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VALIDITY OF EXCLUSIONARY CLAUSES IN INDIAN GOVERNMENT WORKS CONTRACTS: INTEREST, COMPENSATION AND EMPLOYER-CAUSED DELAY

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I. ABSTRACT

Indian Government construction contracts frequently contain non-negotiable clauses that restrict claims for interest on amounts withheld and deny compensation for delays covered by extensions of time. Such clauses are commonly found in standard-form contracts used by public agencies such as the Indian Railways, NHAI, KPWD and K-RIDE, and are generally defended on the basis of freedom of contract. This paper examines the enforceability of such exclusionary clauses where delay or non-payment is caused by the employer's own conduct, including arbitrary deductions, failure to provide land or drawings, delayed certification, or non-performance of reciprocal contractual obligations. The research adopts doctrinal and comparative methods and analyses the Indian Contract Act, 1872, the Interest Act, 1978, the Arbitration and Conciliation Act, 1996 and the MSMED Act, 2006, along with leading judicial decisions on government works contracts. The paper specifically contrasts the contractual approach in Ramnath International Construction (P) Ltd. v. Union of India with the public-policy reasoning adopted in Simplex Concrete Piles (India) Ltd. v. Union of India and *MBL Infrastructures Ltd. v. Delhi Metro Rail Corp. The analysis argues that while reasonable and symmetrical risk-allocation clauses may remain enforceable, absolute exclusions that permit public employers to avoid liability for their own breach should be treated as void under Section 23 of the Indian Contract Act. It further proposes a statutory amendment invalidating clauses that exclude liability for wilful breach, arbitrary withholding or employer-induced delay, together with corresponding reforms to Government Construction Contracts to protect contractors from wrongful retention of payments.*

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II. KEYWORDS

Exclusionary clauses, Government contracts, Employer-induced breach, Section 23, Interest and compensation.

III. INTRODUCTION

In India, government contracts for construction are set up in a manner that creates a sense of imbalance between the parties involved. In this case, the State has created a standard set of tender documents and General Conditions of Contract, which are produced by various Central Government Ministries and State-level agencies, including the Indian Railways, the National Highway Authority of India (NHAI), the Karnataka Public Works Department (KPWD) and the Karnataka Rail Infrastructure Development Corporation (K-RIDE). When contractors bid on these projects, they do not have the chance to negotiate. The contractors' only option is to either accept the documents as they stand or risk losing the chance to work on the project. As the majority of contractors make their living from securing public contracts, no contractor has the ability to negotiate or adjust these documents in any way.

Under this asymmetric arrangement, the importance of the interest-bar clause has a specific commercial purpose. Typically, in their written form as contained in the Indian Railway's Standard GCC (Clause G 1.09), the clause contains the following:

"No claims for either interest or damages are to be considered by the Government relating to any money or other sum held by the Government or amounts owed because of any dispute, disagreement or mistake between the Engineer-in-Charge and the contractor or because of any delay in making either periodic or final payments or otherwise concerning the Engineer-in-Charge."[3]

The contract forms provided to NHAI contain provisions that are similar to the General Conditions that KPWD and K-RIDE use. The substantive reach of these sections is broad: they state that all claims for interest against the government, not just those related to an amount under genuine dispute, are extinguished regardless of whether they are for moneys received or due and for moneys deducted as a result of

[3] INDIAN RAILWAYS, STANDARD GENERAL CONDITIONS OF CONTRACT, cl. G 1.09.

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arbitrary deductions or for moneys retained after the Final Bill was due, as well as for moneys claimed as a result of the government's own breach of its obligation to pay.[4]

The doctrine supporting the validity of these clauses is based on the concept of freedom to contract; the contractor was aware of these clauses when he signed the contract and it must be assumed to have accepted the same; therefore, the contractor will be held accountable for any and all sums, whether or not in dispute, that have been withheld from him. The strength of this argument is increased where the amount withheld was under a legitimate dispute between the two parties regarding the amount due to the contractor and where the parties agreed that no interest would accrue while the amount due to the contractor was in dispute; however, this argument is no longer sufficient to support the validity of these clauses where the amount withheld was the result of the employer's wrongful actions. This applies to situations in which the government wrongfully deducts an amount, fails to certify an amount because of a reason unrelated to the contract or fails to meet reciprocal obligations such as delivering land or drawings or issuing approved variation orders, which are all conditions requisite to the contractor earning and being paid for the project.

In these circumstances the clause prohibiting interest is not being used for a legitimate risk allocation purpose, but as a means of protecting the employer from liability for his wrongful conduct. This is the very thing that is prohibited by section 23 of the Indian Contract Act, 1872 or the law relating to interest, as well as by the principles of equity.[5]

A. Research Objectives

1. To review the validity and scope of interest-bar and no-damage-for-delay clauses in Indian government contracts.
2. To evaluate those clauses under Sections 23, 55, 67, 73 and 74 of the Indian Contract Act, 1872, as well as similar provisions contained in other statutes.
3. To examine the GCC regimes of major government organisations and identify the legislative, judicial and contractual developments relating to such exclusionary clauses.

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[4] NATIONAL HIGHWAYS AUTHORITY OF INDIA, GENERAL CONDITIONS OF CONTRACT; KARNATAKA PUBLIC WORKS DEPARTMENT, STANDARD SPECIFICATIONS; RAIL INFRASTRUCTURE DEVELOPMENT COMPANY (KARNATAKA) LIMITED, GENERAL CONDITIONS OF CONTRACT.
[5] Indian Contract Act, 1872, §§ 23, 55, 73, No. 9, Acts of Parliament, 1872 (India).

B. Research Questions

1. Under what circumstances may the government deny interest or compensation for delay caused by the actions or omissions of a government employer under an exclusionary clause?
2. Does Section 23 of the Indian Contract Act, 1872 render ineffective an absolute clause that allows a government employer to escape statutory remedies or prevents a contractor from enforcing its legal rights?
3. What reforms can create an appropriate balance between contractual risk allocation and fair treatment in public works procurement?

C. Research Hypothesis

1. An absolute exclusionary clause is void to the extent that it shields a public employer from the consequences of its own breach and denies the statutory remedies otherwise available to compensate a contractor.
2. A clause that allocates risk on a symmetrical basis, or limits recovery to reasonable costs, may remain enforceable to the extent that it does not restrict the contractor's otherwise available statutory rights.

D. Research Methodology

This legal analysis follows the doctrinal and comparative method of research as understood within the field of law, with reference to statutes, case law, reports published by relevant commissions and boards, and contract forms used by the government organisations discussed in this paper. The researcher has analysed each type of contract through statutory interpretation, precedent, policy considerations, unconscionability and the prevention doctrine. Limited comparisons have also been made with construction law in the United States to assess exception-based approaches to no-damage-for-delay clauses. The data collected in this study is qualitative and is not based on empirical evidence.

E. Literature Review

The literature on exclusionary clauses found in government construction contracts can be divided into four interconnected categories: statutory contract law and remedies; freedom of contract; standard forms and adhesion contracts; and Indian case law regarding the no claim, no interest and no compensation for delay clauses. Together, these resources provide a comprehensive understanding of why it is not possible to determine the enforceability of an exclusion without looking beyond the language of the contract.

