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Dark Patterns and Free Consent in Digital Banking Contracts: A Doctrinal Analysis under the ICA, 1872

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Abstract

The creation of contracts in the digital world of banking is no longer done by way of negotiations but instantly through interactions with the digital interfaces. With the increasing trend of the standard form electronic contracts in the banking industry, there has been a growing apprehension about the presence of dark patterns which might subtly affect the decision-making process of the customers in entering into contracts, thus putting the existence of free consent under the ICA, 1872 into question. Bank services today are mainly offered through mobile banking apps, online banking sites and digital loaning interfaces where the customers enter into agreements with pre-drafted terms and conditions in order to avail banking services. In this paper, an analysis is conducted regarding whether or not consent obtained using dark patterns fulfills the requirement of free consent as per Sections 13 and 14 of the ICA, 1872. Using the doctrine research method, the study discusses the legal character of digital banking contracts, the legal principles of free consent and their implications on contracts involving misleading digital interfaces. The study also assesses the importance of recently undertaken regulatory initiatives by the Reserve Bank of India against dark patterns in digital banking. The paper asserts that while there exist principles of contract law of India which form the basis of disputing consent obtained by manipulative means, the failure to recognize the concept of dark patterns in statute law leads to uncertainty.

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1. INTRODUCTION

Banking contracts in India have been made increasingly on digital platforms as opposed to the use of conventional paper documents and face-to-face communications. Mobile banking, internet banking portals, and other forms of digital interfaces have now become the primary modes of contract-making between banks and their customers. The adoption of such technology has increased efficiency and helped in expanding access to financial services. However, at the same time, it has completely changed the mode of contract-making by replacing individual contracts with standard form electronic contracts, which are accepted by the customer through a single electronic act.[1] However, electronic acceptance alone is not enough to prove the legality of a contract. According to ICA 1872, a contract can only be legally enforceable if it is based on free consent, which is one of the most crucial conditions required for its validity. In online bankings, consumers' choices may be influenced by the design of their interface without resorting to coercion or any kind of misrepresentation. Dark patterns, i.e. misleading interface design, have thus increasingly come into regulatory and scholarly focus.[2] In spite of the increasing number of works devoted to dark patterns, their discussion still continues within the realms of consumer protection and digital

[1] *Reserve Bank of India, Annual Report 2024–25; Reserve Bank of India, Report of the Working Group on Digital Banking.*

[2] *Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023.*

governance. The implications that dark patterns can have for contract law, especially concerning digital banking, are not considered thoroughly enough. Indeed, digital banking contracts are normally made by banks alone and without any negotiations; thus, consumers do not have any leverage to bargain for more favorable conditions. That is why the legal consideration should go further than just proving the presence of electronic acceptance and should encompass the quality of the consent itself.[3] In view of the foregoing, this study seeks to revisit the law on free consent under the ICA, 1872 vis-a-vis the digital banking contracts. This study will examine whether the consent attained through the use of manipulative interface designs meets the requirements as provided for in Sections 13 and 14 of the Act and whether the existing contract laws are enough to ensure the protection of the principle of contractual autonomy in the evolving digital banking scenario.[4]

2. LITERATURE REVIEW

The scholarly work done on dark patterns has grown significantly in recent times especially in consumer protection, human computer interaction and digital governance. While previous works looked at dark patterns in terms of the behavioral aspect of manipulating interface design in order to manipulate user decision making, later works have explored their regulation issues in digital markets. The dominant literature agrees that dark patterns affect decision making in terms of exploiting cognitive bias and lack of transparency in digital transactions.[5] As far as India is concerned, the academic literature regarding this issue has grown substantially post the Guidelines for Prevention and Regulation of Dark Patterns, 2023 by the Central Consumer Protection Authority (CCPA). These studies discuss the said Guidelines in the context of consumer rights protection, unfair business practices, and regulation of online platforms. While it can be said that all these scholarly studies are aware of the regulatory relevance of dark patterns, however, they tend to address the problem in the context of consumer rights and not the legal validity of contracts.[6] A different line of research deals with the legal issues associated with electronic contracts and online banking. These papers cover such topics as the validity of click-through agreements and standard form contracts and electronic consent in relation to the ICA, 1872 and the Information Technology Act, 2000. Nonetheless, they all tend to assume that electronic consent is valid, while not paying enough attention to the issue of interface manipulation.[7] Thus, there is a clear gap in doctrinal research on the topic. Even though there have been ample studies dedicated to the issue of dark patterns from the standpoint of their regulatory nature and the impact on consumers, much less research has been conducted on how dark patterns affect the issue of free consent in digital banking agreements. At the same time, the issue of interaction between the concept of manipulation via digital interfaces and the requirements stipulated by Sections 13 and 14 of the ICA, 1872 is not well-researched. The current research aims to fill the identified gap.[8]

