



Research Article

FROM BIRTH TO DEATH: IS EVERY HUMAN BOUND BY CONTRACTS?

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ABSTRACT

Modern life is shaped by numerous contractual relationships, but not every legal obligation is contractual. This article examines the relationship between contractual autonomy and legal limits on private agreement, with primary focus on Indian law. It distinguishes contracts under the Indian Contract Act, 1872 from status-based obligations, regulatory duties and digital terms of service. Henry Maine's movement from status to contract provides the jurisprudential starting point, while selected discussions of Kant, Mill, Nozick and Rawls frame the autonomy question. The doctrinal analysis focuses on Section 23 of the Indian Contract Act, the Specific Relief Act, 1963 after its 2018 amendment, and constitutional protections concerning liberty, dignity and forced labour. The article also examines unconscionable contractual terms through *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* and *LIC of India v. Consumer Education & Research Centre*. Comparative references to the United Kingdom, United States, European human-rights law and ILO standards are used to clarify the limits of private agreement. The article concludes that freedom of contract is substantial but bounded: private agreement cannot legitimise slavery, forced labour or other conduct prohibited by mandatory law, while claims concerning waiver of fundamental rights require contextual analysis rather than an absolute rule.

INTRODUCTION

Modern individuals operate within a network of legal relationships. They enter leases, employment agreements, consumer transactions and digital terms of service, while also being subject to duties created independently of contract, such as taxation, criminal law and constitutional regulation. The central question is therefore narrower than whether every social obligation is a contract: to what extent can contractual freedom coexist with legal rules that protect personal liberty and dignity?

Philosophers from Hobbes to Rawls have used the language of a “social contract”, but that concept is primarily political and philosophical rather than a contract in the technical sense of the Indian Contract Act, 1872. In strict legal terms, a contract is an agreement enforceable by law. This article therefore distinguishes legal contracts from broader socio-legal arrangements, including status-based obligations, regulatory duties and digital platform terms.

The article advances a qualified thesis. Modern life contains extensive contractual relationships, but not every binding obligation is contractual. At the same time, contractual freedom is subject to statutory limits, public policy and established constitutional principles. The strongest legal case is not that every fundamental right is categorically non-waivable in every setting, but that private agreement cannot validly create slavery, forced labour or other forms of legally prohibited personal subjugation, and that certain unfair or unconscionable terms may be denied enforcement.

The discussion proceeds in seven parts. Part I distinguishes legal contracts from broader binding relationships. Part II examines Maine and selected philosophical accounts of status, autonomy and contract. Part III is the principal doctrinal section and analyses Indian contract law, the Specific Relief Act and relevant constitutional protections. Part IV provides a limited comparative perspective. Part V considers digital terms of service and empirical evidence on privacy policies. Part VI addresses economic dependence and exploitative contracting. Part VII considers autonomy and the limits of contractual freedom before drawing a qualified conclusion.

METHODOLOGY

The article is primarily doctrinal. It analyses Indian statutory and constitutional materials and selected judicial decisions, using comparative materials only to illuminate the treatment of slavery, forced labour and personal-service obligations. Empirical statements about digital privacy are limited to identified survey evidence and are not presented as representative of India.

What is a “Contract”? Definition in Law and Society

Section 2(h) of the Indian Contract Act, 1872 defines a contract as an agreement enforceable by law, while Section 2(e) defines an agreement. Contractual validity is subject to the Act's requirements, including lawful consideration and object. Section 23 provides that consideration or object is unlawful where, among other things, it is forbidden by law, defeats the provisions of law, involves injury to person or property, or is regarded by the Court as immoral or opposed to public policy. The section therefore supplies an important statutory control, but it should not be treated as a general licence to invalidate every agreement regarded as unfair; the doctrine of public policy operates within established legal principles and precedent.¹

In a socio-legal sense, many ordinary activities involve contracts: property transactions, utilities, employment, insurance and online services commonly operate through contractual arrangements. Electronic transactions may also satisfy ordinary principles of contract formation. The digital environment is especially relevant because users routinely encounter standard-form terms and privacy policies. Empirical evidence should, however, be stated with its source and jurisdictional limits. A 2019 Pew Research Center survey of 4,272 U.S. adults found that 97% had been asked to agree to a company's privacy policy, while only 9% said they always read such policies before agreeing and 13% said they often did so.²

Not all binding obligations are contractual. Nationality, parental responsibility, criminal prohibitions, taxation and other regulatory duties may arise by operation of law rather than by negotiated consent. The political idea of a social contract may provide an analogy for citizen-state relations, but it does not convert constitutional or statutory duties into private contracts.