IV. CONTRACT DOCTRINE AND FREEDOM OF CONTRACT

Pollock & Mulla's coverage of the Indian Contract Act (ICA) serves as the primary source for Indian doctrine regarding contract law. It explains that the autonomy of the parties is found within the statute itself: while the ability to allocate risk exists, that right is limited by legal objects under Section 23 and the statutory requirements for free will and the consequences of breach found in Section 73.[6]

Atiyah gives a wide-ranging view of how Contract Law was developed and how freedom of contract came about and how contracts were generally understood as being based on choice. Freedom of contract is not merely a history of every printed contract, but it is based on the culture in which the contract was written. Freedom of contract has always depended on the cultural values and beliefs regarding the individual ability to make choices, risk-and-effect relationship with the Market, responsibility, etc. Furmston's modern understanding of contract law is similar to that of Atiyah; however, Furmston views 'exemption clauses' as a means of allocating risk with respect to construction and with respect to the extent to which a party is responsible for the risks and consequences of their actions or inactions.[7]

A. Standard Forms, Adhesion and Unconscionability

Kessler's seminal study on contracts of adhesion highlights how a standard form can create a formal acceptance of an agreement when little or no negotiation has taken place between the parties. Rakoff develops this insight from the institutional perspective: boilerplate is not just meaningless text; rather, it is a mechanism for how an entity creates legal terms for a class of transactions. Both of these studies help clarify what we call Government GCCs (government guaranteed contracts), which are typically issued at the department level and are generally not able to be modified by individual bidders.[8]

[6] POLLOCK & MULLA, THE INDIAN CONTRACT ACT (17th ed. 2024).
[7] P.S. ATIYAH, THE RISE AND FALL OF FREEDOM OF CONTRACT (1979); M.P. FURMSTON, CHESHIRE, FIFOOT & FURMSTON'S LAW OF CONTRACT (17th ed. 2017).
[8] Friedrich Kessler, *Contracts of Adhesion - Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629 (1943); Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1173 (1983).

Leff's discussion of unconscionability provides two important stages in determining whether a contract is unconscionable. The first is Procedural Unconscionability; this provides about how the disputed terms entered into the legally binding business agreement, while the second, Substantive Unconscionability, provides what effect the terms will have on the parties involved in the legally binding business agreement. In this case, the non-negotiable tender conditions create the procedural framework and the total immunity for an employer for delaying payment constitutes the substantive issue. When examining both the procedural and substantive elements of the situation, neither element alone is sufficient to demonstrate the invalidity of every commercial contract; however, both elements will invite additional levels of scrutiny.[9]

The most relevant scholarship from Indian scholars is based on the investigation conducted by Ram Mohan and Jain into exclusion clauses in India. After reviewing several decisions by Indian courts, it is found uncertainty, ad hoc judicial controls and a lack of a general statute allowing for a reasonableness test as general statutes and recommended that the legislation create a specific substantive test for unconscionability. The Indian Law Commission also emphasis the same conclusion from an institutional perspective as expressed in its 103rd and 199th Reports regarding unfair terms.[10]

B. The Indian Judicial Debate

The Supreme Court in its earlier rulings primarily approached issues from the perspective of contract. For example, in *Seth Thawardas Pherumal v. Union of India*, the Court found that it would not remove an exclusion from a benefit from a contract simply due to a change in circumstances making it less advantageous for the contractor than when the contract was written. In a similar manner the Court held in *Alopi Parshad & Sons Ltd v Union of India* that a court cannot use the doctrine of equity to change the terms of a clearly worded commercial agreement. The same reasoning was applied by the Court in *Oil & Natural Gas Corp Ltd v Wig Brothers Builders &*

[9] Arthur Allen Leff, *Unconscionability and the Code - The Emperor's New Clause*, 115 U. PA. L. REV. 485 (1967).

[10] M.P. Ram Mohan & Anmol Jain, *Exclusion Clauses Under the Indian Contract Law: A Need to Account for Unreasonableness*, 13 NUJS L. REV. 593 (2020); LAW COMMISSION OF INDIA, 103D REPORT, UNFAIR TERMS IN CONTRACT (1984); LAW COMMISSION OF INDIA, 199TH REPORT, UNFAIR (PROCEDURAL & SUBSTANTIVE) TERMS IN CONTRACT (2006).

Engineers Pvt Ltd and the Court found that an arbitrator may not award a type of compensation that the contract expressly excludes.[11]

A different approach arose in *General Manager Northern Railway v Sarvesh Chopra*, where the Supreme Court held that a contractor may preserve a monetary claim through treating fundamental delays as a repudiation of the contract. The contractor is permitted to enter into a supplemental arrangement regarding the compensation due on the basis of the delay or may reserve his right to compensation if the contract specifies such a right. The subsequent rulings of the Supreme Court in *K N Sathyapalan v State of Kerala and Asian Techs Ltd v Union of India* demonstrate that by requesting from the employer assurances to continue the work on the employer's own behalf, the contractor does not have to rely solely on the clause which excludes claims for any reason.[12]

The approach taken by the Delhi High Court in *Simplex Concrete Piles (India) Ltd v Union of India* employed a different public policy analysis that held that an exclusion that negates the remedial effect of sections 55 and 73 of ICA is null and void and will be deemed invalid under Section 23 of the ICA. The ruling in *MBL Infrastructures Ltd v Delhi Metro Rail Corp* demonstrated similar reasoning when the employer has been determined to be responsible for causing a delay and subsequently sought to rely on the exclusionary provision of the contract. These rulings direct attention to the operation of the clause as it is affected by the evidence presented rather than what the clause includes in its language.[13]

The rulings in *Ramnath International Construction (P) Ltd v Union of India* as well as *M/s C&C Constructions Ltd v IRCON International Ltd* require equal consideration. Here again the Supreme Court upheld the clause which placed responsibility for the consequences of delay solely upon the contractor, but did so without any reference to whether the responsibility was that of the contractor, the employer or both. In M/s C&C Constructions Ltd v IRCON International Ltd, the Court upheld the contractor's repeated requests for extension of time to complete the project as well as the

[11] *Seth Thawardas Pherumal v. Union of India*, (1955) 1 SCR 48; *Alopi Parshad & Sons Ltd. v. Union of India*, AIR 1960 SC 588; *Oil & Natural Gas Corp. Ltd. v. Wig Brothers Builders & Engineers Pvt. Ltd.*, (2010) 13 SCC 377.
[12] *General Manager, Northern Railway v. Sarvesh Chopra*, (2002) 4 SCC 45; *K.N. Sathyapalan v. State of Kerala*, (2007) 13 SCC 43; *Asian Techs Ltd. v. Union of India*, (2009) 10 SCC 354.
[13] *Simplex Concrete Piles (India) Ltd. v. Union of India*, 2010 DHC 1100; *MBL Infrastructures Ltd. v. Delhi Metro Rail Corp.*, 2023 SCC OnLine Del 9098.

contractor's express no-claim undertakings based upon the doctrine of estoppel. Since neither of these decisions dealt with a fully developed Section 23 challenge to a contract that granted immunity to the public employer for its own breach, the substantive issue regarding this question remains unresolved by the Supreme Court.[14]

C. Synthesis and Research Gap

New contract theories are developing a clearer distinction between autonomy and immunity. Stone's rights theory retained a considerable amount of the principle of contractual freedom while establishing limits to contracting, including an absolute prohibition on unconscionable terms. Stone's approach permits parties to enforce legitimate limits on their risk through caps and permits parties to distribute risk, but does not provide that relief; to enforce an ex-post remedy since an undated provision is executed.[15]

Existing literature does not incorporate in one analysis all of the above factors, including: the time period available for bringing an action; the breach of contract caused by the employer; how EoT conduct should be considered; how an arbitrator's power is exercised; the impact of Section 23 of the Limitation Act; as well as the forms adopted by the Indian Railways, NHAI, KPWD and K-RIDE.

