



# LAW CRUMBS



## *The 2026 Shift*

### CONTRACTS THEN VS CONTRACTS NOW

Contracts were historically designed as instruments of intent, not execution. Their legitimacy rested on well settled doctrines of offer, acceptance, consideration, and enforceability, codified in India under the **Indian Contract Act, 1872**. The role of the contract was to define obligations and allocate risk, while performance remained external to the document itself.

Courts played a central role in this framework. Contracts were interpreted, not merely enforced. Ambiguity was resolved through judicial reasoning, equitable principles, and commercial context. The system was deliberately reactive. A breach activated remedies, and enforcement followed through litigation or arbitration.

In essence, contracts did not act. They relied on institutional mechanisms to give them effect.

# THE RISE OF MANDATORY ARBITRATION AND INDIVIDUALISED DISPUTES

A significant structural shift in recent years has been the migration of dispute resolution from public forums to private mechanisms.

Contracts today increasingly embed mandatory arbitration clauses, narrowing the pathway to courts and repositioning dispute resolution as a privately governed process. This is consistent with global arbitration trends and reinforced domestically through **the Arbitration and Conciliation Act, 1996**, which recognises party autonomy as a central principle.

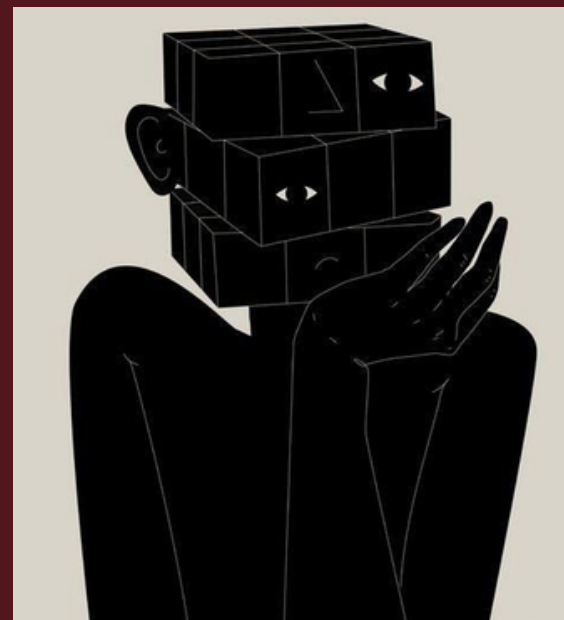
*The consequence is twofold.*

First, disputes are increasingly individualised. Collective adjudication gives way to contract specific resolution. Each agreement becomes its own micro-framework of rights and remedies.

Second, procedural control shifts. Parties define jurisdiction, governing law, and dispute mechanisms at the drafting stage itself. The contract begins to shape not only obligations, but also the forum and manner in which those obligations will be enforced.

## ONE AGREEMENT, MULTIPLE COMPLIANCE LAYERS

What makes 2026 distinct is the convergence of these obligations. Environmental, Social and Governance (ESG) and data protection are no longer treated as separate silos. They are being integrated into a single contractual framework.



A vendor agreement today may link termination rights to both environmental violations and data breaches. Due diligence at onboarding extends to sustainability practices as well as data handling systems. Audit clauses are broader, covering operational, environmental, and digital risks together.

A well structured contract signals governance readiness. It reflects how seriously a business treats ESG obligations and data protection responsibilities. In many cases, the strength of contractual frameworks is becoming a proxy for overall regulatory maturity.

## DATA PROTECTION IS NOW A DRAFTING DISCIPLINE

At the same time, the data protection framework has redefined how businesses structure their relationships. Contracts now carry the burden of privacy compliance. They specify how data is collected, why it is processed, how long it is retained, and when it must be deleted.

Breach notification timelines are no longer internal protocols. They are contractual commitments. Security safeguards are not best practices. They are enforceable obligations. Cross border data transfers require clear contractual backing. The relationship between data fiduciaries and processors is no longer informal. It is tightly defined through layered clauses that leave little room for ambiguity.





# ENVIRONMENTAL, SOCIAL AND GOVERNANCE COMPLIANCE

Under the Securities and Exchange Board of India's Business Responsibility and Sustainability Reporting framework, Environmental, Social and Governance disclosures are mandatory for listed entities, with compliance obligations extending beyond the entity to its suppliers, vendors, and business partners.

As a result, commercial contracts now require sustainability reporting, adherence to environmental and labour laws, permit audit and verification rights. The implication is that participation in supply chains is increasingly contingent upon demonstrable contractual compliance with Environmental, Social and Governance requirements.

## COURTS BUILT THE ESG FOUNDATION

### Polluter Pays Principle

Establishes corporate liability for environmental harm, requiring remediation and compensation.

### Absolute Liability

Imposes strict, no fault liability on hazardous industries.

### Transparency Mandate

Incomplete or defective disclosures invalidate regulatory compliance.

### Operational Consequences

Non compliance can result in restrictions, shutdowns, or financial penalties.