3. RATIONALE OF THE STUDY

The rise in digital banking applications has brought forth several issues with respect to the traditional doctrine of free consent in contract law. Even though the regulators in India have dealt with dark patterns through consumer protection and digital governance policies, there is a lack of emphasis on how these can impact contract law via the Indian Contract Act, 1872. In the absence of any clear doctrine of consent when obtaining consent via such manipulative interface design, the legality of digital banking contracts is questionable. This study seeks to determine whether the current doctrine of free consent as enshrined in Sections 13 & 14 of the ICA, 1872 can deal with manipulation induced by technology.[9]

4. THEORETICAL FRAMEWORK

The research has been based on the theory of contractual autonomy, where it has been established that contractual obligation is made legitimate by virtue of the freedom of will and consent of the parties involved. In the case of ICA, 1872, the theories of Consensus Ad Idem and Free Consent under Sections 13 and 14 of the Act form the backbone of the determination of contractual validity. These theories have been applied to the context of digital banking to establish the validity of the consent gained by virtue of the manipulation of the user interface, and whether such a process is a true voluntary act of contract.[10]

5. RESEARCH METHODOLOGY

This research will use a doctrinal legal research methodology and is largely based on an analysis of statutory laws, court judgments, regulatory documents, and academic writings concerning contract law and digital banking in India. The key document for analysis in this research is ICA, 1872 and especially its provisions regarding free consent. In addition, the study will analyze regulatory documents from RBI and CCPA concerning the conduct of digital banking and dark patterns. Secondary sources such as scholarly articles, legal commentaries and peer-reviewed journals have also been reviewed to determine the present legal position and research gap. The research is of a qualitative nature and confines its analysis to the Indian legal framework.

6. DISCUSSION

6.1. Digital Banking Contracts: Nature and Legal Framework

Rapid digitization in the realm of bank services has significantly revolutionized the contractual nature of

[3] *Information Technology Act, 2000, s. 10A; Reserve Bank of India, regulatory framework on digital banking and customer protection.*

[4] *See discussion in leading Indian contract law commentaries, including Avtar Singh, Law of Contract and Specific Relief (latest ed.).*

[5] *Vibhav Singh, Niraj Kumar Vishvakarma & Vinod Kumar, Unveiling Digital Manipulation and Persuasion in e-Commerce: A Systematic Literature Review of Dark Patterns and Digital Nudging, Journal of Internet Commerce (2024).*

[6] *Krishna Deo Singh Chauhan & Anupriya, Darker Patterns? AI-generated Persuasion and the Regulatory Void in Indian Law, Journal of Development Policy and Practice (2025); Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023.*

[7] *Information Technology Act, 2000, s. 10A; ICA, 1872; leading commentaries on electronic contracts and standard form contracts.*

[8] *ICA, 1872, ss. 13–14.*

[9] *ICA, 1872, ss.13–14;Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023.*

