CONTRACTUAL AND POLICY-LEVEL REFORMS

To address fairness, transparency, and enforceability in EdTech contracts, both immediate and long-term reforms are essential. This dual approach seeks to build trust and safeguard the rights of minors, young adults, and their guardians in India's growing digital education sector. The existing landscape—marked by opaque terms, clickwrap enforcement, and unequal bargaining—calls for more than piecemeal solutions. It demands comprehensive drafting reform, regulatory oversight, and child- and youth-sensitive design. Drawing from international models and India's regulatory history, this section outlines five-layered reforms across two core areas: contractual improvements and policy-level interventions.

A. Contractual-Level Reforms: Drafting with User Sensitivity

1. Clause Pre-Disclosure and Simplified Presentation

At the most immediate level, EdTech providers must redesign arbitration clauses for clarity and visibility. Platforms should implement *just-in-time notices*—concise pop-ups or visual flags that alert users to key legal terms at the moment of digital acceptance. These notices must include plain-language summaries, particularly around dispute resolution clauses, and should be age-tailored. For minors, clauses must be accompanied by guardian-specific disclosures and simplified explanations. These standards mirror best practices under the EU's GDPR and the U.S. COPPA, where contractual assent from minors requires verifiable, clearly communicated consent by guardians.[64]

[64]Gen. Data Prot. Reg. (EU) 2016/679, art. 12; Children's Online Privacy Prot. Act, 15 U.S.C. §§ 6501–6506

2. Clause Layering and Comprehension Aids

Instead of placing dense legal text at the end of Terms of Service pages, dispute clauses should be structured using headers, bullet points, and expandable FAQ-style sections. For example, a clause could be accompanied by a section titled "What this means for you," explaining whether arbitration is final, who bears the cost, and whether judicial remedies are waived. Layered design improves readability and comprehension, especially for first-time users and young adults. It also aligns with design-for-rights principles recommended by UNICEF in its guidance on AI and education platforms.[65]

3. Guardian-First Interfaces and Consent Verification

Given the legal incapacity of minors under Section 11 of the Indian Contract Act, EdTech platforms must implement interfaces that secure explicit guardian acknowledgment for contracts involving users under 18.[66] This could include two-step authentications, such as guardian email verification, OTP confirmations, or mandatory video prompts. For young adults aged 18–21, platforms should offer optional legal literacy aids—such as short explainer videos or annotated clause previews—to reduce information asymmetry and promote genuine understanding.

4. Opt-Out and Optional Arbitration Models

Platforms should allow users, particularly guardians, to opt out of binding arbitration within a specified time period after contract acceptance. Platforms like Coursera and Khan Academy offer opt-out windows, reflecting a growing consensus that mandatory arbitration without alternatives undermines procedural fairness.[67] Arbitration in EdTech should be presented as one of several resolution modes, not the exclusive forum.

5. Inclusive Venue and Cost Sharing Mechanisms

Dispute clauses should clearly define the location and cost-sharing model for arbitration. If a platform mandates arbitration in Bengaluru or Mumbai, users from rural or low-income areas face disproportionate burdens. A more inclusive approach would be to allow regionally neutral venues and subsidize costs in cases involving students, minors, or economically weaker families. Such provisions also enhance enforceability under Indian public policy, especially when addressing claims involving minors.

(1998); see supra notes 51, 54.

[65] UNICEF, *Policy Guidance on AI for Children*, supra note 61, at 19–21.

[66] Indian Contract Act, 1872, § 11; see supra note 32.

[67] Coursera, *Terms of Use*, https://www.coursera.org/about/terms; Khan Academy, *User Terms*, https://www. Khan academy.org/about/tos (last visited Apr. 30, 2025).

B. Policy-Level Reforms: Structural and Regulatory Interventions

1. Regulatory Oversight of Clause Architecture

The Digital Personal Data Protection Act, 2023, while progressive in terms of data rights and grievance redress, does not address how dispute clauses must be designed or disclosed in digital contracts. Amendments or supplementary guidelines should introduce age-specific standards for digital consent and arbitration visibility. Drawing from GDPR and COPPA, the law should mandate differentiated disclosure requirements for minors and young adults, enforce consent verification protocols, and prohibit one-sided arbitration clauses in child-facing contracts.[68]

2. Model Clause Templates and Clause Libraries

Regulatory bodies such as the Ministry of Electronics and Information Technology (MeitY), in collaboration with NCERT, NCPCR, and the Data Protection Board, should publish Model EdTech Dispute Resolution Clauses. These templates must:

- Define the age of contractual capacity;
- Include optional consent-at-dispute clauses for arbitration;
- Embed language at a sixth-grade reading level;
- Encourage the use of neutral arbitration institutions (e.g., ICA, SIAC) rather than in-house grievance panels.

This initiative would replicate clause standardization models successfully used by SEBI, IRDAI, and RBI in financial and insurance sectors.[69]

3. Clause Audits and Certification Schemes

To ensure compliance, the government or an independent data rights body could launch a "Digital Nagrik Clause Trustmark" certification scheme. Under this program:

- Platforms would submit their Terms of Service for review;
- A regulator-approved arbitration body (e.g., ICA) would audit readability, fairness, and enforceability;
- Certified platforms would receive a digital trust badge, making it easier for parents and schools to identify responsible providers.