The analytical question is therefore twofold: first, how pervasive are actual contractual relationships in modern life; and second, what legal limits apply when a private agreement purports to restrict personal liberty or other legally protected interests? Keeping these questions separate avoids treating every binding rule as a contract.

Status vs. Contract: Historical Jurisprudence

Henry Sumner Maine famously described a movement “from status to contract.” In *Ancient Law* (1861), he used the contrast to describe the historical shift from relationships determined principally by inherited status toward relationships increasingly structured by voluntary agreement. The thesis is important here not as a claim that modern society has eliminated status, but as a framework for examining the coexistence of status-based regulation and contractual choice.³

Locke's account of natural rights and political consent places limits on the idea that an individual may voluntarily surrender all freedom. Rousseau similarly treats political legitimacy as connected with collective self-government. These theories are not themselves rules of contract law, but they illuminate the normative tension between consent and the protection of basic liberty.

Kant provides a stronger philosophical account of inalienable agency. His conception of human beings as ends in themselves challenges the idea that a person could validly transform himself or herself into the property of another. The argument is philosophical rather than a direct statement of modern positive law, but it helps explain why legal systems distinguish ordinary contractual commitments from arrangements amounting to personal domination.⁴

Mill's defence of individual liberty also recognises that contractual choice is not necessarily unlimited. His work is relevant to the present inquiry because it raises the question whether an exercise of present autonomy can permanently destroy the individual's future capacity for self-direction.⁵

Nozick presents the strongest autonomy-based counterpoint. His discussion of voluntary slavery tests the limits of self-ownership and freedom of contract. The value of the example is analytical: it exposes the difference between a theory under which consent is sufficient and legal systems in which certain interests are treated as outside ordinary market exchange.⁶

Rawls approaches the problem from justice as fairness. His framework places basic liberties within the structure of a just society rather than treating them as ordinary commodities. The philosophical debate therefore establishes the article's central tension: contractual autonomy is valuable, but legal systems may reserve some interests from private alienation.⁷

Maine's thesis consequently requires qualification in the twenty-first century. Contract has expanded into employment, consumer and digital relationships, but status and regulation remain important. The modern problem is less a simple movement from status to contract than the interaction between contractual choice, mandatory legal rules and institutional power.

Indian Law: Doctrines of Contract and Liberty

In India, freedom of contract operates within statutory and judicial limits. The Indian Contract Act, 1872 supplies the general framework, while constitutional provisions and other legislation constrain agreements that conflict with mandatory law or established public policy. The analysis below focuses on three questions: the operation of Section 23, the limited enforceability of personal-service obligations, and the relationship between private contracts and constitutional protections.

Section 23 of the Indian Contract Act renders the consideration or object of an agreement unlawful in specified circumstances, including where it is forbidden by law, defeats a law, involves injury, or is immoral or opposed to public policy. The doctrine of public policy is not unlimited. In *Gherulal Parakh v. Mahadeodas Maiya*, AIR 1959 SC 781, the Supreme Court explained the established and cautious approach to public policy. Later decisions, including *Central Inland Water Transport Corporation Ltd. v.*

Brojo Nath Ganguly, (1986) 3 SCC 156, have recognised that an unfair or unconscionable term in a contract may, in an appropriate context, be invalidated as opposed to public policy, particularly where bargaining power is substantially unequal.⁸

Sections 27 and 28 address restraints on trade and legal proceedings respectively. They should not be presented as general prohibitions on every long-term agreement. A separate question concerns personal service: the law generally does not permit a court to specifically enforce a contract requiring continuing personal performance. The precise statutory position is now governed by the Specific Relief Act as amended in 2018.⁹

