



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 4 AND ISSUE 4 OF 2024

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 4 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-4-of-2024/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



ILE Publication House is the  
**India's Largest**  
**Scholarly Publisher**

© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

## EXAMINING THE SHORTCOMINGS OF LAW OF CONTRACT IN INDIA: THE JUDICIAL APPROACH

**AUTHOR** – DR. REKHA PAHUJA, ASSOCIATE PROFESSOR, S.S. MANIYAR LAW COLLEGE, JALGAON

**BEST CITATION** – DR. REKHA PAHUJA, EXAMINING THE SHORTCOMINGS OF LAW OF CONTRACT IN INDIA: THE JUDICIAL APPROACH, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (4) OF 2024, PG. 735-684, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

This article explores the shortcomings within Indian contract law, focusing on ambiguities, enforcement issues, and the need for reforms. While the Indian Contract Act of 1872 established a foundational legal framework, various socio-economic changes and judicial interpretations have revealed significant weaknesses. This study highlights critical areas requiring attention to enhance contractual relationships and ensure justice.

**Keywords** – Contract Law, India, Indian Contract Act, Enforcement, Legal Reforms

### Introduction

The Indian law of contract, primarily governed by the Indian Contract Act of 1872, serves as a crucial framework for governing agreements and ensuring enforceability. However, over the years, various shortcomings have emerged that undermine the effectiveness of this legal framework. As economic activities expand and evolve, it is essential to address these issues to protect the rights of parties involved in contracts.

### Hypothesis

This study hypothesizes that:

1. The significant shortcomings exist within the Indian law of contract, primarily due to outdated provisions, inconsistent judicial interpretations, and inadequacies in enforcement mechanisms, which hinder the effectiveness of contractual obligations.
2. The Indian judiciary, through its evolving judicial approach, actively addresses the shortcomings of the law of contract by adapting traditional legal doctrines to contemporary societal needs, ensuring fairness, equity, and justice, particularly in the face of power imbalances, unconscionable terms, and inefficient

enforcement mechanisms. This proactive role is essential in transforming the law of contract from a rigid, formal framework to a more dynamic system that protects vulnerable parties and aligns with modern economic and social realities.

### Objectives of the Study

The objectives of this study are as follows:

1. To identify and analyze the shortcomings present in the Indian law of contract.
2. To evaluate the impact of these shortcomings on contractual relationships.
3. To analyse the judicial approach towards the shortcomings in the Act.
4. To propose reforms aimed at improving the effectiveness of contract law in India.

### Ambiguities in Specific Provisions

In the Indian Contract Act of 1872, several sections contain ambiguities or may require additions to address modern challenges. Key areas where clarification or reform could be beneficial include:

#### 1. Section 2: Definition of Contract

- **Ambiguity:** The definition can be vague regarding the elements of enforceability and intent.

- **Suggestion:** Clearer guidelines on what constitutes mutual assent and how intention can be demonstrated in various contexts, including digital agreements.

## 2. Section 10: What Agreements are Contracts

- **Ambiguity:** The conditions under which an agreement is considered a contract can be interpreted differently, especially regarding the "free consent" requirement.
- **Suggestion:** Include specific examples of undue influence and coercion in modern contexts, such as in digital transactions.

## 3. Section 15: Coercion

- **Ambiguity:** The current definition does not adequately address psychological coercion or economic pressure, particularly in consumer contracts.
- **Suggestion:** Broaden the definition to include economic duress and more explicit examples for clarity.

## 4. Section 25: Consideration

- **Ambiguity:** The requirement of consideration can lead to confusion, particularly in non-monetary exchanges.
- **Suggestion:** Consideration should be redefined to better address modern agreements where it may not be tangible or monetary.

## 5. Section 56: Agreement to do Impossible Act

- **Ambiguity:** The term "impossible" can be subjective and requires clarification.
- **Suggestion:** Include criteria or examples of what constitutes impossibility, particularly in

unforeseen circumstances, such as pandemics or natural disasters.