Therefore, this paper's argument is a more mixed analysis of the law on exclusion clauses than is generally available: the validity of an exclusion clause must be assessed based on the text of the clause, the statutory framework in which it is found, the relative bargaining power of the parties, their conduct and the underlying cause of the act. When both parties negotiate or agree to share a risk, this will stand; however, where an employer uses a pre-printed form to absolve itself from the penalty resulting from its own arbitrary behaviour, this presents a significantly different legal issue. No one portion of the existing literature adequately resolves the issues that arise from the current situation. The classical doctrine of contract interpretation provides a best practice for courts when they interpret the wording of the contract; adhesion contract literature explains why simply having an agreed-upon form of contract is insufficient to meet the legal standard required for enforcement of a contract; Indian legal scholarship addresses the difficult state of knowing whether a remedy will be granted;

[14] *Ramnath International Construction (P) Ltd. v. Union of India*, (2007) 2 SCC 453; *M/s C&C Constructions Ltd. v. IRCON International Ltd.*, 2025 INSC 138.
[15] Rebecca Stone, *Putting Freedom of Contract in Its Place*, 16 J. LEGAL ANALYSIS 94 (2024).

and the case law limits the scope of the law as relating to the specific facts of each case.[16]

The autonomy-only approach to defining exclusion clauses is problematic since it assesses the clause at the time it was created, while ignoring the potential for exploitation of the clause after a breach occurs. An overly broad definition of an unconscionable clause could diminish the competitive and innovative contracting practices of contracting parties.

V. RESEARCH AND ANALYSIS

A. Statutory Framework Governing Interest in Government Contract Disputes

1. The Indian Contract Act, 1872: Sections 55, 73 and 74

The ICA of 1872 is the main statutory source for a contractor's statutory right to receive compensation due to breach of contract, including, in particular, interest, which is a form of compensation. Under Section 73 of the ICA, where there is a breach of contract, the innocent party has a right to be compensated by the breaching party for any loss or damage incurred by the innocent party due to the breach, including losses and damages which occurred naturally in the usual course of events or damages and losses which were actually known to the parties when the contract was made as likely to occur from the breach.[17]

From an evidentiary standpoint, interest represents compensation to the innocent party for the loss of utility of money that was due but wrongfully withheld. However, reliance on *State of Haryana v. S.L. Arora & Co.* must now be treated with caution, since that decision was subsequently declared not to be good law by the majority in *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa* on the distinct question of post-award interest and the meaning of "sum" under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996. The current position is that the "sum" directed to be paid by an arbitral award may include pre-award interest, and post-award interest may operate on that awarded sum unless the award or contract provides otherwise. Therefore, for the limited purpose of the present argument, interest should be described as a compensatory consequence of delayed or wrongful withholding, while

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[16] M.P. Ram Mohan & Anmol Jain, *Exclusion Clauses Under the Indian Contract Law: A Need to Account for Unreasonableness*, 13 NUJS L. REV. 593 (2020); Rebecca Stone, *Putting Freedom of Contract in Its Place*, 16 J. LEGAL ANALYSIS 94 (2024).
[17] Indian Contract Act § 73.

its computation in arbitration must be governed by Section 31(7) as interpreted in *Hyder Consulting*.[18]

Section 74 of the ICA covers stipulations for liquidated damages. In the case of *Fateh Chand v. Balkishan Dass* and subsequently in the case of *Maula Bux v. Union of India*, the Supreme Court ruled that Section 74 is a remedy for providing compensation, not to impose punitive forfeiture. These two sections of the ICA, Sections 73 and 74, along with other provisions, create the legal basis for reviewing any exclusionary clauses that exclude the payment of interest.[19]

Under Section 55 of the ICA, when the promisee decides to accept late performance, the promisee is required to inform the promisor that he intends to claim compensation for the loss that results from the delay at the time of acceptance of the delay. In the case of *General Manager, Northern Railway v. Sarvesh Chopra*, the Supreme Court applied this requirement in a dispute regarding an exclusionary clause and held that if a contractor continues to perform under the contract without making a timely written demand for damages related to the contractor's delay, the contractor may be precluded from recovering damages related to the subsequent delay caused by the employer (or employee).

Therefore, when making the request for an extension of time, it is important to preserve the reservation-related correspondence so as to avoid confusion regarding the decision between accepting the new completion date and waiving the right to seek damages related to employer's delay. Thus, the relationship between Section 55 of the ICA and the use of exclusionary clauses is a key part of the EoT disputes discussed in the comparative analysis below.[20]

2. The Interest Act, 1978

The Interest Act 1978 provides for the award of interest by the court where there is no agreement saying otherwise between the parties. Section 3(1) gives the courts the discretion to set a reasonable amount of interest to be paid on a debt or damages claim. However, Section 3(3) states that, where parties to a contract have expressly agreed to waive their right to interest on any type of debt or damages, then Section 3 will not

[18] *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa*, (2015) 2 SCC 189. See also *State of Haryana v. S.L. Arora & Co.*, (2010) 3 SCC 690, overruled on the question of compound interest/post-award interest and the scope of "sum" under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996.
[19] *Fateh Chand v. Balkishan Dass*, AIR 1963 SC 1405; *Maula Bux v. Union of India*, AIR 1970 SC 1955.
[20] Indian Contract Act § 55; *Sarvesh Chopra*, (2002) 4 SCC 45.

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apply. This decision was again confirmed by *Kerala Water Authority v. T.I. Raju* when the Supreme Court ruled that the parties were free not to make a claim for interest if the action was based on a contractual waiver. The Interest Act is designed to work only when there is an absence of any agreement, so it cannot override a contractual waiver of interest by the parties.[21]

The emphasis on the existence of a conscious contractual decision when waiving the right to claim interest is significant, but it does not preclude the need for the court to separately consider whether the agreement was unconscionable or in violation of public policy, in accordance with Section 23 of the ICA.

