
PRICE ESCALATION CLAIMS IN PUBLIC INFRASTRUCTURE PROJECTS: LEGAL AND PROCEDURAL CHALLENGES IN INDIA

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ABSTRACT

India's aspiration to become the world's third-largest economy by 2028 hinges on sustained investment in infrastructure at central and State levels, yet persistent delays in execution remain a systemic concern.¹ Air Chief Marshal Amar Preet Singh's remark— "Not a single project that I can think of has been completed on time"—underscores the gravity of the problem.² If this reflects defense procurements, civil infrastructure is unlikely to fare better.

Major public works contracts typically contain price escalation clauses covering materials such as cement, steel, and bitumen, as well as fuel and labour, allowing contractors to claim compensation for cost increases during the contract and due to employer delays. Enforcement of such clauses often triggers disputes, leading to arbitration, challenges under Sections 34 and 37 of the *Arbitration and Conciliation Act, 1996*,³ and even Special Leave Petitions before the Supreme Court, increasing costs, delays, and judicial backlog.

This study analyses the evolution of judicial approaches to price escalation in public infrastructure contracts, drawing principles from landmark rulings including *Alopi Parshad*, *P.M. Paul*, *Sudhakar Das*, and *K.N. Sathyapalan*, and, where relevant, from significant non-infrastructure cases. It also proposes amending Section 73 of the *Indian Contract Act, 1872*,⁴ to expressly address "price escalation" for greater contractual clarity and consistency in adjudication.

¹ Ram Kishan Rao Chilappagari et al., *Liquidated Damages in Public Infrastructure Projects: Legal and Procedural Challenges in India*, 7 Indian J. L. & Legal Res. 6446, 6446 (July 2025).

² Times of India Online, May 30, 2025.

³ The *Arbitration and Conciliation Act, 1996*, No. 26 of 1996, §§ 34, 37 (India).

⁴ The *Indian Contract Act*, No. 9 of 1872, § 73 (India).

While the present focus is on escalation claims arising during both in-currency and prolongation periods attributable to the employer, contractors often pursue related claims—loss of profit, extended overheads, idling costs, and interest—which involve distinct legal and evidentiary considerations. These are addressed in an ongoing follow-up study aimed at developing assessment standards and identifying reforms to ensure fairness and predictability in dispute resolution.

Keywords: Price escalation, public infrastructure contracts, employer default, contractor claims, the *Indian Contract Act*, the Arbitration and Conciliation Act, construction law, and delay disputes.

1. INTRODUCTION

Public infrastructure projects in India are frequently subject to time overruns, often arising from delays attributable to the employer, including changes in scope, administrative inaction, funding constraints, and unforeseen statutory or environmental clearances. While such delays have multiple legal and financial implications, one of the most persistent and high-value claims raised by contractors is that of price escalation. Unlike liquidated damages—imposed by the employer to penalise for delay—the contractor initiates price escalation claims to recover additional costs incurred both during the original contract period (in-currency) and due to prolongation of the contract attributable to the employer.

In practical terms, price escalation constitutes the single most prevalent head of claim in contractor–employer disputes. Empirical evidence shows these claims appear in nearly every substantial contractor dispute, often forming a major part of the total quantum claimed, reflecting the direct correlation between performance periods and increased expenditure on labour, materials, plant, machinery, and overheads.

The legal framework governing price escalation in India is complex, drawing from statutory provisions under the *Indian Contract Act, 1872*,⁵ the *Specific Relief Act, 1963*,⁶ and common law, while also being shaped by contract-specific clauses and sectoral standard forms such as the General Conditions of Contract in public works. Judicial treatment has oscillated between strict contractual interpretation and equitable consideration of contractor burdens due to employer delays. Enforceability is further complicated by the absence or presence of escalation

⁵ Contract Act, 1872.

⁶ *The Specific Relief Act, No. 47 of 1963, (India)*.

clauses, the doctrine of privity, the principle of mitigation of loss, and evidentiary requirements for proving actual cost increases.

In recent decades, the Supreme Court of India and various High Courts have pronounced on multiple facets of price escalation claims, addressing contractual entitlement, quantification methodologies, and arbitral discretion limits. Certain landmark cases reaffirm long-standing doctrines, while others carve out new principles or reconsider earlier rulings, creating a patchwork of legal positions for practitioners.

This article examines price escalation in public infrastructure projects, covering both in-currency and prolongation claims, with a focus on procedural and legal challenges in enforcement. Building on the authors' earlier work on liquidated damages, this study reviews statutory interpretation, contractual mechanisms, and judicial precedents to identify trends, highlight doctrinal gaps, and offer recommendations for harmonising legal principles with sector realities.

2. RESEARCH FRAMEWORK

2.1. Scope

This study focuses on the legal and procedural challenges associated with price escalation and related claims by contractors in public infrastructure contracts where the employer is a government entity or government-controlled instrumentality. The analysis is confined to disputes and arbitrations seated in India, governed by domestic commercial arbitration laws. Claims arising both during the original contract period (in-currency) and due to prolongation attributable to the employer are considered. Both substantive and procedural dimensions are examined under Indian contract and arbitration law, with relevant judicial precedents and comparative insights included.