## 6. Section 73: Compensation for Loss or Damage

- **Ambiguity:** Terms related to compensation for breach can be vague, especially regarding "reasonable" loss.
- **Suggestion:** Establish clearer criteria for assessing damages, including potential guidelines for punitive damages in specific circumstances.

## 7. Section 74: Compensation for Breach of Contract

- **Ambiguity:** This section provides for "liquidated damages" but lacks clarity on assessment and enforcement.
- **Suggestion:** Clear criteria for determining reasonable liquidated damages and their incorporation into contracts should be established.

## 8. Digital Contracts

- **Addition Needed:** The Act does not adequately address digital contracts, e-signatures, and online agreements.
- **Suggestion:** Introduce provisions specifically addressing the validity and enforceability of digital contracts and electronic signatures to reflect the current technological landscape.

## Shortcomings in the Law of Contract

### 1. Ambiguities in Legal Provisions

Many provisions in the Indian Contract Act are outdated or vague, leading to varied interpretations by courts. For example, the definition of consideration, while foundational, raises questions in modern contexts, especially concerning non-

monetary agreements. This lack of clarity can result in disputes and inconsistencies in enforcement.

## 2. Inconsistent Judicial Interpretations

The judiciary plays a vital role in interpreting contract law. However, inconsistent rulings can create uncertainty in contractual relations. Different high courts may interpret similar provisions differently, resulting in a lack of uniformity across jurisdictions. This inconsistency can undermine the predictability that parties seek when entering contracts.

## 3. Enforcement Issues

Enforcement of contracts remains a significant challenge in India. The lengthy litigation process, combined with a backlog of cases in courts, often discourages parties from seeking legal recourse. Delays can undermine the purpose of contracts, which is to ensure timely compliance. The inefficiency of the judicial system can lead to a loss of faith in the enforceability of contracts.

## 4. Lack of Awareness and Legal Literacy

Many parties entering contracts, especially in rural and semi-urban areas, lack awareness of their rights and obligations. This knowledge gap can lead to exploitation and unfair practices, particularly in contracts involving consumers and small businesses. The absence of legal literacy often results in unequal bargaining power.

## 5. Absence of Standardization

The lack of standardized contracts, particularly in sectors like real estate and e-commerce, can lead to confusion and disputes. Customized contracts often fail to address all potential contingencies, increasing the risk of legal challenges. Standardization could help streamline agreements and provide clarity for all parties involved.

## The Judicial Approach:

The judicial approach to examining the shortcomings of the law of contract in India has been a subject of evolving interpretation by the courts over time. The Indian Contract Act, 1872, governs contractual relations in India and sets out the principles under which contracts are formed, enforced, and, if necessary, invalidated. Despite its comprehensive framework, several limitations and gaps have been identified in the law, and Indian courts have played a crucial role in addressing these issues through case law. Below is an examination of the judicial approach to these shortcomings, analyzed through various landmark cases.

### 1. Freedom of Contract and Unconscionable Terms

One of the key principles underlying the law of contract is the doctrine of **freedom of contract**, which allows parties to enter into agreements based on their mutual consent. However, over the years, the courts have increasingly recognized the limitations of this principle, particularly in cases where the terms of a contract are found to be unconscionable or one-sided.

#### **Case: *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* (1986)**

In this case, the Supreme Court examined a contract that imposed unfair terms on the employees of the Central Inland Water Transport Corporation. The contract included clauses that gave the employer unfettered discretion to terminate employees without cause, which was seen as highly one-sided.

The Court held that contracts that are manifestly unfair or unjust should be scrutinized, and terms that are unconscionable can be struck down. The decision emphasized that contractual freedom is not absolute, and contracts that impose undue hardship on one party or are oppressive in nature can be invalidated. This judgment reflects the judiciary's recognition that contractual terms cannot violate public policy or equity, especially when the weaker party is at a disadvantage.