3. Section 31(7) of the Arbitration and Conciliation Act, 1996

Section 31(7) of the Arbitration and Conciliation Act, 1996 governs the award of interest by arbitral tribunals in arbitrations conducted under the 1996 Act. Under Section 31(7)(a), unless otherwise agreed by the parties, the arbitral tribunal may award interest for the whole or any part of the period between the date on which the cause of action arose and the date of the award. Section 31(7)(b) then governs post-award interest on the sum directed to be paid by the award. The expression "unless otherwise agreed by the parties" gives effect to party autonomy and requires the tribunal to examine whether the contract clearly excludes interest, and if so, for which period and category of claim.

The decision in *M/s Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan* should not be cited as a direct 1996 Act authority for Section 31(7). The Supreme Court expressly decided that case under the Arbitration Act, 1940, because the arbitration proceedings were governed by the earlier statutory regime. The operative holding in *Ferro Concrete* was that, under the 1940 Act, a clause merely stating that the contractor shall not be entitled to claim interest on payments, arrears or balances did not amount to an express bar on the arbitrator's power to award pendente lite interest. The Court's discussion of Section 31(7)(a) of the 1996 Act was comparative and contextual: it noted that the 1996 Act adopts a different formulation, under which the tribunal's power to grant pre-award and pendente lite interest is restricted where the agreement between

[21] Interest Act, 1978, § 3, No. 14, Acts of Parliament, 1978 (India); *Kerala Water Authority v. T.I. Raju*, 2026 LiveLaw (SC) 172 (order dated Feb. 9, 2026).

the parties' bars payment of interest, even if the clause is not framed as a specific prohibition on the arbitrator's jurisdiction.

Therefore, for arbitrations governed by the 1996 Act, the proper inquiry is not whether *Ferro Concrete* directly authorises pendente lite interest, but whether the contract, read under Section 31(7)(a), contains an agreement excluding interest for the relevant period. If the clause only bars one category of interest, it should not automatically be extended to all periods. Conversely, if the clause clearly excludes pre-award or pendente lite interest, the tribunal must give effect to that contractual exclusion, subject to any overriding statutory provision or valid public-policy challenge under Section 23 of the Indian Contract Act, 1872.[22]

B. Doctrine of Employer-Induced Breach and Its Effect on the Interest-Bar Clause

1. Prevention and the Rule Against Profiting from Wrong

The provisions of the ICA (Sections 55, 67 and 73) embody a single principle, which is that a party who causes or delays the performance of its reciprocal obligations cannot take advantage of the other party's inability to fulfil its obligations as a result of the first party's actions or omissions. In the context of the construction contract, this principle applies whenever the employer fails to deliver a site, drawings or other documents, interferes with the work, fail to certify or delay the certification of works or otherwise unlawfully retains some sums. In those instances where an employer has delayed the performance of their duties, the worker is entitled to claim the interest on the amount retained due to the employer's default.[23]

This distinction is based on both legal and factual considerations. A legitimate dispute as to measurement, quality or value falls within the categories of ordinary commercial risks that may be subject to a clear interest-bearing clause. However, an amount that has been certified, accepted or otherwise withheld from being paid, without any basis, is treated very differently. Where both categories of amounts are treated the same, the risk allocation becomes a shield against liability for wrongful retention of funds by the employer.

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[22] Arbitration and Conciliation Act, 1996, § 31(7), No. 26, Acts of Parliament, 1996 (India); *M/s Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan*, 2025 INSC 429, decided under the Arbitration Act, 1940; *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa*, (2015) 2 SCC 189.
[23] Indian Contract Act §§ 55, 67, 73; *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49.

2. Extension of Time and Reservation of Rights

An EoT establishes a new date for completion, but it does not, by itself, determine all the monetary ramifications of a delay. In *General Manager, Northern Railway v. Sarvesh Chopra*, the Supreme Court ruled that a contractor that chooses to proceed with performance following acceptance of an employer's delayed performance must contemporaneously reserve the right to seek compensation. Therefore, each request for an EoT should indicate that the contractor will continue performance without prejudice to claims for prolongation costs, compensation and interest resulting from delays caused by the employer.[24]

Therefore, a reservation of right should be both contemporaneous with the granting of EoT and explicit. A suggested formulation is: "This application for Extension of Time is submitted without prejudice to the Contractor's rights to claim compensation, damages, escalation and prolongation cost and interest on all amounts withheld or delayed as a result of the acts or omissions of the Employer." The same position must be stated in the SOP's progress report, as well as the appropriate bill submissions and any correspondence in response to EoT notices received. This records the links between the monetary claims and the identified acts and omissions of the employer thus preventing the inference that simply extending the contract represents full satisfaction.

The general no-compensation-for-EoT clause should be unbundled from the interest bar. The first extinguishes claims for escalation, idle plant, labour and overhead, whereas the interest bar only excludes the time-value of money that may eventually be recovered later. Both of these exclusions may, when operating concurrently, combine so that the contractor may lose out on both the principal loss caused by the delay and the interest amount ultimately recouped.[25]

The distinction has a direct impact on both pleading and valuation respectively. Under the interest bar, a contractor's principal debt is recoverable and the dispute is only about the time-value period and rate for recovery. Under the no-compensation clause, a contractor must first prove their right to recover for each of the heads of loss, such as site overheads, equipment idle, labour escalation and head-office contribution.

[24] Indian Contract Act § 55; *General Manager, Northern Railway v. Sarvesh Chopra*, (2002) 4 SCC 45.
[25] CENTRAL PUBLIC WORKS DEPARTMENT, GENERAL CONDITIONS OF CONTRACT; INDIAN RAILWAYS, STANDARD GENERAL CONDITIONS OF CONTRACT.

When both no-compensation clauses and interest bars exist, the award must treat each separately and not be viewed as one general waiver.

3. Ramnath International and Symmetrical Risk Allocation

The Supreme Court supported enforcement of contractual limitation of liability in *Ramnath International Construction (P) Ltd. v. Union of India*, where it was stated that an extension provided by either party shall be the only remedy available for any delay by either party; thus, the Court viewed this as an equitable way to distribute the risk of delay, therefore, the Court dismissed the monetary compensation from the arbitral decision.[26]

While the decision should not be ignored, it cannot be extended beyond its context. The Court only considered the symmetry of the parties' clause at the time of the ruling; therefore, the decision does not address or resolve all claims under the Section 23 argument and it also cannot be used to provide a basis for the future enforcement of similar clauses that allow the contractor to retain liquidated damage rights for the contractor's delays and that do not permit the employer from pursuing any rights for delays caused by the employee. The lack of symmetry between these two types of clauses presents an argument that the same creates a finding of "one-sided immunity" by providing for a complete defense to the contractor for delays but removes from the owner their right to recover damages for delays caused by the contractor.[27]

The Ramnath International ruling is binding upon all adjudicators and will not be overruled based upon a later ruling, but rather, the courts and à tribunal must look to the exact nature of the argument raised and the clause being reviewed as to whether they both reflect the same bilateral agreement for delay due to any reason. *M/s C&C Constructions Ltd. v. IRCON International Ltd*. is primarily based on the contractor's representations of "no-claims" along with the resulting estoppel, leaving the legal implications of the public policy challenge raised after such representations to the tribunal.[28]

4. Unjust Enrichment

[26] *Ramnath International Construction (P) Ltd. v. Union of India*, (2007) 2 SCC 453.
[27] *Ramnath International*, (2007) 2 SCC 453; *Simplex Concrete Piles (India) Ltd. v. Union of India*, 2010 DHC 1100.
[28] *M/s C&C Constructions Ltd. v. IRCON International Ltd.*, 2025 INSC 138.