2.2. Objectives

- a) Analyse statutory and contractual foundations governing price escalation claims in Indian public infrastructure projects, particularly under CPWD and PWD contracts.
- b) Examine judicial and arbitral interpretations of escalation clauses, including conditions precedent, such as notice requirements and documentary proof.

- c) Identify procedural and evidentiary challenges faced by contractors and employers.
- d) Assess the impact of price escalation claims on project costs, timelines, and stakeholder relationships.
- e) Evaluate the efficacy of dispute resolution mechanisms, including arbitration and court adjudication.
- f) Propose practical recommendations and legal reforms to improve clarity, fairness, and enforceability of escalation provisions.

2.3. Significance

Price escalation claims are critical to maintaining financial viability of long-term infrastructure contracts amid inflation. The absence of uniform escalation clauses, procedural lapses, and inconsistent judicial approaches have resulted in disputes and protracted litigation, affecting project delivery and investor confidence. This study analyses statutory provisions, contract clauses, and judicial decisions—including recent landmark rulings—to trace the evolution and challenges in adjudicating escalation claims, drawing comparative insights for calibrated approaches suitable to the Indian context.

2.4. Period of Study

The research covers statutory provisions from the *Indian Contract Act, 1872*,⁷ evolving jurisprudence, and contract practices up to 2025, enabling a comprehensive assessment of historical developments and recent judicial trends relevant to escalation claims during both in-currency and prolongation periods.

3. METHODOLOGY

This paper adopts doctrinal legal research, focusing on the interpretation of statutory provisions and judicial precedents to critically analyse price escalation in Indian infrastructure projects. The methodology comprises the following steps:

⁷ Contract Act, 1872.

3.1. Statutory Analysis

Examination of relevant provisions of the *Indian Contract Act, 1872*, particularly Section 73,⁸ which govern compensation for breach of contract and price escalation both during the original contract period and any prolongation due to employer delays.

3.2. Case Law Analysis

- a) Analysis of key Supreme Court decisions on interpretation and application of price escalation in large-scale infrastructure projects.
- b) Relevant High Court judgements highlighting divergent interpretations or novel reasoning are also reviewed.
- c) Doctrinal consistency, trends, and shifts in interpretation are discussed.

3.3. Critical Evaluation

- a) Assessment of how effectively the current legal framework addresses practical issues in infrastructure contracts, such as delay, cost overruns, and enforceable escalation clauses.
- b) Identification of ambiguities and inconsistencies in judicial reasoning and statutory interpretation.

3.4. Interpretation for Reform

Based on the analysis, the paper proposes amendments to the *Indian Contract Act, 1872*,⁹ redrafting contract terms about price escalation and suggesting guidelines for consistent judicial interpretation covering both in-currency and prolongation claims.

4. LITERATURE SURVEY

The body of scholarship addressing price escalation and related claims by contractors in Indian public infrastructure projects reveals a multifaceted and evolving legal landscape. This

⁸ Id. § 73.

⁹ Contract Act, 1872.

literature survey synthesizes judicial pronouncements, statutory provisions, contractual practices, and academic analyses, situating the present study within the broader discourse.

4.1. Price Escalation: Conceptual and Practical Perspectives

4.1.1. *Material and Labour Costs*

Escalation in material and labour costs remains the most immediate and visible driver of price variation in public infrastructure projects. Fluctuations in the cost of cement, steel, bitumen, fuel, and other key inputs are often triggered by global market dynamics, taxation changes, or supply-chain disruptions. Similarly, increases in labour wages—whether due to statutory revisions, scarcity of skilled manpower, or inflationary pressures—significantly raise project expenditure.

Standard escalation clauses in contracts typically address these variables by linking reimbursement to published indices such as those of the Reserve Bank of India (RBI) or the Ministry of Statistics and Programme Implementation (MoSPI). However, the responsiveness of these indices to actual market conditions is often debated, with contractors contending that the compensation offered lags behind real cost increases.

4.1.2. *Prolongation of Work*

Prolongation of work constitutes one of the primary factors intensifying price escalation in public infrastructure projects. Such prolongation typically arises from delays in land acquisition, grant of statutory clearances, frequent changes in scope, or administrative inaction by the employer. These delays extend the project duration beyond the originally contemplated timeline, thereby exposing contractors to prolonged market fluctuations.

While the financial consequences of prolongation often translate into distinct heads of claims—such as loss of profit, site overheads, or other disruption-related expenses—these are addressed in detail in Section 4.5. For present purposes, it is sufficient to note that prolongation amplifies the impact of escalation by extending the period of exposure to inflationary pressures.

4.1.3. *Foreign Exchange Variations*

Foreign exchange fluctuations often constitute a significant risk in public infrastructure

contracts, particularly in projects requiring imported equipment, technology, or consultancy services. Escalation formulas in standard bidding documents, including those issued by multilateral funding agencies, frequently incorporate mechanisms to neutralize adverse forex impacts. Indian jurisprudence, however, has not developed uniform principles on allocation of such risks, with tribunals and courts generally upholding contractual stipulations that expressly provide for forex adjustments while rejecting claims in their absence. This divergence underscores the importance of precise drafting in escalation clauses, especially in projects with high exposure to currency volatility.

