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# **THE LEGALITY AND VARIATIONS REQUIRED UNDER CONSTRUCTION LAW IN INDIA**

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## **Abstract**

The statutes governing the domain of construction industry has caught significant level of attention over it's applicability, in the overwhelming realm of functioning of construction and industrial projects, it becomes unpredictable to follow an established pattern altogether to ensure the compliance of legal applications. There exists several possibilities of variation, contemplated as well as non-contemplated which affects the admissibility of the executed terms of the contract. However, there are loopholes to avoid such kind of triggering contingencies and amend appropriate statute in order to conciliate the turmoil caused as a result of non-contemplated happenings. Rights and interests of laborers, employers and contractors are safeguarded and governed by expanse of contract law, labor law and arbitration and conciliation law. However, it is pertinent to note here that these statutes are taken into consideration only in cases of unavoidable discrepancy, otherwise it will be unenforceable.

## **INTRODUCTION**

The laws governing the prospect of construction in India has a dynamic nature, the statutes are being redefined for the sake of meeting with emerging demands in the labour and construction industry. With the evolving nature of the method of work being performed, there is a necessity that the construction department is governed by such sets of provisions which formulates the mechanism to deal the potential risks, to manage the legal disputes and safeguard the interests of the workers with a comprehensive motive.

The Construction law in India is governed by the following inherent laws:

1. Indian Contract Act, 1872: To make the contract, legally enforceable it must meet the valid requirements, a valid contract is which is freely entered by the parties, they must be aware of the nature of documentations and it's purpose in the field. Under this act, the victim can claim damage for the breach of contract.

2. Arbitration and Conciliation Act: This act provides the framework to resolve the disputes amicably while ensuring a cost friendly and time-effective mechanism. Parties can opt for this method to claim a more beneficial result.
3. Environmental law- It is mandatory to maintain the institution of environment by meeting the prescribed standards laid for operating the industrial work, balancing the construction work with the environment preservation needs a very conscientious approach. Depriving the nature can have a negative impact on the functioning of construction tasks.

Requisite elements of a valid variation include the following terms:

1. The parties must mutually agree to alter/modify the contract, however, the party to the contract can be given unilateral rights but a mutual agreement is a major factor.
2. The terms must be framed which defines the alterations that should be outside the purview of the original terms and such as to give permanent effect to the variation required, otherwise it would lead to temporary concession and parties would have to reinstate the entire process.
3. The alterations desired at the end of executor must not be a repercussion of the contractors failure, this tends to safeguard the implementation of variation from being exploited and misused.
4. The work which is subjected to alteration must be capable of having monetary value as a consideration.

Causes to inculcate variations under Construction law

To mention the most prominent factor which a contractor has to strive is to meet the requirements of the client. With the changing trends, it's important that a contractor is aware of the emerging demands related to the construction industry and the modal to design it's structure to meet the demands. As mentioned, with the evolving trends, lients may place their demands which may subtly vary from the initial term. This may lead to inadvertently varying the contract.

The technological innovation have become volatile, this tends to create constant perplexity for the consultants to bind by a sole objective, which subsequently changes the original opted technology and in some cases bylaws require the consultants to opt for new construction technology as it may have be a cost effective alternative and fetch more better results.

In some instances, the general conditions are subjected to alteration, the rights, obligations, and duties are listed under the general conditions. The parties to the contract may want to modify the terms of the contract pertaining to certain circumstances. The option to variation provides the parties with extent level of privilege to delve into a more constructive format of the agenda. The contract stands varied when this alterations are made mid-way.

The contracts are bound by statutory obligation and these obligations are imposed by law and the terms of the contract must be in compliance with it to avoid any future repercussions. Statutes seem to mould itself to meet the required objectives of the changing times. On this basis, terms of the contract may be subjected to verify it's structure as to satisfy the present legal trends complimenting it.

Other financial problems may even lead to variations in the course of time of the contract, such impacts can be as a result of change of financial status of owner or variations in costs of materials, technological implements or contingency of an event. Force Majeure clause is another factor which may lead to possible changes. This clause safeguard the obligations and interests of both contractor and the client in the course of unforeseeable events which may lead to it's non-compliance. This events can be as a result of natural calamities, acts of terrorism, war, or implications imposed by government action.<sup>1</sup>

Legality of variations depicted through case laws:

**IRCON International Ltd. v. CR Son Builders and Developers:**

In the light of the facts of the above case, dispute arose between the parties regarding the claim of additional damages due to delay in the execution of the work. The supplementary agreement entered by the parties mentioned no significant provision specifying the extra amount which becomes payable to the respondent in case of delay, or change in the position of labour remuneration. The appellant in the case states that that the respondent compelled the claimant to enter into the contract through undue influence, and that this contract entered through immoral act of respondent must be termed unenforced as it is acting contradictory to the provisions of **section 14 of Indian Contract Act.**

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1. **IRCON International Ltd. v. CR Son Builders and Developers**

2. *Alopi Parshad & Sons Ltd v. Union of India*

3. *The Indian Contract Act*

It was held by the Appellate court in the respect of this case that both the appellant and the respondent are equally responsible for the delay caused in the execution of the construction work and both the parties are suppose to incur the monetary charges together.