Section 14 of the Specific Relief Act, 1963, as substituted with effect from 1 October 2018, identifies contracts that cannot be specifically enforced, including a contract whose performance involves a continuous duty that the court cannot supervise, a contract dependent on the personal qualifications of the parties where material terms cannot be enforced, and a contract that is determinable. Section 10, as amended, makes specific performance subject to Section 14 and other statutory conditions. The older formulation should therefore be avoided. The Supreme Court's decision in *Jitendranath Biswas v. Empire of India and Ceylone Tea Co.*, AIR 1990 SC 255, remains relevant to the non-specific enforceability of personal-service employment, but the statutory provisions should be cited in their current form.¹⁰

The Constitution provides important limits on state power and expresses values that inform the legal treatment of dignity and exploitation. These provisions should not, however, be described as automatically transforming every private contract into a constitutional dispute. The relationship between constitutional rights and private contracts depends on the particular right, the parties, the statutory framework and the nature of the challenged term.¹¹

Article 21 protects life and personal liberty against deprivation except according to procedure established by law. In *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, the Supreme Court recognised privacy as a constitutionally protected interest linked to dignity and liberty. These principles support scrutiny of state action and inform statutory interpretation, but they do not establish that every private contractual term affecting privacy or autonomy is automatically void.¹²

Article 23 prohibits traffic in human beings and begar and other similar forms of forced labour. Read with legislation such as the Bonded Labour System (Abolition) Act, 1976, it provides a strong legal basis for rejecting arrangements that amount to bonded or forced labour. A private agreement cannot validate conduct that the Constitution or statute prohibits.^{11,13}

Article 19 protects specified freedoms subject to constitutional restrictions. It is too broad to state that a private contract can never affect the exercise of a fundamental right. Rather, the enforceability of a contractual restriction must be assessed under the relevant constitutional doctrine, statutory provisions and ordinary contract law. Indian law does not generally recognise a private agreement as a means of contracting out of mandatory legal protections.

Several decisions illustrate the need for a contextual approach. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, emphasised the constitutional protection of personal liberty against arbitrary deprivation. *Central Inland Water Transport*, (1986) 3 SCC 156, addressed unconscionable contractual terms in an employment setting and treated a term that was unfair and unreasonable in the circumstances as capable of offending public policy. *LIC v. Consumer Education & Research Centre*, (1995) 5 SCC 482, further illustrates judicial concern with unfairness and public-law values in contracts involving a public element. These authorities support a qualified proposition: some contractual terms may be unenforceable because of legislation, public policy, unequal bargaining power or the public character of the relationship; they do not establish an unlimited rule that every fundamental right is incapable of waiver in every context.^{14,15,16}

Indian law therefore recognises both contractual and non-contractual sources of legal obligation. The strongest conclusion is not that every person is legally “bound by contracts” at all times, but that modern life combines private agreements with mandatory public law. Contractual autonomy is substantial, yet it operates within statutory limits and cannot be used to legitimise forced labour, prohibited restraints or other arrangements that the law treats as void or unenforceable.

COMPARATIVE PERSPECTIVES

United Kingdom: *Somerset v. Stewart* (1772) is historically significant in the development of English law concerning slavery, while later legislation and human-rights instruments provide the modern framework. Article 4 of the European Convention on Human Rights prohibits slavery and servitude and forced or compulsory labour, subject to the Convention's defined exceptions. English law also generally refuses specific performance of contracts requiring personal service, reflecting the difficulty of compelling continuous personal performance.¹⁷

United States: The Thirteenth Amendment abolished slavery and involuntary servitude, except as punishment for crime. *Bailey v. Alabama*, 219 U.S. 219 (1911), is an important illustration of the constitutional prohibition on peonage. The comparison is useful because it demonstrates a constitutional limit on private or state-created arrangements that effectively impose involuntary servitude, rather than proving that all long-term employment contracts are legally equivalent to servitude.¹⁸