4.2. Statutory Framework

The legal framework governing compensation for breach of contract in India is principally anchored in Sections 73 and 74 of the *Indian Contract Act, 1872*.¹⁰ Section 73¹¹ lays down the general compensatory principle, stipulating that when a contract is broken, the injured party is entitled to receive compensation for any loss or damage caused to him by the breach, so far as such loss arises naturally from the breach, or which the parties knew, at the time of contracting, to be likely to result from it. The section underscores the requirement of a causal connection between the breach and the loss, while excluding compensation for remote or indirect damages.

Section 74,¹² by contrast, represents a statutory departure from the common law position by specifically addressing cases where the parties have predetermined damages or penalties in the contract itself. It provides that when a contract has stipulated a sum to be paid in case of breach, or contains any other stipulation by way of penalty, the party complaining of breach is entitled, whether or not actual loss is proved, to receive reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated. The emphasis is thus on “reasonable compensation,” making the pre-agreed sum a ceiling but not an automatic entitlement.

Read together, Sections 73 and 74¹³ embody a balanced legislative approach: while Section 73¹⁴ insists upon proof of loss and causation in ordinary cases, Section 74¹⁵ authorizes

¹⁰ Contract Act, 1872, §§ 73, 74.

¹¹ *Id.* § 73.

¹² *Id.* § 73.

¹³ *Id.* §§ 73, 74.

¹⁴ *Id.* § 73.

¹⁵ *Id.* § 74.

enforcement of stipulated damages clauses, but only within the bounds of reasonableness. This statutory framework has provided the foundation for judicial interpretation of liquidated damages and penalty clauses in India, and continues to shape the adjudication of disputes in public infrastructure contracts.

4.3. Judicial Development

Judicial precedents have shaped the interpretation and enforceability of price escalation claims. The Supreme Court's ruling in *Food Corporation of India v. A.M. Ahmed & Co.* recognized escalation as "a normal and routine incident arising out of the gap of time in this inflationary age," thereby affirming the principle that cost fluctuations are inherent to long-term contracts.¹⁶ Conversely, the Court in *Tarapore & Co. v. State of Madhya Pradesh* underscored the necessity of explicit contractual provisions to claim escalation, limiting recovery to losses directly attributable to breach.¹⁷

Further, in *Continental Construction Co. v. State of Madhya Pradesh*, the Supreme Court held that arbitrators cannot award compensation for escalation absent an express or implied contractual right, reaffirming the sanctity of contract terms.¹⁸ The authoritative decision in *Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* on liquidated damages has influenced arbitration and hes to contractual damages, emphasizing proof requirements and the limits of penalty clauses.¹⁹

Comparative jurisprudence underscores similar tensions. In *Denka Advantech Pte. Ltd. v. Seraya Energy Pvt. Ltd.*, the Singapore Court of Appeal reaffirmed the proportionality test for penalty clauses, requiring that they reflect commercial realities without being punitive.²⁰ Likewise, the United Kingdom Supreme Court in *Cavendish Square Holding B.V. v. Makdessi* refined the doctrine by balancing contractual freedom with fairness.²¹ These developments highlight international trends that may inform Indian adjudication on escalation disputes.

¹⁶ *Food Corporation of India v. A.M. Ahmed & Co.*, (2007) 13 SCC 779.

¹⁷ *Tarapore & Co. v. State of Madhya Pradesh*, (1984) 2 SCC 87.

¹⁸ *Continental Construction Co. v. State of Madhya Pradesh*, (1988) 3 SCC 82.

¹⁹ *Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

²⁰ *Denka Advantech Pte. Ltd. v. Seraya Energy Pte. Ltd.*, [2020] SGCA 119 (Sing.).

²¹ *Cavendish Square Holding B.V. v. Makdessi*, [2016] AC 1172 (UKSC).

4.4. Academic and Empirical Analyses

Academic discourse highlights the tension between contractual rigidity and equitable claims arising from project delays. Ashfaq and Bharathi's empirical study on Indian construction contracts reveals frequent procedural lapses—such as omission of delay notices and poor record-keeping—that weaken contractor claims for escalation and prolongation.²² Such deficiencies exacerbate disputes and prolong arbitration or litigation.