[10] *ICA, 1872, ss. 10, 13 & 14;Avtar Singh, Law of Contract and Specific Relief (latest ed.).*

interaction between banks and their customers. This is because, whereas traditionally banking transactions were undertaken through paper-based documentation and face-to-face interactions, modern banking contracts have now become increasingly prevalent through electronic means such as mobile banking, internet banking and other online banking channels. Contractual agreements with customers are normally made through an online registration process, acceptance of standardized terms and conditions and electronically consenting to such agreements.[11] Digital banking contracts are nothing but electronic contracts that are controlled by the basic provisions of the Indian Contract Act, 1872. The legality of such contracts comes into existence not due to the manner of communicating but due to the presence of basic requirements of a contract, that is, lawful offer and acceptance, lawful consideration, competent parties, lawful object, and free consent. The recognition of electronic records and electronic signatures under the IT Act 2000 has added strength to the enforceability of such contracts.[12] A feature that differentiates digital banking agreements from others is the fact that these are largely standard form agreements that are written only by the financial institution. The clients have no realistic chance of negotiating the terms of the contract and they have to accept the entire contract as it is. Even though these agreements are essential in today's banking business because of the speed and high number of digital transactions, these agreements tend to create a situation where there is an imbalance in negotiating powers between the bank and the client..[13] Consequently, the development of digital banking has led to the change in the legal perspective on consent as a criterion not only for the existence of it but also for the way consent is given. As financial operations in the banking sector tend to become more and more dependent on digital interfaces, issues related to transparency, making a well-informed choice and autonomy of the parties in respect to the contract become relevant in deciding on compliance with the criteria of the ICA, 1872.

6.2. *Formation of Digital Banking Contracts*

The creation of a digital banking contract is bound by similar basic elements of a contract as any regular contract despite the difference in modes of communication used in its creation. According to the Indian Contract Act of 1872, for a valid contract to exist, there must be a valid offer, a clear acceptance, lawful consideration, proper parties, lawful object and free consent. Digital form only becomes a way through which the elements of the contract are expressed but doesn't negate their legal value. Therefore, the electronic acceptance of a digital contract can make the contract legally binding.[14] In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.,*[15] the Supreme Court has acknowledged that it is possible to have a binding agreement arising from communication in electronic form provided that the necessary elements of contract creation are fulfilled. It should be noted that the contracts involving digital banking are made in the process of onboarding via electronic means. It happens when a person makes an account with the bank, becomes a registered user of internet banking or mobile banking, sets up their digital payment or takes out a digital loan through filling out some forms and accepting pre-prepared terms and conditions. The acceptance usually takes place through clicking on the options such as "I agree", "Accept", "Proceed", etc., at the end of which the person is allowed to use the relevant banking service.[16] Standardized banking contracts, in contrast, are almost always standard form contracts written solely by financial institutions. The client is seldom provided an opportunity to negotiate particular contract clauses or alter the contractual obligations. Despite the necessity of standardization in business, the banks have a greater obligation to provide the terms of the contract in a clear, understandable way. Legitimacy of the contractual consent must be based not only on the client's action of clicking 'I Agree' but also on the informed nature of such action.[17] For this reason, it would be wrong to evaluate the validity of digital banking agreements based only on the presence of electronic acceptance because there must be an examination of whether the digital environment used for obtaining consent ensures the contractual autonomy envisaged by the ICA, 1872.

6.3. *Dark Patterns in Digital Banking*

The trend towards the digitalization of banking services has made a huge difference in the way that clients interact with banks. Everything from the process of setting up an account to mobile banking sign-up to digital borrowing and payments has become digitalized. As much as these interfaces aim at streamlining the process of banking for the clients, some may be created in a way that manipulates the client's behaviour. This manipulation is known as dark pattern in the context of user interface design. It involves the deception or coercion of users into making decisions that they would otherwise not make of their own volition.[18] Unlike regular types of contractual misdeeds, dark patterns are not associated with direct misrepresentations and physical coercion. Dark patterns use psychological and cognitive tricks as well as interface designs to make the user select an option beneficial for the service provider. This can be seen in online banking, when the user sees the ticked consent box, confusing privacy settings, deceptive claims about financial services offered, unexpected fees, the obligation to purchase additional services that are not required, and complex cancellation policies. This affects the decision making without the possibility for the user to refuse from the deal technically.[19] Contractual importance of dark patterns is not only because of their deceptive nature but because of their ability to influence the quality of consent. Contracts in digital banking are essentially contracts of adhesion where the consumer has very limited bargaining power. This can be illustrated from the case decided by the Supreme Court in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly[20], where the Supreme Court has acknowledged that terms of contract created by the party