European Union / Council of Europe: Article 5 of the EU Charter of Fundamental Rights prohibits slavery and servitude and forced or compulsory labour. Article 4 of the European Convention on Human Rights contains a parallel prohibition. These instruments provide useful comparative evidence that certain forms of personal domination are treated as outside ordinary contractual choice.^{19,20}

ILO and international norms: ILO Convention No. 29 (1930) defines forced labour by reference to work or service exacted under the menace of a penalty and without voluntary offer, subject to the Convention's terms and exceptions. ILO Convention No. 105 (1957) addresses the abolition of forced labour in specified circumstances. These instruments reinforce the distinction between ordinary employment and legally prohibited forced labour.^{21,22}

Comparative law therefore supports a narrower proposition than the original draft: legal systems place strong limits on slavery, servitude and forced labour, while the enforceability of ordinary personal-service contracts is governed by distinct domestic rules.

The comparison shows that consent is important but not always decisive. The legal treatment of a particular agreement depends on its subject matter, the bargaining relationship, applicable legislation and public policy. It is therefore more accurate to say that some interests cannot be validly alienated through private agreement than to assert that all fundamental rights are universally non-waivable in every context.

Table 1: Comparative treatment of forced labour and personal-service contracts

Jurisdiction	Slavery / Forced Labour	Personal-Service Contracts
India	Article 23 prohibits trafficking, begar and other similar forms of forced labour.	Specific performance is limited by the current Section 14 of the Specific Relief Act.
United Kingdom	ECHR Article 4 prohibits slavery, servitude and forced labour, subject to its defined exceptions.	Specific performance of personal service is generally unavailable; remedies are ordinarily non-specific.
United States	Thirteenth Amendment prohibits slavery and involuntary servitude, subject to the constitutional exception.	Personal-service enforcement is generally constrained by common-law equitable principles.
EU / Council of Europe	EU Charter Article 5 and ECHR Article 4 prohibit slavery, servitude and forced labour.	Domestic law governs enforcement; human-rights norms limit arrangements amounting to servitude.

The Digital Age: Invisible Contracts Everywhere

Digital services have increased the frequency with which individuals encounter standard-form contractual terms. Online accounts, applications and social-media services commonly use terms of service and privacy policies. This is an important contemporary example of contractual governance, but the existence of a clickwrap mechanism does not by itself establish that every term is enforceable.

Whether digital terms are binding depends on ordinary requirements of notice, assent, applicable statute and the substance of the term. Standard-form contracting also raises questions of information asymmetry and bargaining power. The empirical point should be kept distinct from the doctrinal one: a high frequency of acceptance does not itself prove legal validity of every clause.

Automated systems and platform rules may regulate behaviour without resembling negotiated contracts. Examples such as algorithmic decisions, automated penalties or data-driven restrictions should therefore be described as regulatory or contractual mechanisms according to their legal basis, rather than uniformly labelled as contracts.

The digital context thus supports a more modest conclusion. It demonstrates how contractual terms can become pervasive in everyday life, but it does not eliminate the distinction between contract and mandatory law. Even a person who avoids most commercial agreements remains subject to public law and social institutions that do not depend on private consent.

SOCIOLOGICAL AND ECONOMIC CONTEXT

Socio-economic conditions can affect the practical meaning of contractual consent. Debt bondage, coercive labour and exploitative employment arrangements demonstrate that formal agreement may coexist with severe constraints on meaningful choice. Claims about the scale of modern slavery or forced labour should be supported by current, clearly identified empirical sources; the present article therefore uses such evidence only as contextual support rather than as a comprehensive empirical study.

Long-term employment arrangements, professional tenure and other continuing relationships are not equivalent to slavery merely because they last for many years. Their legal character depends on termination rights, statutory protections, working conditions and the parties' actual freedom of choice. The relevant issue is whether a particular arrangement crosses a legal boundary into coercion, forced labour or an otherwise unenforceable restraint.

Dependence also extends beyond contractual relationships. Individuals rely on infrastructure, public services and regulatory institutions. These dependencies illustrate why the article should distinguish contractual obligation from broader social and legal interdependence.