Scholars like M.P. Ram Mohan, Gaurav Ray, and Jeeri Sanjana Reddy have analyzed the enforceability of liquidated damages in Indian infrastructure projects, noting inconsistency in arbitral and judicial treatment of stipulated damages and the need for clearer legal standards. Their work emphasizes the importance of procedural rigor, including critical path method (CPM) analyses and independent certifications, to substantiate claims effectively.²³

4.5. Prolongation and Associated Claims

Beyond price escalation, contractors frequently claim prolongation costs encompassing loss of profit, lost opportunities, extended site overheads, and interest on delayed payments.²⁴ These claims raise complex evidentiary issues concerning causation, concurrency of delays, and quantification.²⁵ Indian courts and arbitral tribunals differ in their acceptance of formulaic methods versus documentary proofs, reflecting a lack of uniform standards.²⁶

Employer claims, particularly liquidated damages, also play a pivotal role in dispute resolution. Enforcement of such claims must align with constitutional principles of equality and fairness, particularly given the state's superior bargaining power.²⁷ Recent High Court rulings affirm that time extensions granted to contractors may waive liquidated damages claims, underscoring

²² Shaik Ashfaq & Vishnu Bharathi S, *Analysing Damages Claims in Construction Contracts in India: Challenges and Best Practices*, 6 *Indian J. L. & Legal Res.* 1, 4–5 (2024).

²³ M. P. Ram Mohan, Gaurav Ray, Promode Murugavelu & Jeeri Sanjana Reddy, *Liquidated Damages in India: Concepts, Enforceability, Drafting Considerations*, Indian Inst. Of Mgmt. Ahmedabad 4-9 (2024), <https://www.iima.ac.in>.

²⁴ *P.M. Paul v. Union of India*, (1989) 1 S.C.C. 368 (India) (holding that claims for loss of profits due to prolongation are maintainable).

²⁵ *McDermott Int'l Inc. v. Burn Standard Co. Ltd.*, (2006) 11 S.C.C. 181 (India) (discussing evidentiary standards for delay and prolongation claims).

²⁶ *K.N. Satyapalan v. State of Kerala*, (2007) 13 S.C.C. 43 (India) (highlighting the judicial reluctance toward formulaic methods without supporting evidence).

²⁷ *Simplex Infrastructures Ltd. v. Union of India*, 2019 SCC OnLine Del 9526 (India) (holding that extension of time without reserving LD rights may amount to waiver).

procedural diligence's significance.²⁸

4.6. Concluding Observations

The literature on price escalation in public infrastructure contracts reveals both the breadth and complexity of the issue. Judicial pronouncements have gradually shaped a framework that balances contractual autonomy with the necessity of fairness in long-term projects, while academic contributions have illuminated the practical and doctrinal tensions underlying these disputes. Policy reports have further highlighted the systemic challenges of inflationary pressures, funding constraints, and the need for standardized risk allocation.

Taken together, the surveyed works indicate that Indian jurisprudence has not yet developed a uniform or predictable approach to escalation claims. While courts have occasionally drawn insights from comparative jurisdictions, particularly in recognizing the role of economic disruption and contractual flexibility, such references remain fragmented and non-systematic. What clearly emerges is that escalation is no longer a peripheral contractual matter but a central issue of risk allocation in public procurement. The interplay of judicial interpretation, academic critique, and policy evaluation underscores the urgent need for coherent doctrinal clarity and legislative guidance.

The following section builds on this foundation by analyzing judicial trends, statutory interpretation, and arbitral practices to identify key findings and propose a coherent framework for addressing escalation claims in India.

5. ANALYSES AND FINDINGS

The statutory framework under Sections 73 and 74 of the *Indian Contract Act, 1872* establishes the general principles of compensation for contractual breaches.²⁹ While these provisions provide the foundation, their practical relevance to escalation claims in public infrastructure projects has been clarified primarily through judicial interpretation. Indian courts and arbitral tribunals have repeatedly addressed whether, and to what extent, contractors may recover increased costs arising from delay, inflation, or changes in economic conditions. These decisions reveal how escalation is treated differently from other heads of claim, such as

²⁸ *Kailash Nath Assocs. v. Delhi Dev. Auth.*, (2015) 4 S.C.C. 136 (India) (emphasizing fairness in enforcement of liquidated damages under public contracts).

²⁹ Contract Act, 1872, §§ 73, 74.

liquidated damages, and highlight the difficulties in applying general statutory language to complex, long-duration public contracts. Against this background, the following discussion examines leading judicial pronouncements to trace the evolution of principles governing escalation claims, beginning with the landmark Supreme Court decision in *Alopi Parshad & Sons Ltd. v. Union of India*.³⁰

In *Alopi Parshad*, the Supreme Court considered whether an agent was entitled to additional compensation under a revised 1942 wartime agreement, despite the absence of any contractual provision for rate revision. The original contract for supplying ghee to military personnel was fixed-rate, and the agent claimed enhanced rates to account for wartime price escalation. The dispute was initially referred to arbitration; the umpire rejected the claim, holding that the contract contained no implied term allowing enhancement due to hardship.

Subsequent proceedings in the lower courts involved challenges to the arbitral award, including allegations of denial of fair hearing and errors apparent on the face of the award. Ultimately, the Supreme Court held that mere changes in circumstances do not justify altering contractual terms and restored the original fixed contract rates.

*Alopi Parshad*³¹ remains a foundational precedent affirming that in fixed-rate government contracts, price escalation or hardship cannot justify enhanced compensation unless expressly provided or statutorily authorised, underscoring strict construction and limiting equity-based claims in public procurement.