[11] Reserve Bank of India, Annual Report 2024–25;Digital Banking – Report of the Working Group.
[12] Information Technology Act, 2000, s. 4,5 & 10A; ICA, 1872, s.10.
[13] Avtar Singh, Law of Contract and Specific Relief (13 ed.); Pollock & Mulla, Indian Contract and Specific Relief Acts (17 ed).
[14] IT Act, 2000,s.4,5&10A.
[15] (2010) 3 SCC 1
[16] Avtar Singh, Law of Contract and Specific Relief (13 ed.); see also discussion on electronic and clickwrap contracts in leading Indian contract law commentaries.
[17] Reserve Bank of India, regulatory framework on digital banking and customer protection.
[18] Central Consumer Protection Authority,Guidelines for Prevention and Regulation of Dark Patterns, 2023.
[19] Organisation for Economic Co-operation and Development, reports on dark commercial patterns and digital consumer manipulation; see also recent academic literature on behavioural manipulation in digital interfaces.
[20] (1986)3SCC156.

having overwhelming bargaining power shall be scrutinized by the court. Thus, the design of the digital interface becomes an essential part of the contracting procedure. In case consent is attained through manipulation by the interface design and not through proper disclosure, the visible sign of consent might not represent the real voluntary will of the client. There arises here a crucial difference between automatic consent and free consent, especially with regard to the ICA, 1872.[21] Addressing these issues, however, the Indian regulators have made it a point to ensure that any transaction made using technology is based on transparency and fairness. The CCPA has explicitly outlined dark patterns through its Guidelines for Prevention and Regulation of Dark Patterns, 2023. Similarly, the Reserve Bank of India (RBI) has further stressed upon the need for informed consent from customers. While both these regulations recognize the risk involved in using manipulative interface designs, these policies work mainly in the domain of financial regulation and consumer protection laws. Neither of them can directly impact whether such consent meets the criteria of a valid contract in terms of the ICA, 1872.[22]

6.4. Free Consent Under The ICA, 1872

Thus, the legal problem is not only related to the identification of misleading actions in the realm of the Internet. It is necessary to define whether the consent obtained through the dark patterns reflects true will, or whether it is a mere appearance of a contract consent gained through manipulations with interfaces. Answering this problem necessitates doctrinal analysis of the notion of free consent according to ICA, 1872, the basis of the following analysis. The principle of free consent is considered to be a key principle of the Indian contract law and one of the necessary conditions for the creation of an effective agreement. According to section 10 of ICA, 1872, an agreement is a contract if it is made freely by persons competent to contract, for a lawful consideration and with a lawful object, and is not expressly declared to be void.[23] Therefore, for contract to be legally valid, not only does there need to be consent, but the consent has to be legally free. As per section 13, consent is defined as agreement of two or more individuals about the same thing in the same sense (consensus ad idem).[24] It is consistent with the basic concept that contract duties flow only from situations where there is an agreement among the parties about the transaction. Nevertheless, in a virtual banking setting, just because of the fact that there is electronic acceptance does not automatically mean that such agreement has been made voluntarily and consciously. With the increased use of form-based electronic contracts, the courts now have to determine not only if the acceptance was clicked but whether the entire situation demonstrates a voluntary act of assent. Section 14 of the E-SIGN Act further states that consent is free if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.[25] In *R. Janakiammal v. S. K. Kumaraswamy*[26] The courts have made it clear that in cases where consent has been obtained using any of the vitiating elements outlined above, the contract thus formed can be declared to be voidable at the option of the affected individual. These statutory grounds for vitiating consent are based on a traditional understanding of commercial dealings, where such improper influences could only be exercised through direct human interaction. The advent of digital contracting presents a new form of influence which can now be exercised through the deliberate design of interfaces that take advantage of behavioural tendencies. Although dark patterns may not fit into any of the classical definitions of coercion or undue influence, certain deceitful interface designs may approximate the concepts of fraud or misrepresentation through concealment and distortion of material information. The doctrine of free consent is thus broad enough to encompass the modern ways in which contractual agreements may be manipulated. Instead of limiting the scope of application of the doctrine in Sections 13 and 14 to traditional personal negotiations, the underlying goal of the sections has to be the protection of the freedom of choice of the individual entering into the contractual obligations. In cases where a digital banking interface manipulates behavioural tendencies to achieve consent to the terms of the contract, the law has to pay attention to the essence of the customer's consent rather than simply the fact that the customer consented electronically. This interpretation would be true to the objectives of the ICA, 1872.[27] However, the Act does not make any explicit mention of the manipulation of interfaces or algorithmic persuasion or the use of dark patterns. The absence of legislation in this context has left the question of the point where technological influence reaches the legal level of being enough to invalidate consent unclear. Hence, while the concept of free consent is crucial from an analytic perspective, its applicability to electronic banking agreements is still in doubt.