### **Alopi Parshad & Sons Ltd v. Union of India**

In this case, the expressed terms of the contract was altered due to non-contemplated circumstances and leading to that there was variation in the cost incurred by the parties under the contract. The cause of action arose as a result that applicant suffered loss due to depreciation of currency and lead to revision in the original price and that it was stated that the parties were bound by onerous obligations but that shouldn't make the contract impossible to perform.

It was analyzed by the court that the circumstances which lead to the variation was not intended by the parties and was entirely non-contemplated and hence the original contract ceased to exist, the parties were aware of the altered circumstances and their obligation were fulfilled by them so there stands no dispute concerning the alterations performed in the monetary terms.

#### ➤ **Exclusionary clause having contrary impact on legal applicability**

Under construction law, exclusionary clause is a factor which forbids the employer from his own liability and he is not held responsible for any delay or any kind mishap that might have caused under his purview. This clause tends to disregard the rights of the contractor in this aspect and subsequently endorses injustice. Every person is bound to act as per the norms of law, and law never favors anyone, it has set concrete norms and every person has an obligation to bind by it.

In **Pioneer Urban Land and Infrastructure Ltd and Govindan Ragahavan case**, it was held by the Hon'ble court that any clause in the contract which has an unfair or biased impact on the other party will be accepted as unenforced and will have no applicability and will be considered void-ab-initio. In the aforementioned case, exclusionary clause was not binding on the judicial authorities and hence the employer was forbidden from entertaining claims from contractor.

Exclusionary clause as a factor has contradictory impact on law, it neglects the idea of promoting justice and deprives the person of his ow<sup>2</sup>n interest.

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<sup>2</sup> Pioneer Urban Land and Infrastructure Ltd v. Union of India and ors.

It is to be emphasized here that any contract or part of it which gives gross unequal bargaining power to one of the party indicates prejudicial terms for the other and law can not reinforce such provision which is detrimental in nature. The clause which collides with the instructions of public policy are declared void by the courts and parties can not force it's applicability.

➤ **Contractor's failure to predict the ground conditions**

Contractor has the authority to precisely introspect the ground conditions of the construction site and must be experienced in speculating the probable factors which may cause the delay in the process, if he fails to carry a proper inspection of the nature and scope of work, he will be ineligible to claim damages for the loss concurred as a result of poor due diligence. To analyse the assessment which is supposed to be carried by the contractor, let's observe the case of **Obrascon Huarte Lain SA v. Her Majesty's attorney General for Gibraltar**, in the judgement of this case, it was given that a contractor must be duly qualified and must have sufficient experience in analyzing the traits of ground conditions and he must not solely rely on the details prescribed by the employer and himself conduct inspection of the place. If he does not succeed to fulfill his obligations, he will be deprived of his right and can not choose to bring legal claim against the another, and would entitle the employer to terminate the contract as a result of negligence of the contractor.

➤ **Recommendations in the framing of adaptable laws**

In the regard of the overview depicted, it is apparent that the laws concerning construction and other similar project works are expected to be framed in such a manner that it has a flexible adaptability and that it incorporates every aspect of the trending construction statutes. It becomes a great aspect of concern for the employers, constructors and other people employed under the same domain to ensure that contract executed is bound by such set of clauses which maintains a certainty upon their position.

Construction laws are a compilation of distinct acts like Labour law and Wages Code which determines the rights of the workers and laborers across a broad spectrum. To present an assessment on the agenda of this acts, it is evident that it should provide a framework to claim a fair compensation, to ensure an even right concerned with the bargaining power so that the inferior party is not restrained and that the the terms of the contract are in hierarchy with the public policies. **The Indian Contract Act** provides provisions to make appropriate alteration,

parties can chose to modify the terms under **section 62** with mutual<sup>3</sup> agreement and to align the prospect of non circumstantial demands with law.

It is pertinent to note here that it is significant to ascertain the intentions and duties of the parties before delving to make this laws prevalent to them, parties must have operated with due diligence and that the conditions were so perplexed that it made the law prominent to variation. Hence, the variations must be performed with an organized approach complied with statutory formalities and structured procedures.

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3. The Indian Contract Act