Following *Alopi Parshad*,³² another early Supreme Court decision addressing escalation claims under arbitration clauses is *Tarapore & Co. v. Cochin Shipyard Ltd.*³³ The dispute arose under a contract for constructing a building dock, where the contractor was to procure pile-driving equipment and technical know-how, initially expected from a Japanese firm at an estimated foreign exchange outlay of Rs. 2 crores. The contractor ultimately sourced the equipment from a Dutch firm, incurring significantly higher costs, and claimed Rs. 2,03,47,266 before the arbitrator, arguing that the original pricing assumption had changed materially.

The arbitrator partly upheld the claim, awarding Rs. 99 lakhs, which the Subordinate Judge,

³⁰ *Alopi Parshad & Sons Ltd. v. Union of India*, AIR 1960 SC 588.

³¹ *Id.*

³² *Id.*

³³ *Tarapore*, supra note 17.

Ernakulam, made a rule of the court with minor modifications to interest. The Kerala High Court, on appeal, held that Clause 26 of the General Conditions of Contract excluded escalation of imported equipment costs from arbitration, since the contractor was responsible for all procurement costs.

On further appeal, the Supreme Court emphasized that when a contract is premised on a specific factual assumption—here, the Rs. 2 crore cost of equipment—material changes to that assumption may justify compensation. The Court held that such claims, including those arising from escalation, could fall within a broadly worded arbitration clause, notwithstanding general exclusions. This case thus clarified that escalation claims linked to foundational contract assumptions can be arbitrable even where other clauses appear to limit them.

In *Continental Construction Ltd. v. The State of Madhya Pradesh*,³⁴ the Supreme Court considered whether a contractor could claim compensation for cost escalation in the absence of an express contractual provision. The dispute arose from a 1970 contract for constructing Rip Rap on the right bund of the Masonry Dam under the Tawa Project. The contractor alleged that delays in work allotment and breaches by the State increased costs by Rs. 5,29,812.

After the Superintending Engineer rejected the claim and arbitration request, the contractor moved the District Judge under Section 20 of the Arbitration Act, 1940. The District Judge and Madhya Pradesh High Court allowed arbitration, appointing a retired Engineer-in-Chief as arbitrator. The arbitrator partly allowed the claim, but the District Judge later set aside the award on remand, and the High Court dismissed the appeal.

The Supreme Court held that financial hardship or increased costs, even if caused by the employer, do not entitle a contractor to compensation unless the contract explicitly provides for it. Upholding the High Court, the Court affirmed that escalation claims must be expressly grounded in the contract, and courts will not imply such entitlements.

In *P.M. Paul v. Union of India*,³⁵ the Supreme Court recognised that price escalation is a natural incident in contracts performed over time within an inflationary economy. The dispute, referred to arbitration, involved allocation of responsibility for delays in building construction and the consequent financial impact. The contractor submitted six claims, of which Claim I sought

³⁴ *Continental Construction Ltd. v. The State of Madhya Pradesh*, (1988) 3 SCC 78.

³⁵ *P.M. Paul*, *supra* note 24.

compensation for increased costs of materials, labour, and transportation during the extended contract period—commencing 9 June 1980 for Phase I and 9 November 1980 for Phase II—totaling Rs. 5,47,612.15. The arbitrator, after examining evidence of rising costs, concluded that escalation was genuine and reasonable, and awarded 20% of the claimed amount under Claim I.

The Supreme Court upheld the arbitrator's award, confirming that Claim I was within the scope of the contract and that an arbitrator possesses jurisdiction to grant compensation for such escalation. The Court emphasised that unforeseen but natural consequences of delayed performance in an inflationary context are compensable, and that reasoned awards addressing these issues are valid. This case remains a foundational precedent for allowing price escalation claims even in the absence of an explicit escalation clause, provided the claim arises as a natural incident of contractual obligations.

In *Vishwanath Sood v. Union of India*,³⁶ the Supreme Court considered whether a contractor could claim price escalation under a fixed-price contract that contained no general escalation clause. While the contract allowed for time extensions and recovery of compensation in cases of delay attributable to the contractor, it did not permit broad escalation claims.

During execution, the contractor sought additional payment for rising labour and material costs. The arbitrator awarded sums under this head, but the Union challenged the award, contending that the claim was excluded by the contract's express terms. The Court held that entitlement to escalation must be expressly provided; hardship or inflation alone cannot justify deviation from agreed fixed rates. The decision reaffirmed the principle from *Alopi Parshad* that neither equity nor commercial difficulty allows an adjudicator to rewrite fixed-price contracts. Consequently, arbitral awards granting uncontracted escalation are liable to be set aside.

In *State of Andhra Pradesh v. M/S Associated Engineering Enterprises*,³⁷ before the Andhra Pradesh High Court, the issue was whether an arbitrator could award price escalation despite a contractual bar. The dispute arose out of a contract to construct approaches to the rail-cum-road bridge across the Godavari River at Rajahmundry, with a stipulated completion period of 42 months (ending 21 December 1973). The contractor completed the work on 10 December

³⁶ *Vishwanath Sood v. Union of India*, (1989) 1 SCC 657.