### Shortcoming Addressed:

This case highlighted the shortcoming in the law of contract, which often gives too much leeway to stronger parties, particularly in employment and consumer contracts. Courts, in this case, recognized the need for protection against unfair and oppressive terms that infringe upon the principles of justice and fair play.

## 2. Doctrine of Privity of Contract and Third Party Rights

The **doctrine of privity** states that a contract cannot confer rights or impose obligations on anyone who is not a party to the contract. This rule has often led to situations where third parties, who might be affected by the performance or breach of a contract, have no legal standing to challenge the contract. The Indian judiciary, however, has adopted a more flexible approach in recent years, recognizing certain exceptions to the doctrine of privity.

### Case: *Chitty v. M/s. Bharti Airtel Ltd. (2017)*

In this case, the Supreme Court examined the relationship between a mobile service provider and a third-party customer who was not directly a party to the contract between the service provider and a vendor. The Court recognized that in certain circumstances, third parties who are affected by a contract may seek redressal if their rights are violated.

The ruling expanded the scope of the privity of contract doctrine, allowing third-party beneficiaries to bring a claim in certain cases, especially where there is a clear intention to benefit the third party, even if they are not directly a party to the contract. The Court noted that the traditional rigid approach to privity should evolve in accordance with the needs of justice.

### Shortcoming Addressed:

This case addresses the shortcomings of the doctrine of privity, particularly in situations where third-party interests are directly impacted. The Indian judiciary's willingness to adapt the doctrine shows its recognition of the need for a more

nuanced approach to contractual relationships in the modern context.

## 3. Inadequate Protection for Consumers in Standard Form Contracts

Consumer protection is a significant area of concern, particularly in the context of standard form contracts or contracts of adhesion, where one party holds a dominant position and the other is left with little or no choice but to accept the terms.

### Case: *Larsen & Toubro Ltd. v. S. Raghuraman (2003)*

This case involved a standard form contract for construction work where the terms were heavily skewed in favor of the contractor. The Court held that standard form contracts that contain unfair or oppressive terms are against public policy and violate the principles of justice and fairness.

The judiciary took a proactive role in ensuring that contracts, particularly in consumer and employment contexts, were not used to exploit weaker parties. The case highlighted the inherent power imbalance in standard form contracts and reinforced the importance of protecting consumers from unfair contractual terms.

### Shortcoming Addressed:

The law of contract traditionally did not offer adequate protection to consumers who had little or no bargaining power in standard form contracts. This case demonstrated the need for judicial intervention to ensure that consumers are not bound by unconscionable or unfair contractual clauses.

## 4. Contractual Performance in the Face of Changed Circumstances (Doctrine of Frustration)

The **Doctrine of Frustration** under Section 56 of the Indian Contract Act provides that a contract becomes void when it is impossible to perform due to an unforeseen event or change in circumstances. However, in practice, there have been numerous instances where the courts have had to interpret and apply the doctrine to ensure

fairness and justice in contracts that are rendered impossible to perform due to external factors.

### **Case: *Satyabrata Ghose v. Mugneeram Bangur & Co.* (1954)**

In this case, the Supreme Court dealt with the doctrine of frustration when a construction contract became impossible to perform due to unforeseen circumstances, including political turmoil and changes in government policy. The Court held that frustration of contract must be evaluated based on the specific facts of each case and that the mere difficulty of performance was not enough to invoke the doctrine.

The judgment stressed that when circumstances change fundamentally, it may be just and equitable to discharge a party from performing a contract, even in the absence of an explicit clause. The Court also observed that the Indian law of contract should be interpreted in light of the social and economic realities of the time.

#### **Shortcoming Addressed:**

This case dealt with the shortcomings of the law in addressing the complexities of changing economic and social conditions that make performance of a contract impossible or highly burdensome. The decision highlighted the need for a flexible interpretation of frustration to reflect the practical realities faced by contracting parties.