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When a State improperly takes a sum of money from a contractor without legal authority, it receives the benefit of using another's money while the contractor is forced to pay financing costs. The interest on that amount restores the time value of money and prevents the State from wrongfully enriching itself by breaching its contract with the contractor. Interest is not always granted in disputes, but it explains why an exclusion of interest is especially objectionable once the Tribunal has found the retention to be improper.[29]

The analysis should still be compensatory. The claimant must furnish proof of when the money was actually due, what kind of notice or demand was made for the payment, how long the State held onto the money and what the relevant contractual or statutory rates were. This discipline would prevent unjustly enriching the condemning party by providing a basis for punitive damages, as well as help keep the claimant's claim within the limits imposed by the foreseeable consequences of a breach of contract.

C. Freedom of Contract: Foundations, Scope and Inherent Limits

1. Autonomy Within the Statute

Freedom of contract has historically been one of the fundamental tenets of the law; however, the ICA places limits on Freedom by defining the legal conditions under which Contractual Autonomy can operate (i.e., the ICA defines the requisite elements for Contractual Autonomy to exist). Sections 10 through 30 of the ICA set out the required components of a contract in terms of the necessity for free consent, lawful consideration and lawful object, as well as the requirement to comply with the applicable provisions of mandatory law.

The case of *Alopi Parshad & Sons Ltd. v. Union of India* was the first case to ascertain the judicial authority to rewrite an express contract and held that the inability to continue performing under a contract as a result of commercial hardship does not give rise to a right for the parties to a contract to have their express agreement rewritten. The principle enunciated in this case protects the agreed allocation of risk; it does not,

[29] Indian Contract Act §§ 23, 73; *MBL Infrastructures Ltd. v. Delhi Metro Rail Corp.*, 2023 SCC OnLine Del 9098.

however, validate the validity of any term of a contract if the object and/or operation of such term is expressly prohibited by the ICA.[30]

The classical view to this matter as expressed by Sir George Jessel MR in the case of *Printing & Numerical Registering Co. v. Sampson*, treats the ability of the person who is competent to enter into a contract and, consequently, of the judicial enforcement of agreements to which he or she has agreed to, as being one of the elements of public policy. The formulation, therefore, presupposes that there has been a freely and lawfully made agreement and consequently it fails to resolve the question that is raised by the statute related to the legality of a particular standard term and whether such term defeats a provision of law or is contrary to public policy.[31]

2. Public Procurement and Standard Terms

GCCs issued by government agencies operate under a take-it-or-leave-it basis. Commercial contractors are not usually at a disadvantage due to the inherent power of the government; nevertheless, government agencies generally hold all of the negotiating power regarding the form of contracts to be used throughout an agency's entire department. This provides a mechanism for determining the power of those involved in contract negotiation. The question to be asked for each of these types of transactions should be based on such things as market options, bid or design symmetry, notification requirements, practical risk pricing/rejection abilities, etc.[32]

The Law Commission's 103rd report treats public works contractors as needing to accept large corporations' offers regardless of contractual terms or conditions. This statement is significant, but should not replace the need for evidence. A large contractor will have the ability to price a known risk and potentially be able to spread that risk over many employers; however, a smaller contractor may only have access to one procurement marketplace. The question to be asked should provide the necessary context, avoiding the two extremes of the argument that every signature provides the same amount of negotiating power; and, conversely, that every government contractor will have little or no negotiating power.

[30] Indian Contract Act §§ 10-30; *Alopi Parshad & Sons Ltd. v. Union of India*, AIR 1960 SC 588.
[31] *Printing & Numerical Registering Co. v. Sampson*, (1875) LR 19 Eq. 462, 465.
[32] LAW COMMISSION OF INDIA, 103D REPORT, UNFAIR TERMS IN CONTRACT (1984); LAW COMMISSION OF INDIA, 199TH REPORT, UNFAIR (PROCEDURAL & SUBSTANTIVE) TERMS IN CONTRACT (2006).

In *Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly*, the Supreme Court ruled that a public-sector employer could be found to have imposed a grossly unfair term on an employee with little or no bargaining power and that such a term could be declared unenforceable under Section 23 of the Indian Contract Act, since the term was unconscionable and contrary to public policy. The Court based its conclusion on the argument that formal acceptance of a contract would not always validate a grossly unequal bargaining power situation. In Life Insurance Corporation of India v. Consumer Education and Research Centre, the Supreme Court reaffirmed its previous holding that all contractual provisions implemented by the state entity must be consistent with the provisions of the Constitution pertaining to fairness, reasonableness and non-arbitrariness under Article 14. The two aforementioned rulings form a basis for both public and private controls over potentially oppressive Standard Terms used by the Government.[33]

The Supreme Court reinforced the constitutional dimensions related to the issue of public contracting through its rulings in *Ramana Dayaram Shetty v. International Airport Authority of India* and *Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir*. In Ramana Dayaram Shetty, the Court held that all Public Authorities must adhere to Article 14 of the Constitution of India when awarding Government contracts and cannot differentiate from the standards established in connection with their own decision-making processes in an arbitrary manner. In Kasturi Lal, the Court reiterated that all State action with respect to distribution or contractual matters must be fair, reasonable and directed toward meeting the public interest. Collectively, these decisions do not determine the constitutionality of all payment disputes but inform the analysis under Section 23 when a uniform condition created by a State Body operates systematically to allow the arbitrary retention of Contractors' funds.[34]

3. The Reconciling Principle

The acceptable basis for placing risk and pricing in equilibrium is the distinction between allocating liability and shielding from liability. Reasonable rate caps, limitation on remote damages and symmetric all-cause limits provide a basis for determining the level of risk and price. When a contractual clause is invoked to

[33] *Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly*, AIR 1986 SC 1571; *Life Insurance Corp. of India v. Consumer Education & Research Centre*, (1995) 5 SCC 482; INDIA CONST. art. 14.
[34] *Ramana Dayaram Shetty v. International Airport Authority of India*, AIR 1979 SC 1628; *Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir*, AIR 1980 SC 1992.

eliminate the results of the drafter's acts, that clause serves a different purpose than the other clauses. At that point in the process, autonomy does not give way to the statutory right to receive protection or to rely on Section 23 or the prohibition on profiting from wrongful acts.[35]

This differentiation also preserves the certainty of commerce. If onerous clauses were unenforceable, certainty in pricing for tenders and arbitral predictability would degrade. If all signed or accepted clauses were conclusive, parties would have the option to select between statutory remedies and the underlying duty of fair dealing (owed by all states) would not be mandatory. Otherwise, a review of the effects of an agreement will protect all parties to the extent required to avoid statutory defeat or create an excuse for the drafter to not be liable for wrongful conduct.