[68] Gen. Data Prot. Reg., supra note 51, art. 12; COPPA, supra note 54, §§ 6502–03.
[69] Securities and Exchange Board of India (SEBI), *Master Circular on Model Agreements in Capital Markets* (2021); IRDAI, *Guidelines on Product Filing*, https://irdai.gov.in; RBI, *Banking Ombudsman Scheme*, supra note 30.

Similar mechanisms have been adopted in the EU through GDPR compliance seals and in Nigeria via the NDPR Implementation Framework, which mandates clause-level review in contracts involving minors.[70]

4. Multi-Tier Dispute Resolution Frameworks

Arbitration, while efficient, is not always suitable for disputes involving young users. EdTech contracts should adopt multi-tier resolution clauses, starting with informal grievance mechanisms (e.g., in-app helpdesks or email mediation), escalating to regulatory ombudsman processes, and finally allowing arbitration for high-value disputes. The architecture mirrors that of the Reserve Bank's Banking Ombudsman Scheme or the Telecom Regulatory Authority's complaint redress model.[71] Such a layered design enhances accessibility without entirely discarding arbitration.

5. Third-Party Review and Enforcement

Independent audits of EdTech arbitration clauses by public interest bodies or sectoral regulators should be institutionalized. Regulatory bodies such as MeitY or the Data Protection Board should conduct periodic reviews of dispute clause enforceability and accessibility, especially for services targeted at minors. Penalties for non-compliance should include suspension of platform access, public naming, and monetary fines—aligning with international enforcement protocols under GDPR and the EU's AI Liability Directive [72]

C. Reimagining Arbitration as a Trust-Building Tool

The goal of these reforms is not to eliminate arbitration but to transform it into a tool for empowerment. When designed with user capacity and fairness in mind, arbitration can offer fast, confidential, and context-sensitive outcomes. However, its current deployment in Indian EdTech contracts—via dense, inaccessible clickwrap clauses—risks functioning as a shield for platform liability rather than a genuine avenue for redress. Adopting clear, guardian-inclusive interfaces, regional venue access, clause simplification, and regulatory oversight can help shift arbitration from a procedural obstacle to a trust-building mechanism. One such example of skewed clause accessibility is Amazon's treatment of third-party sellers. Between 2014 and 2019, only 163 registered sellers entered arbitration, despite over 2.5 million sellers on the platform, largely due to the high entry costs, procedural complexity, and lack of awareness.[73]

[70] Nigeria Data Prot. Reg., supra note 60; see also EU Data Protection Seal Regulation, Reg. (EU) 2016/679, art. 42.
[71] Telecom Regulatory Auth. of India (TRAI), *Consumer Grievance Redressal Regulations*, No. 14 of 2012.
[72] Proposal for a Directive on Adapting Civil Liability Rules to Artificial Intelligence, supra note 63, arts. 4–7.
[73] Spencer Soper, *Amazon Merchant Kicked Off Website Spent $200000 to Get Justice*, Bloomberg Businessweek (June 3, 2021), https://www.bloomberg.com/news/articles/2021-03-03/amazon-merchant-kicked-off-website-

The disparity underscores that even formally available mechanisms may function as deterrents in practice, especially in low-literacy or resource-constrained environments like EdTech's rural user base in India. In the post-pandemic landscape, where digital education is not a luxury but a norm, EdTech contracts must reflect values of inclusion, fairness, and accountability.

VI. CONCLUSION

India's EdTech revolution has unlocked unprecedented access to digital learning for millions of children, young adults, and their families. Yet, embedded within the fine print of many such platforms are dispute resolution clauses, particularly those mandating arbitration, that undermine the very principles of fairness, transparency, and informed consent that are essential to a trustworthy digital education ecosystem.

This article has demonstrated that the current architecture of arbitration clauses in Indian EdTech contracts suffers from a structural trust deficit. When such clauses are imposed on minors and young adult users with limited legal literacy and constrained agency, they risk rendering dispute mechanisms meaningless. These provisions are seldom explained, rarely localized, and rarely accompanied by meaningful alternatives, despite effectively waiving access to fundamental legal rights. Compounding the issue is the inadequacy of the existing regulatory framework, including the Digital Personal Data Protection Act (DPDP), which lacks both the clarity and enforcement mechanisms needed to ensure that such clauses meet even minimal thresholds of fairness.

The need for reform is both urgent and achievable. Contract design can no longer remain the exclusive responsibility of legal compliance teams. Instead, it must emerge as an interdisciplinary effort, drawing on legal, technical, and ethical expertise. Guardian-first consent interfaces, layered and simplified clause language, opt-out rights, and independent third-party audits are not utopian aspirations; they are globally accepted best practices already implemented in several jurisdictions. A comparable shift in India would not only align with constitutional principles and consumer protection mandates but also elevate the credibility and global reputation of Indian EdTech providers.

Ultimately, arbitration is not the enemy. Poor drafting is. In a sector committed to educating future digital citizens, the law must go beyond mere enforcement of agreements; it must educate and empower. Trust, transparency, and fairness should not be afterthoughts—they must be foundational design principles, deliberately embedded into the fine print.

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 [ISSN 2581-5369]

Drafting for trust is not only a legal imperative, but it is a moral responsibility in a digital education ecosystem that increasingly defines access, opportunity, and autonomy for the next generation of learners. If the EdTech industry aims to educate responsibly, it must also contract responsibly. Arbitration, when fair, accessible, and meaningfully consented to, can serve as a tool for empowerment. But without reform, it risks becoming a barrier to justice for the very users it claims to serve.

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 [ISSN 2581-5369]