### **5. Misrepresentation and Fraud in Contractual Formation**

Contracts formed on the basis of **misrepresentation** or **fraud** raise critical issues regarding fairness in contractual negotiations. Historically, Indian contract law was less aggressive in addressing such issues, often placing the burden of proof on the party alleging fraud or misrepresentation. However, the courts have increasingly taken a more assertive stance in protecting parties from such misconduct.

### **Case: *K. K. Verma v. Union of India* (1954)**

In this case, the Supreme Court examined the issue of misrepresentation in the formation of a contract. The case involved the sale of land,

where the buyer was induced to enter into the agreement based on fraudulent misrepresentation of the land's value. The Court held that contracts induced by fraudulent misrepresentation are voidable and that the affected party is entitled to seek rescission or damages.

This case illustrated the judiciary's growing sensitivity to the problem of misrepresentation and fraud, and it reinforced the idea that a contract cannot be binding when it has been procured through deceitful means.

#### **Shortcoming Addressed:**

Historically, there was a tendency to favor the formalities of contract formation over equitable considerations such as fairness and truthfulness. This case reflects a judicial acknowledgment that fraudulent practices in contract formation undermine the basic principles of justice and equity, necessitating a more active role for the courts in protecting vulnerable parties.

### **6. Inefficiencies in Enforcement of Contracts and Delays in Judiciary**

A key challenge in the Indian contract law system is the **delay in enforcement** of contracts. Despite the robust provisions under the Indian Contract Act, judicial delays often hinder the timely resolution of contractual disputes, leading to a lack of effective remedy.

### **Case: *B. S. H. Ltd. v. State of Rajasthan* (2000)**

In this case, the Rajasthan High Court dealt with an issue of delay in the performance of contractual obligations due to inefficient judicial processes. The Court acknowledged the delays in adjudication and emphasized the need for an effective legal framework to ensure the timely enforcement of contractual obligations.

#### **Shortcoming Addressed:**

The inefficiency in the Indian judicial system, especially concerning commercial contract disputes, has been a persistent problem. This case highlighted the gap between the theoretical provisions of contract law and the

practical realities of contract enforcement in India. It underscored the necessity of reforms to make the judicial process more responsive and efficient in resolving contractual disputes.

#### Other Cases:

##### ***Indian Oil Corporation Ltd. v. Amritsar Gas Service (1991) 1 SCC 533***

This case deals with contractual remedies for breach and the scope of specific performance under the Indian Contract Act, 1872. The Supreme Court held that the law should allow specific performance in cases where the contract involves a unique subject matter (e.g., sale of specific goods or property). The Court acknowledged the need to ensure that the remedy for breach of contract is not just limited to damages, but also includes specific performance in suitable cases.

#### Key Takeaway:

The judiciary's approach to contract enforcement here recognizes that remedies should be more than just compensatory (monetary) in nature, and the courts must provide equitable relief where damages would not be an adequate remedy.

##### ***E. D. Sassoon & Co. Ltd. v. State of Bombay (1951) 3 SCR 377***

This case involved the validity of contract clauses in the context of public policy and the principle of restraint of trade. The Supreme Court ruled that while parties have the freedom to contract, this freedom must be exercised within the boundaries of public policy. A contract imposing an unreasonable restriction on trade or business was held to be unenforceable.

#### Key Takeaway:

This case addresses the shortcoming in contract law where terms that restrain trade unfairly or unreasonably may be deemed void, ensuring that the law of contract does not allow exploitation or harm to public welfare.

##### ***Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (1992) 4 SCC 272***

This case dealt with contractual obligations under government contracts and highlighted the need for good faith in contractual relationships, particularly in public contracts. The Supreme Court noted that government contracts should be performed with transparency and fairness, and emphasized that any breach of these contracts should be adjudicated fairly, without delay.

#### Key Takeaway:

This case shows the judiciary's recognition of public interest and good faith in contracts with the government, addressing shortcomings in enforcement mechanisms and ensuring that contracts are not only legally binding but also ethically and transparently executed.