D. Section 23 of the ICA: Unconscionability, Public Policy and the Void Interest-Bar Clause

1. Defeating Law and Public Policy

Section 23 completely invalidates as objects any consideration which has been determined by a court to defeat any of the provisions of a statute or which opposes public policy. The object which is the subject of this determination should be ascertained from the operation of the clause. If the term only sets out a rate of remuneration, the clause cannot operate as a remedy. Conversely, if the term removes any financial penalties that would otherwise result from a breach due to the employer's actions, it will defeat the provisions of Section 55 and Section 73.[36]

With respect to issues of public policy, four issues exist: agreements that contravene existing legislation (e.g., the Contracts Act); oppressive relationships due to extreme inequality in bargaining power; the grant of authority to injure another party's legally protected rights; and the infringement of fundamental principles of law. These issues overlap, though they should be separated for purposes of determining which is applicable. The proper classification of an issue assists in determining if the issue is reviewable and lessening dependence upon an undefined appeal to equity.

In the case of *Simplex Concrete Piles (India) Ltd. v. Union of India*, the Delhi High Court held that a provision in a contract that negates the intent of the legislature of the

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[35] Indian Contract Act § 23; *Associate Builders*, (2015) 3 SCC 49.
[36] Indian Contract Act §§ 23, 55, 73.

Contract Act is void because it is contrary to public interest and public policy. The strongest reasoning for this position is when a party has an absolute prohibition against claiming statutory remedies for damages incurred as a result of that party's actions.[37]

2. Procedural and Substantive Unconscionability

While the procedural issue is concerned with how the parties negotiate and engage in an agreement based on their meaningful choices, the substantive issue is focused on how the wording of a clause affects the parties after they have entered into a contract. For example, if both parties agree to use a standard form template, this does not mean the clause in the standard form template is unenforceable solely because it was not specifically negotiated between the parties. The best example of an unconscionable term combining gross asymmetry, non-negotiation and employer fault occurs when the employer's default of an innocent party's standard remedy is eliminated by the innocent party's agreement to remove the clause.[38]

The procedural evidence applied to the interest bar consists of the inability to deviate from the standard procurement template, the inability to deviate from the defined parties' roles under the agreement the reliance by the parties on the procurement authority and the ability of each party to price the financial risk of the project realistically. The substantive evidence consists of whether the clause deals with amounts that are acknowledged as sums, a security retained after the term of the contract, a willfully unapproved sum and a loss created by the employer's fault. Before determining the clause to be unconscionable, a tribunal should record the evidence relating to both types of evidence.

The argument of statutory excuse is separate and distinct from these two concepts. Section 55 and Section 73 provide an innocent party damages or a form of compensation for breach of contract. In most cases, the parties will agree to determine how to measure recoverable loss, the rate at which it will be measured and to exclude remote loss. However, a clause that restricts the innocent party from obtaining any monetary remedy for a promisor's willful non-performance may be argued to create

[37] *Simplex Concrete Piles*, 2010 DHC 1100, ¶ 16.
[38] *Brojo Nath Ganguly*, AIR 1986 SC 1571; *Consumer Education & Research Centre*, (1995) 5 SCC 482.

a one-sided legal obligation. Therefore, Section 23 provides a means to control this if the exclusion does, in effect, reach a point of being clearly rejected.

3. Absolute Prohibition Versus Limitation

Any limitation on the maximum interest payable or exclusion from third-party liability for indirect loss shall in most instances provide an appropriate allocation. Even where an Absolute Prohibition restricts claims for various forms of damages on the basis of the Prohibiting Clause and applies to a claim which is otherwise acknowledged, it is qualitatively and materially different than any other type of allocation. Therefore, the appropriate tribunal must ask which period and which type of claim the clause covers and whether or not a statutory regulation applies; the cause of the loss; and whether the clause creates reciprocal obligations for both parties.

Interest periods must also be assessed separately. Pre-reference interest can arise from contractual agreement, precedent, statue or substantive law; pendente lite interest relates to the action of the tribunal while it is in relations; and an award interest provides security for the payment of an award and relates to post-award interest. An Arbitral Tribunal is able to validly address only one of these periods unless it clearly addresses all three. As such, while the term ‘no interest clause’ is used to describe a period of pre-reference and post-award, the manner in which that term is drafted determines the applicability of that term.

4. Arbitral Review and Fundamental Policy

While the arbitrator must adhere to the contract, he/she cannot simply replace the terms of the contract with general principles of fairness. However, the arbitrator must also evaluate any adequately raised Section 23 defence. In certain situations, simply enforcing the prohibition on interest when there is evidence of wrongful conduct by the employer may create a conflict with the fundamental policy of preventing a person from profiting from their wrongful conduct and could therefore invite a review under Section 34(2)(b)(ii).[39]

It is therefore essential that when drafting a reasoned award, the tribunal properly consider the scope of the exclusionary clause; determine which interest periods are applicable to that clause and the statutory source of those interests; ascertain which

[39] *Associate Builders*, (2015) 3 SCC 49; Arbitration and Conciliation Act § 34(2)(b)(ii).

party caused the withholding or delay; address any waiver, estoppel and/or reservation of rights; and ultimately address any Section 23 defence raised by either party. This rationale is based upon the fact that the establishing of an interest period and identifying all relevant statutes are not mutually inclusive or exclusive and must be construed together. Therefore, the overall construction of the contract must reflect its applicability as a legally binding agreement under the Arbitration Act and not be construed as a document that is separate from the governing legislation.[40]

E. MSMED Act, 2006: A Statutory Override of the Interest-Bar Clause

1. The Non-Obstante Clause and Its Effect

The Micro, Small and Medium Enterprises Development Act, 2006 (the "MSMED Act") creates a specific legal framework that applies to supplier contractors that meet the criteria of Micro, Small and Medium Enterprises (MSMEs). Pursuant to Section 16, if the buyer does not make the payment to the supplier in accordance with Section 15 of the MSMED Act, "the buyer will be liable to the supplier for compound interest at monthly intervals, notwithstanding anything contained in any agreement between the buyer and supplier or any legal obligation that is currently in force."[41]

The phrase "notwithstanding" is the broadest possible form of the non obstante clause and thereby removes any agreement between the buyer and supplier regarding the Bar to Interest clause from their contract as well as any legal obligation that may exist under current law. Therefore, for government contractors classified as MSMEs, the Bar to Interest clause within the GCC of Indian Railways, NHAI, KPWD or K-RIDE is a nullity as a result of the MSMED Act. The right to receive compound interest in accordance with Section 16, at three times the bank rate, is a statutory right, not a contractual right.