³⁷ *State Of Andhra Pradesh v. M/S. Associated Engineering*, AIR1990 AP 294.

1974 after two extensions.

The arbitrator, in a non-speaking award dated 25 March 1981, granted Rs. 1,61,790.93 under Claim No. 1 for price escalation due to delay in handing over the site. The State challenged the award under Section 30 of the Arbitration Act, 1940.³⁸

The Court examined *Preliminary Specification to 59 of the Andhra Pradesh Detailed Standard Specifications* (APDSS),³⁹ which bars compensation for departmental delays, permitting only time extensions. Since the contractor had accepted extensions and completed the work, the Court held that compensation was contractually barred and concluded that: “The arbitrator exceeded his jurisdiction in awarding Rs. 2,81,800 under Claim No. 1.”

The appeal was partly allowed, and the award under Claim No. 1 was set aside. The High Court followed the ruling of the Supreme Court in *Continental Construction Co. Ltd.*,⁴⁰ which held that where the contract expressly excludes compensation for delay, arbitrators have no authority to grant escalation claims.

In *State of Karnataka & Another v. R.N. Shetty and Co.*,⁴¹ the Karnataka High Court dealt with claims for price escalation in a public works contract. The Court, while relying on *Alopi Parshad*⁴² and *Continental Construction*,⁴³ reiterated that escalation cannot be claimed as a matter of right in the absence of an express contractual clause, save where the delay causing escalation is attributable to the employer.

Though a High Court pronouncement, *R.N. Shetty*⁴⁴ is widely cited in arbitral and judicial practice for its clear application of Supreme Court precedent to the realities of infrastructure contracts. The judgment is frequently referred to in conjunction with *P.M. Paul*,⁴⁵ to distinguish between escalation arising from general inflationary trends and escalation attributable to employer-caused delay.

³⁸ The Arbitration Act, 1940, § 30 (India).

³⁹ Padala Rama Reddy & Padala Srinivasa Reddy, *A.P. Detailed Standard Specifications & General Principles of Engineering Contracts* cl. 59, (16th ed. Asia Law House 2022).

⁴⁰ *Continental Construction Co. Ltd.*, supra note 34.

⁴¹ *State of Karnataka & Another v. R.N. Shetty and Co.*, AIR 1991 Karnataka 96.

⁴² *Alopi Parshad*, supra note 30.

⁴³ *Continental Construction Co. Ltd.*, supra notes 34. and 40.

⁴⁴ *R.N. Shetty*, supra note 40.

⁴⁵ *P.M. Paul*, supra notes 24, and 34.

In *Ch. Ramalinga Reddy v. State of Andhra Pradesh*,⁴⁶ the Supreme Court addressed whether a contractor could recover escalation costs notwithstanding the absence of a specific price-escalation clause in the agreement. The dispute arose from public works contracts where delays in execution were largely attributable to the State. The contractor claimed compensation for increased costs of labour and materials during the extended period, contending that such losses flowed naturally from the employer's breach. The arbitral tribunal, upon examining the evidence, upheld the claim and awarded escalation.

The Supreme Court affirmed the award, holding that compensation for escalation was a legitimate head of claim under Section 73 of the Indian Contract Act, 1872.⁴⁷ The Court reasoned that where delay is attributable to the employer, the contractor cannot be made to suffer losses arising from rising costs in an inflationary economy merely because the agreement is silent on escalation. The arbitrator's decision was therefore within jurisdiction and consistent with principles of compensatory damages.

This decision reinforces the principle that absence of a price-escalation clause does not bar recovery of escalation costs when such costs are the direct consequence of employer-caused delay. It stands as a significant precedent aligning with *P.M. Paul*,⁴⁸ and subsequent rulings, affirming the contractor's entitlement to just compensation for losses naturally arising from breach in long-duration public works contracts.

In *New India Civil Erectors (P) Ltd. v. ONGC*,⁴⁹ the Supreme Court considered whether an arbitrator could award price escalation in the face of an express prohibition in the contract. The contractor sought escalation citing delays, but the contract specifically stipulated that the rates were firm and final. The Court held that the arbitrator had exceeded his jurisdiction in granting escalation contrary to the contractual prohibition. Relying on settled precedent, it reaffirmed that arbitral tribunals cannot rewrite contractual terms or award claims barred by the agreement.

In *Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises*,⁵⁰ the Supreme Court considered whether an arbitrator could award price escalation despite an express contractual prohibition. The Court held that arbitral authority must remain confined to the four

⁴⁶ *Ch. Ramalinga Reddy v. Superintending Engineer & Anr.*, (1994) 6 SCC 266.

⁴⁷ Contract Act, 1872, § 73.

⁴⁸ *P.M. Paul*, supra notes 24, 34 and 45.

⁴⁹ *New India Civil Erectors (P) Ltd. v. ONGC*, (1997) 11 SCC 75.