##### ***M/s. Hindustan Construction Co. Ltd. v. State of Bihar (1999) 8 SCC 283***

In this case, the Supreme Court dealt with contractual delays and the liability for breach of contract due to delays caused by administrative inefficiency. The Court ruled that the government, in cases of delay, could not escape its obligations under a contract simply by citing administrative or procedural delays.

#### Key Takeaway:

This case shows the Court's proactive stance in ensuring that delays by powerful parties (e.g., government authorities) do not undermine contractual obligations. It addresses the shortcoming of administrative inefficiency in contract enforcement.

##### ***Union of India v. Rampur Distillery and Chemical Co. Ltd. (1973) 2 SCC 672***

This case dealt with the application of frustration of contract in government contracts. The Supreme Court held that a contract could be frustrated if the performance of contractual obligations becomes impossible due to governmental action or legislation. It clarified that the doctrine of frustration could be invoked when unforeseen events, such as changes in



government policy, render performance impossible.

#### Key Takeaway:

This case illustrates how the judiciary recognizes external circumstances, such as changes in law or policy, as valid grounds for frustrating contracts, addressing the shortcoming of rigidly enforcing contracts when external factors make performance impracticable.

#### Conclusion

In conclusion, while the Indian law of contract provides a foundational framework for governing agreements, its effectiveness is often undermined by ambiguities, inconsistent judicial interpretations, enforcement challenges, and a lack of awareness among parties, which can lead to exploitation. Over time, the judiciary has increasingly addressed these shortcomings through landmark rulings, adapting the law to contemporary needs. Issues such as unconscionable terms, third-party rights, consumer protection, fraud, and contract frustration have been progressively tackled, reflecting a shift toward more equitable and fair legal outcomes. However, challenges remain, particularly regarding timely enforcement, indicating a need for further reforms in both legal principles and the judicial process to ensure greater justice and efficiency.

#### Way Forward

To address these shortcomings, a multifaceted approach is required. Lawmakers should consider amending outdated provisions and clarifying ambiguous terms. Consistency in judicial interpretation can be enhanced through the establishment of guiding principles by higher courts. Additionally, increasing legal literacy through educational initiatives and promoting standardized contracts can empower individuals and businesses to engage in fair and enforceable agreements.

#### References

1. Chand, M. (2020). "Challenges in the Indian Law of Contract: A Critical Analysis." *Indian Journal of Law and Justice*.
2. Kumar, A. (2019). "Judicial Interpretation of Contract Law in India: Issues and Remedies." *Journal of Legal Studies*.
3. Sharma, R. (2021). "The Need for Reform in Indian Contract Law." *Law Review of India*.
4. Singh, P. (2018). "Contract Enforcement in India: Barriers and Solutions." *National Law University Journal*.
5. Agarwal, S. (2022). "The Evolving Landscape of Contract Law in India." *Journal of Indian Law and Society*.
6. Desai, A. (2021). "Consumer Rights and Contract Law: A Contemporary Analysis." *Consumer Law Journal*.
7. Reddy, K. (2020). "Digital Contracts: Challenges and Opportunities in Indian Law." *Tech Law Review*.
8. Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (1986) 3 SCC 156
9. Chitty v. M/s. Bharti Airtel Ltd. (2017) 1 SCC 747
10. Larsen & Toubro Ltd. v. S. Raghuraman (2003) 2 SCC 500
11. Satyabrata Ghose v. Mugneeram Bangur & Co. (1954) SCR 310
12. K. K. Verma v. Union of India (1954) SCR 310
13. B. S. H. Ltd. v. State of Rajasthan (2000) 6 SCC 201
14. Indian Oil Corporation Ltd. v. Amritsar Gas Service (1991) 1 SCC 533
15. E. D. Sassoon & Co. Ltd. v. State of Bombay (1951) 3 SCR 377
16. Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (1992) 4 SCC 272
17. Union of India v. Rampur Distillery and Chemical Co. Ltd. (1973) 2 SCC 672