The socio-economic discussion therefore qualifies, rather than proves, the central thesis: modern life is structured by numerous agreements and rules, but the two categories should not be collapsed into one.

Counter-Arguments: Autonomy, Consent, and Freedom of Contract

An autonomy-based objection asks why a competent person should not be free to accept even highly onerous contractual terms. Freedom of contract is an important principle, and adults routinely accept waivers, confidentiality obligations and long-term commitments. The objection is strongest where the parties have comparable bargaining power and the term does not conflict with mandatory law.

The force of consent is weaker where it is affected by coercion, undue influence, fraud, severe information asymmetry or substantial inequality in bargaining power. Sections 15–19A of the Indian Contract Act provide statutory controls over several such situations. In addition, Central Inland Water Transport and related jurisprudence show that, in an appropriate setting, an unconscionable term may be denied enforcement. The conclusion should remain contextual rather than assuming that every unequal bargain is void.¹

Nor should the article state categorically that all fundamental rights can never be waived by private agreement. The law distinguishes between rights, statutory protections, procedural choices and contractual arrangements. Some rights may be subject to lawful limitations or informed choices in particular contexts, while protections against slavery, forced labour and other prohibited conduct cannot be privately contracted away. The relevant legal question is therefore whether the challenged term conflicts with a mandatory rule or an established public-policy principle.

Further difficulty concerns permanence. A purported perpetual personal-service arrangement raises distinct questions of termination, supervision and specific enforcement. The Specific Relief Act now expressly identifies categories of contracts that cannot be specifically enforced, which supports the conclusion that personal performance is not ordinarily treated like an ordinary transferable commodity.¹⁰ International human-rights instruments reinforce the prohibition of slavery, servitude and forced labour. These norms are especially relevant where an agreement purports to legitimise conduct that domestic law already prohibits. They should not, however, be used as a substitute for identifying the applicable domestic rule in a contract dispute.

Some long-term institutional arrangements, such as tenure or fixed-term professional appointments, may be lawful because they operate within statutory and institutional safeguards. Their existence demonstrates why duration alone is not the correct test. The relevant distinction is between lawful long-term commitment and a legally prohibited deprivation of liberty.

CONCLUSION

The analysis supports a qualified conclusion. Contractual freedom is a central feature of modern private law, but it is bounded by legislation, public policy and protections against coercion and prohibited exploitation. An agreement purporting to create slavery, forced labour or comparable personal subjugation cannot be treated as an ordinary exercise of freedom of contract. At the same time, not every long-term or onerous agreement is unlawful, and the non-waivability of fundamental rights should not be stated as an absolute proposition without identifying the particular right and legal context.

Modern individuals are therefore not “contract-free”, but neither are all legal obligations contractual. The more precise claim is that individuals move through a mixture of negotiated agreements, standard-form terms, legal statuses and mandatory public-law duties. This distinction improves both the jurisprudential analysis and the doctrinal accuracy of the article.

Policy implications should follow from this narrower conclusion. The law should preserve contractual autonomy while strengthening safeguards against coercive and unconscionable terms, particularly where bargaining power is seriously unequal.

First, lawmakers and courts may continue to clarify the circumstances in which mandatory rights and protections cannot be contracted away, rather than adopting an undifferentiated rule covering every fundamental right.

Second, consumer and digital-contract regulation should address terms that are unfair, misleading or inconsistent with mandatory law. Any proposal concerning access to courts, privacy or other protected interests should identify the specific statutory or constitutional basis for the restriction.

Third, enforcement against bonded and forced labour should remain a priority, with particular attention to arrangements in which debt, threats or dependency undermine genuine freedom of choice.

Fourth, the law may benefit from clearer treatment of purported lifetime personal-service arrangements, while preserving legitimate long-term employment and professional relationships that remain terminable and subject to labour and contract law.

Finally, digital contracting warrants a fairness-oriented approach that recognises the practical importance of standard-form terms without assuming that every clickwrap clause is enforceable. The 2019 Pew findings illustrate the information problem; they do not by themselves establish the legal validity or invalidity of any particular term.

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CONFLICT OF INTEREST

The author declares no conflict of interest.

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