6.5. Do Dark Patterns Vitiate Free Consent? – A Doctrinal Analysis

The main concern that this research is going to address is whether it is possible for the use of dark patterns in the digital banking contracts to influence the validity of the consent under the ICA, 1872. Even though the Act does not mention the existence of the term 'dark pattern', its provisions regarding free consent are broad enough for it to be determined whether consent gained through dark patterns is valid according to the law.[28] As per Section 13 of the Indian Contract Act, 1872, the consent can be said to have been formed when the parties agree on the same thing in the same sense (consensus ad idem). An agreement by just clicking of the mouse button cannot be taken to establish the existence of real consent. During the online banking transactions, there is often acceptance of long standard form contracts with one click without comprehending their terms. While acceptance normally forms a contractual obligation, the legal inquiry should not stop at just establishing acceptance by clicking.[29] Under Section 14, in addition to being voluntary, the consent must also be given freely and not through coercion, undue influence, fraud, misrepresentation, or mistake. The use of dark patterns generally does not entail physical coercion or the traditional form of undue influence. However, there are many types of dark patterns which may intersect with the notions of fraud and misrepresentation under the statute. This includes, for example, the concealment of mandatory fees until the end of a banking transaction,

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[21] ICA,1872,s.13–14.
[22] Reserve Bank of India, regulatory framework on customer protection and digital banking; Central Consumer Protection Authority,Guidelines for Prevention and Regulation of Dark Patterns, 2023.
[23] ICA,1872,s.10.
[24] ICA,1872,s.13.
[25] ICA, 1872, s. 14.
[26] Civil Appeal No.12251 of 2012, decided on 30 June 2021.
[27] Pollock & Mulla, The Indian Contract and Specific Relief Acts (17 ed.); Avtar Singh, Law of Contract and Specific Relief (13 ed.).
[28] ICA,1872,s.10,13&14.
[29] Information Technology Act, 2000,s.10A; ICA,1872,s.13.

representing optional insurance products as compulsory, presenting promotional offers as essential services of a bank, and the use of false visual importance to secure consent. Where material information is withheld or represented in a misleading manner, the consent that follows cannot easily be described as informed and voluntary.[30] It is established by the Supreme Court that fraud cuts at the heart of the consent required for a contract. Hence, in cases where deception forms part of the factors behind the formation of a particular contract, such a contract may be voided on the grounds of fraud under Section 24, ICA, 1872. It is a good starting point to consider which types of dark patterns qualify as fraud or misrepresentation.[31] The legal implications of dark patterns, however, consist of their combined effect on contractual decision-making process. While the essence of traditional fraud lies in its use of an express false representation, the practice of dark patterns mostly involves manipulation of the user by means of an omission, interface design, defaults and nudging. Their goal is not always to prevent any form of choice; on the contrary, they often seek to guide users into making business-friendly decisions. This form of influence shows one of the weaknesses of the traditional doctrine of free consent, formulated within the framework of person-to-person transactions.[32] Nevertheless, it is not legally accurate to assert that all the dark patterns will necessarily make the banking contract void or voidable. The contract law must establish the element that the impugned conduct significantly impacted the customer's consent. Small changes to the interface, which are normal in business dealings, ought not to make valid contracts null and void. The judicial review must therefore assess the nature and impact of the interface. When there is intentional obscurity of material information or restriction of customer choices through interface design, the court can review the case on the grounds of whether the customer gave consent under fraud or misrepresentation.[33] The lack of a specific statutory provision addressing dark patterns does not preclude the use of existing principles of contract law for the analysis of modern transactions conducted via digital platforms. The Indian contractual law has traditionally been able to accommodate the new realities of commerce through the interpretation of general principles in a manner that takes account of changes in facts. An interpretation of Section 13 and 14 thus allows for an assessment of the impact of technological manipulation on the principle of autonomy enshrined in those provisions. Thus, this paper argues that dark patterns cannot be considered as a distinct cause of making contracts void. Rather, they need to be seen as situations which help courts in judging if the consent was freely given, as stated by the Indian Contract Act, 1872. In cases where manipulation of user interfaces is so extreme that decision-making becomes both uninformed and unwilling, then such contracts need to be evaluated according to current legal standards of fraud, misrepresentation, and free consent.