The Supreme Court of India held in *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd.* that the Micro and Small Enterprises Facilitation Council, established as a dispute resolution mechanism under the MSMED Act, has exclusive jurisdiction to hear payment disputes involving MSMEs. Also, it has the authority to

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[40] LAW COMMISSION OF INDIA, 103D REPORT, UNFAIR TERMS IN CONTRACT (1984); LAW COMMISSION OF INDIA, 199TH REPORT, UNFAIR (PROCEDURAL & SUBSTANTIVE) TERMS IN CONTRACT (2006).
[41] Micro, Small and Medium Enterprises Development Act, 2006, § 16, No. 27, Acts of Parliament, 2006 (India).

award interest on payments due to MSMEs and this authority cannot be negated by a Bar to Interest clause in a contract or any private arbitration clauses.[42]

2. The MSMED Act as a Model for the Broader Argument

The MSMED Act is not only applicable to contractors with a qualifying MSME, but its fundamental principle provides a framework for the legislator's view of how commercial justice must be applied, especially when it comes to payments made after delay or failure by another. In passing this law, the Parliament found that the importance of payments made after delays was so significant to the economy and the functioning of commerce that it must prevail over anything contained in any agreement, including agreements reached between the two parties.

This legislative reflects the deeper principle that amounts owed to a contractor for the wrongful withholding of funds are not simply an economic benefit, but are an entitlement and an obligation to prevent unjust benefit to the employer. Consequently, the same principle that governs the withholding of amounts owed to an MSME contractor in accordance with the provisions of Sections 23 and 73 of the ICA, should similarly apply to any contractor whose amounts owed were withheld based on an arbitrary or unreasonable basis, as well as to any amounts withheld based on the employer's breach of its contractual obligations.

VI. COMPARATIVE ANALYSIS ACROSS INDIAN RAILWAYS, NHAI, KPWD, K-RIDE AND THE CENTRAL PROCUREMENT FRAMEWORK

A. Indian Railways

In Clause G 1.09 of the Railways GCC, interest on all amounts and balances owed is broadly excluded. However, such exclusion must be read according to its precise text, the period of interest claimed and the statutory regime governing the arbitration. A general bar on interest should not be treated as automatically covering every legally distinct period of interest unless the contractual language clearly produces that result. This is particularly important after the clarification that *Ferro Concrete Construction* was

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[42] *Gujarat State Civil Supplies Corp. Ltd. v. Mahakali Foods (P) Ltd.*, (2023) 6 SCC 401.

decided under the Arbitration Act, 1940, and cannot be treated as a direct Section 31(7) authority under the Arbitration and Conciliation Act, 1996.[43]

The contra proferentem rule also has a more limited interpretation in situations that involve signed contracts that specify 'dispute, difference or misunderstanding'. Where a dispute is a bona fide question as to how to measure or value the work performed, the request for a fair estimate is consistent with that term. Where the request is based upon an unconfirmed certificate or upon holding security after the date of release or upon the deduction from payment of an unsubstantiated or otherwise unauthorized fee by the contractor, it is not the same as a bona fide consensus. Because the Railways use the standard form of contract, all ambiguities within these areas of contractual provision should be construed in favour of the contractor.

B. NHAI

Clause 60.8 of the NHAI conditions provides a specific rate of interest for delay in interim payments. This represents a more calibrated drafting model than an outright prohibition. It recognises that delayed certification and delayed payment have a financing consequence for the contractor, while still permitting the employer to regulate the rate, due date and procedure for payment. Any such clause must nevertheless remain subject to mandatory statutory entitlements, including the MSMED Act, 2006 where applicable, and to the cause and period of the delay.[44]

The NHAI formulation is therefore indicative of a more nuanced drafting approach. A contractor's ability to factor into its bid a cost stream for the timely provision of certification acts as a financial incentive for it to act expeditiously. While disputes regarding the due date, rate, compounding of interest or mandatory statutory entitlement may still arise following the passage of the NHAI Clause 60.8, the initial provision does not create an implied prohibition against the idea that a financing consequence arises from a late payment.

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[43] INDIAN RAILWAYS, STANDARD GENERAL CONDITIONS OF CONTRACT, cl. G 1.09; *M/s Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan*, 2025 INSC 429.
[44] NATIONAL HIGHWAYS AUTHORITY OF INDIA, GENERAL CONDITIONS OF CONTRACT, cl. 60.8.

C. KPWD and K-RIDE

Although KPWD and K-RIDE use different language, their standard-form contracts operate within similar public procurement structures. The comparison should therefore focus on the operative effect of each clause rather than the name of the administering entity. The relevant inquiry is whether interest is absolutely barred or merely limited; whether the clause applies to bona fide disputed amounts or also to admitted and wrongfully withheld sums; whether the delay procedure distinguishes contractor default, neutral events and employer default; and whether the limitation operates symmetrically between the parties.[45]

1. Manual for Procurement of Works, 2025 and the GFR Framework

The comparison across individual GCC regimes should also be situated within the broader central procurement architecture created by the General Financial Rules, 2017 and the *Manual for Procurement of Works*, Second Edition, 2025, issued by the Department of Expenditure, Ministry of Finance. The 2025 Manual expressly states that it incorporates policy changes following amendments to the GFR 2017, DFPR 2024 and other developments in the procurement ecosystem, and it is intended to advance value for money, transparency, fairness and good governance in public procurement.

The Manual is directly relevant to this paper because it addresses the same commercial consequences that interest-bar clauses attempt to exclude. It recognises that payment milestones should be structured to support the contractor's cash flow and the progress of work, and that payment terms must be disclosed in the tender and contract. It further records that delays in eligible payments can cause project delays, cost overruns and disputes, and therefore requires ad hoc payment of at least 75% of an eligible running account bill or due stage payment within 10 working days, with the balance normally payable within 28 working days. It also permits public authorities to provide for interest where bills are delayed by more than 30 working days after submission.

The 2025 Manual also supports the paper's distinction between legitimate risk allocation and employer immunity. In relation to price variation, it requires the tender document to clearly state the methodology for price variation where appropriate, recognises that price variation clauses enable contractors to quote more competitive

[45] KARNATAKA PUBLIC WORKS DEPARTMENT, STANDARD SPECIFICATIONS; RAIL INFRASTRUCTURE DEVELOPMENT COMPANY (KARNATAKA) LIMITED, GENERAL CONDITIONS OF CONTRACT.

prices, and permits price variation beyond the original scheduled completion date in cases of force majeure or Government default. These provisions show that contemporary central procurement policy does not treat all financial consequences of delay as risks to be borne by the contractor; rather, it requires a structured allocation of risk according to cause, period and contractual responsibility.

Rule 171 of the GFR 2017, as reflected in the Manual, also governs performance security in works contracts and permits performance security generally in the range of 3% to 10% of the contract value, subject to tender conditions and approval requirements. The Manual further states that performance security is refundable without interest after due completion of contractual obligations. This confirms that procurement rules may validly exclude interest in limited and defined contexts, such as refund of performance security, but such limited exclusions should not be expanded into a general immunity for wrongful withholding of running bills, final bills or compensation arising from employer-caused delay. [46]

2. Common EoT Practice

Across these regimes, the practical protection remains the same. When a contractor invokes an extension-of-time clause, the contractor must expressly reserve its right to claim compensation and interest attributable to employer-caused delay. A reservation of rights separates permission to complete the work within an extended period from the monetary consequences of the delay.

A reservation must also identify the employer-caused events that affected particular invoices or stages of work, rather than relying only on general "without prejudice" language. To substantiate causation and quantum, the contractor should maintain a chronology of events, delay records, drawing and approval logs, certification dates, payment dates and financing records. The tribunal should then distinguish contractor-caused delay, concurrent delay, neutral delay and employer-caused delay before applying any exclusionary clause.