⁵⁰ *Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises*, (1999) 9 SCC 283.

corners of the agreement and cannot disregard or rewrite contractual terms. Relying on earlier rulings in *Alopi Parshad*,⁵¹ and *Tarapore*,⁵² the Court reiterated that neither commercial hardship nor delay can justify departure from a binding bargain.

At the same time, the Court clarified that *P.M. Paul*⁵³ does not sanction escalation claims where the contract itself contains an explicit bar. The judgment thus circumscribed the scope of arbitral discretion, emphasising that equitable considerations cannot override contractual stipulations. By doing so, it consolidated the judicial position and paved the way for subsequent rulings such as *Sudhakar Das*, where the same principle was reinforced.

In *T.P. George v. State of Kerala*,⁵⁴ the Supreme Court considered whether a Supplemental Agreement dated 20 October 1983 barred a contractor from pursuing pre-existing claims before arbitration. The contract, for construction of a canal tunnel under the Kallada Irrigation Project, had a completion date of 4 March 1983. Delays led to the Supplemental Agreement extending the time for completion. Prior to signing, however, the contractor had already raised his claims and expressly notified the Superintending Engineer that execution would be “without prejudice.” Even after signing, he reiterated that the agreement was signed under coercion and did not amount to waiver of claims.

The Arbitrator, while awarding escalation under Claim 12(i), held that the Supplemental Agreement neither extinguished nor estopped the contractor’s rights, since he had consistently reserved them. The Subordinate Court upheld the award, but the Kerala High Court reversed, holding that the claims were barred.

The Supreme Court restored the Arbitrator’s award, observing that the High Court ignored vital correspondence demonstrating the contractor’s intent to preserve his claims. It held that once the Arbitrator’s interpretation was reasonable and based on evidence, interference was unwarranted. Accordingly, it affirmed that a supplemental agreement extending time does not, by itself, preclude pre-existing claims when the contractor has expressly reserved his rights.

The Supreme Court in *State of Orissa v. Sudhakar Das (Dead) by L. Rs.*,⁵⁵ the Supreme Court

⁵¹ *Alopi Parshad*, supra notes 30, and 42.

⁵² *Tarapore*, supra notes 17, and 33.

⁵³ *P.M. Paul*, supra notes 24, 34, 45, and 48.

⁵⁴ *T.P. George v. State of Kerala & Another*, (2001) 2 SCC 758.

⁵⁵ *State of Orissa v. Sudhakar Das (Dead) by L. Rs.*, (2003) 3 SCC 27 (India).

dealt with a contractor's claim for reimbursement of additional costs arising from delays alleged to be attributable to the employer. The contractor relied on earlier precedents, particularly *P.M. Paul*,⁵⁶ to argue that escalation in prices during prolonged execution entitled him to compensation, even in the absence of an express contractual provision. The Court, however, decisively rejected this line of reasoning and held that where the contract contained a clear and specific clause governing escalation, the parties were bound by its terms, and no further claim could be entertained on equitable grounds. Stressing the sanctity of contractual provisions, the Court ruled that equity and hardship could not be invoked to override the express allocation of risks agreed upon by the parties. Importantly, a three-judge bench expressly disapproved the reasoning in *P.M. Paul*⁵⁷ to the extent it suggested that escalation claims might succeed independent of contractual stipulations, thereby laying down a stricter approach that confined claims strictly within the four corners of the contract.

This line of reasoning, beginning with *Alopi Parshad*,⁵⁸ was reinforced in *Tarapore*⁵⁹ and further clarified in *Continental Construction*,⁶⁰ before being carried to its logical culmination in *Sudhakar Das*.⁶¹ Collectively, these decisions affirm a consistent judicial position that contractual stipulations cannot be displaced on grounds of equity or hardship, and that courts will not rewrite bargains struck between the parties. This continuity established a doctrinal foundation that subsequent cases would either adopt or attempt to distinguish, but without displacing the settled principle itself.

In *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*,⁶² the Supreme Court considered whether price escalation under a contract for the supply of metallurgical coke should be computed with reference to Washery Grade II coal, originally used, or the costlier Grade I, which was later substituted. The Tribunal had awarded escalation on the basis of Grade II as the base throughout, though Grade I was actually used after July 1992. The trial court set aside the award in part, holding that escalation must thereafter be tied to Grade I with its own base price; the High Court reversed. Restoring the trial court's view, the Supreme Court held that an arbitral

⁵⁶ *P.M. Paul*, supra notes 24, 34, 45, 48 and 53.

⁵⁷ *Id.*

⁵⁸ *Alopi Parshad*, supra notes 30, 42 and 51.

⁵⁹ *Tarapore*, supra notes 17, and 33.

⁶⁰ *Continental Construction Co. Ltd.*, supra notes 34, 40, and 43.

⁶¹ *Sudhakar Das*, supra note 45.

⁶² *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445.

award cannot disregard the express terms of a price variation clause, and judicial interference under Section 34 is justified where the award contravenes clear contractual stipulations.