6.6. *Recommendations*

Based on the findings of this study, the following recommendations are proposed:

6.6.1 Legislative Clarification

The ICA, 1872 needs to be clarified in order to state that manipulative interface designs can also be taken into consideration while deciding whether consent has been vitiated through fraud, misrepresentation or any other reason which affects free consent.

6.6.2 RBI Standards for Digital Banking Contracts

The Reserve Bank of India should lay down standards for the creation of digital banking contracts in order to make sure that the details about the contract terms, costs, risks and duties of customers have been clearly laid out.

6.6.3 Mandatory Informed Consent

Banks should obtain consent from the customer on a contract-specific basis and separate consent must be sought in case of optional products or additional services and should not be obtained in bundled form.

6.6.4 Judicial Interpretation of Free Consent

In cases involving Section 13 and 14 of the ICA, 1872, courts should interpret free consent in light of the extent to which manipulative interface designs affected the decision making process of the customer rather than concluding the matter on the basis of electronic acceptance.

6.6.5 Standardization of Digital Banking Contracts

Banks should keep updating their digital banking contracts regularly to avoid any kind of ambiguity in the contract as well as to change misleading interface designs and contract terms which affect informed decision making.

6.6.6 Strengthening Institutional Compliance

Legal compliance mechanisms should be introduced by banks in order to periodically evaluate if their digital contracting methods meet the criteria of ICA, 1872, RBI directions and transparent contracting.

7. CONCLUSION

The shift from traditional banking to digital banking has completely revolutionized the process of creation of contractual relationship. With digital banking, consent for forming contracts occurs through a single click on the interface. Despite all the benefits that have emerged due to this transition, it has posed a major legal question regarding the extent to which this form of consent can be said to be truly informed and free. In the modern era, the emergence of dark patterns in digital banking shows how crucial the manner in which consent is sought has become as much as the consent itself. With regards to dark patterns in digital banking, this paper has analyzed the legal framework of ICA, 1872 and discovered that the current doctrine of free consent provides a good legal base for analyzing digital banking contracts. Although the Act does not contain any provisions regarding dark patterns, the provisions of ICA, 1872 dealing with consent, fraud and misrepresentation can be applied in the context of modern methods of contracting. Therefore, the problem with the current law is not the lack of relevant principles but their proper application in the technology-based contractual transactions. The findings of the research show that the conditions under which digital banking takes place are completely different from those that existed when ICA, 1872 was adopted. Since manipulative design of the interface makes people make certain

[30] ICA,1872,s.17–19;Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns,2023.
[31] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.(2021) 4 SCC 713.
[32] RBI, regulatory framework on digital banking and customer protection; Central Consumer Protection Authority, Guidelines for Prevention and Regulation of Dark Patterns, 2023.
[33] Avtar Singh, Law of Contract and Specific Relief (13 ed.); Pollock & Mulla, The Indian Contract and Specific Relief Acts (17 ed.).

decisions in contract formation differently than in cases of traditional types of coercion or misrepresentations, the purposive approach needs to be applied when applying the general principles of contracts. In conclusion, it can be stated that dark patterns in digital banking should not be seen as purely digital law question but as the question of validity of the consent in digital contractual relationships. The correct interpretation of the doctrine of free consent coupled with adequate banking and legal reforms will make sure that technological development does not come at the cost of autonomous contracting.

Conflict of Interest
Conflict of interest declared none.

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