3. Result of the Comparative Analysis

The comparison shows that Indian public works contracts do not require a single absolute rule excluding interest or compensation. The available drafting models

[46] *General Manager, Northern Railway v. Sarvesh Chopra,* (2002) 4 SCC 45.

include absolute exclusions, limited-rate clauses, defined payment timelines, price-variation mechanisms, performance-security rules and express procedures for delayed payments. A form that permits the employer to recover liquidated damages, advances, securities and interest, while simultaneously preventing the contractor from recovering the time value of money wrongfully withheld by the employer, requires a stronger justification than a symmetrical clause that merely caps or structures recoverable amounts. The 2025 Manual therefore strengthens the case for GCC-wide reform: future Government Construction Contracts should replace absolute immunity clauses with defined payment timelines, reasonable interest provisions, and express exceptions for wilful breach, arbitrary withholding and employer-induced delay.

VII. COMPARATIVE AND LEGISLATIVE GAPS

A. American Exception-Based Control

Although construction law in the United States permits 'no damage for delay' clauses, exceptions apply to delays that were beyond the original contemplation of the parties, intentional interference, abandonment at a large scale, fraud and bad faith. These exceptions have a functional relationship to some of the Indian legal principles of prevention, fundamental breach and public policy.[47]

The comparison made is intended to serve a functional purpose and not a direct transplant. Delays outside the original contemplation of the parties would invite narrow construction of the exclusionary clause; intentional interference is conceptually reflected in Section 67 of the ICA as prevention; abandonment at a large scale resembles a fundamental breach; and fraud or bad faith is linked to public policy under Section 23 of the ICA. Although Indian legal doctrine contains the components necessary to formulate such rules, it has not yet brought those components together in an orderly and predictable exception-based framework for government works contracts.

B. The Unresolved Indian Position

At present, the Supreme Court has not issued a final decision reconciling the competing approaches applicable to exclusionary clauses in government construction

[47] *United States v. Rice*, 317 U.S. 61 (1942); *Corinno Civetta Construction Corp. v. City of New York*, 493 N.E.2d 905, 910 (N.Y. 1986).

contracts. In *Ramnath International Construction (P) Ltd. v. Union of India*, the Supreme Court enforced a contractual delay-allocation clause in its specific context. In *M/s C&C Constructions Ltd. v. IRCON International Ltd.*, the Court gave effect to express no-claim undertakings on the basis of estoppel. In contrast, the Delhi High Court in *Simplex Concrete Piles (India) Ltd. v. Union of India* and *MBL Infrastructures Ltd. v. Delhi Metro Rail Corp.* applied Section 23 and public-policy reasoning where exclusionary clauses operated to defeat statutory claims arising from employer-caused delay or breach. If the legislature were to create defined exceptions for wilful breach, bad faith, arbitrary withholding and active interference by employers, the present uncertainty could be resolved in a more predictable manner.

A further legislative development requiring mention is the Arbitration and Conciliation (Amendment) Bill, 2024. The Department of Legal Affairs invited public comments on the draft Bill in October 2024 as part of a consultation exercise for further amendments to the Arbitration and Conciliation Act, 1996; however, it remains relevant to note that the Bill was a draft consultation proposal and not an enacted amendment. The draft reform agenda is primarily directed toward improving the arbitration framework, including institutional arbitration and enforcement of contracts, rather than creating a substantive rule invalidating interest-bar clauses in government works contracts. Therefore, even if the proposed arbitration reforms are carried forward, they would not by themselves resolve the central problem considered in this paper: whether a public employer may rely on a standard-form exclusionary clause to avoid the financial consequences of its own breach.

Thus, until the Supreme Court reconciles the present decisions, or Parliament creates a targeted statutory rule, parties will continue to face uncertainty in pricing delay risk, tribunals may conflate contractual interpretation with statutory validity, and reviewing courts may characterise the same issue either as a matter of party autonomy or public policy. A legislative provision under the ICA, supported by coordinated amendments to Government Construction Contracts and central procurement manuals, would give the exceptions a designated source while preserving legitimate caps, rate limitations and negotiated allocations.[48]

[48] *Ramnath International*, (2007) 2 SCC 453; *C&C Constructions*, 2025 INSC 138; *Simplex Concrete Piles*, 2010 DHC 1100; *MBL Infrastructures*, 2023 SCC OnLine Del 9098.

VIII. SUGGESTIONS AND RECOMMENDATIONS

It is recommended that three legislative amendments be passed:

1. Amend the ICA by adding a new provision that renders an agreement that excludes all liability for willful breach, arbitrary withholding or any breach caused by the actions of the excluding party, void as it relates to liability for willful breach, arbitrary withholding or any breach caused by the actions of the excluding party consistent with the recommendations of the 103rd Law Commission Report proposed Section 67A.
2. Amend the Government Contract GCC to require all GCC regimes of major government entities to contain a provision that excludes amounts wrongfully withheld by the employer from the interest-bar clause.
3. Extend the interest guarantee provided by the MSMED Act to all government contractors not just MSMEs, so that public procurement law in India reflects the principle that the State may not take advantage of its monopsonistic status to deny contractors the value of time with respect to money that it has wrongfully withheld.

IX. CONCLUSION

Government construction contracts contain exclusionary clauses that cannot be considered valid or void in the abstract. The effect of exclusionary clauses can only be determined by examining each clause in the context of its wording, the relevant statute, type of damage, conduct of the parties, whether the provision shifts a genuine risk or immune to wrongdoing by the public employer. For example, a general prohibition against payments or balance owing does not automatically exclude pendente lite interest. Section 31(7)(a) highlights the party's intentions with respect to the tribunal's authority and time frame of effect.

Sections 23, 55, 67 and 73 create a limited but necessary limitation on the ability of the public employer to use an absolute standard term to terminate the time value of money or actual consequences from an arbitrary breach of contract. The basis for this limitation has been articulated by the Delhi High Court in the decisions of Simplex Concrete Piles (India) Ltd. v. Union of India and MBL Infrastructures Ltd. v. Delhi Metro Rail Corp.

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On the other hand, the Supreme Court in *Ramnath International Construction (P) Ltd. v. Union of India* has ruled out the broader statement that all no compensation clauses are invalid. The scope for enforcing a clear and symmetrical provision for delays by either party is available to allocate the risk of delay. The objection under Section 23 is strongest when the provision is one-sided and absolute and is enforced after the delay caused by the employer, in bad faith or with active involvement. Further, the contractor must maintain the factual and procedural basis of the claim. EoT requests, Running Account Bills and Final Bill communication should always reserve a claim for compensation and interest. For the qualifying supplier, Section 16 of the MSMED Act independently creates a preemption of inconsistent contractual terms.

Thus, the legislation and the revised GCC should replace absolute immunity with a defined fee schedule, reasonable limits and express exceptions for willful breach, bad faith and active interference from the employer. This will provide both commercial certainty and continued protection against the employer profiting from their own wrongdoing.

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