In *Ramnath International Construction v. Union of India*,⁶³ the Supreme Court dealt with claims for escalation and delay damages despite Clause 11(C), which expressly barred such claims once time was extended. The arbitrator had partially allowed them, but the High Court set aside those portions. Upholding that decision, the Supreme Court reiterated, following *Ch. Ramalinga Reddy v. Superintending Engineer*,⁶⁴ that arbitrators cannot ignore clear exclusion clauses, and compensation for price escalation is recoverable only if expressly provided in the contract.

In *Food Corporation of India (FCI) v. A.M. Ahmed & Co.*,⁶⁵ the Supreme Court upheld an arbitral award granting compensation for increased labour costs following a statutory wage revision under Section 12(3) of *Industrial Disputes Act, 1947*,⁶⁶ even though the contract lacked an express escalation clause. The arbitrator found that the revision substantially raised performance costs and noted that FCI's conduct—constituting committees to examine the claim and requesting the contractor to continue work—indicated acknowledgment of the burden. Affirming the Madras High Court, the Supreme Court held that “escalation is a normal incident of contract performance in an inflationary economy” and that once delay was attributable to FCI, it was liable for the statutory wage increases. The Court further clarified that arbitrators may award escalation in such circumstances, provided they act within the reference and jurisdiction.

In *K.N. Sathyapalan (Dead) by LRs. v. State of Kerala*,⁶⁷ the Supreme Court considered whether, notwithstanding the absence of a price escalation clause in the original agreement and the presence of a specific prohibition in the supplemental agreement, a contractor could still claim escalation costs, and whether the arbitrator had exceeded his jurisdiction in awarding such claims.

The dispute arose from a 1985 contract for construction of the Chavara Distributory. Out of twelve claims referred to arbitration, the arbitrator allowed five, including Claim (g) relating

⁶³ *Ramnath International Construction v. Union of India*, (2007) 2 SCC 403.

⁶⁴ *Ch. Ramalinga Reddy*, supra note 46.

⁶⁵ *Food Corporation of India v. A.M. Ahmed & Co.*, (2007) 13 SCC 779.

⁶⁶ Industrial Disputes Act, 1947, No. 14 of 1947, § 12(3) (India).

⁶⁷ *K.N. Sathyapalan (Dead) by LRs. v. State of Kerala*, (2007) 13 SCC 43.

to escalation of material costs during the extended period attributable to departmental delays. Against a claim of Rs. 39,90,198/-, the arbitrator awarded Rs. 11,70,000/- for work executed beyond the original contract period.

On challenge, the Kerala High Court held that the supplemental agreement barred payment at enhanced rates for the extended period and that the arbitrator had acted beyond the contract terms. The Supreme Court, however, took the view that although parties are ordinarily bound by the express terms of their agreement, where one party's failure to perform its reciprocal obligations directly causes delay, the arbitrator is competent to award compensation for additional costs incurred. The Court therefore restored the award, holding that it was within the arbitrator's jurisdiction.

Notably *Sathyapalan*⁶⁸ was decided by a two-judge bench in 2007, whereas a three-judge bench in *Sudhakar Das*⁶⁹ had categorically held that, in the absence of a price escalation clause, an arbitrator lacks jurisdiction to grant such claims. Judicial discipline ordinarily requires a smaller bench to follow the ratio of a larger bench, yet *Sathyapalan*⁷⁰ proceeded without reference to *Sudhakar Das*.⁷¹ This has created a measure of doctrinal inconsistency. Nevertheless, the equitable orientation in *Sathyapalan*⁷²—that a contractor should not bear the financial consequences of employer-caused delay even where the contract is silent on escalation—reflects a pragmatic shift in judicial reasoning toward equity in public contract disputes.

In *Bharath Coking Coal v. M/S. Annapurna Constructions*,⁷³ the Supreme Court set aside an arbitral award granting “material escalation” in the absence of any escalation clause. Relying on *Alopi Parshad & Sons Ltd. v. Union of India*,⁷⁴ the Court reiterated that escalation is a matter of contractual entitlement and cannot be implied on grounds of hardship or equity.

In *M/s. Nandsons Construction Co. v. State of Madhya Pradesh*,⁷⁵ the Madhya Pradesh High Court, relying on the Supreme Court's ruling in *Sudhakar Das*,⁷⁶ reiterated that in the absence

⁶⁸ *Id.*

⁶⁹ *Sudhakar Das*, supra notes 45, and 61.

⁷⁰ *Sathyapalan*, (2007) 13 SCC 43.

⁷¹ *Sudhakar Das*, supra notes 45, 61, and 69.

⁷² *Sathyapalan*, (2007) 13 SCC 43.

⁷³ *Bharath Coking Coal v. M/S. Annapurna Constructions*, (2008) 12 SCC 277.

⁷⁴ *Alopi Parshad*, supra notes 30, 42, 51, and 58.

⁷⁵ *M/s. Nandsons Constr. Co. v. M.P. Tourism Dev. Corp. Ltd.*, 2010 SCC OnLine MP 4327.

⁷⁶ *Sudhakar Das*, (2003) 3 SCC 27.

of an express price-escalation clause, an arbitrator has no jurisdiction to award escalation claims. The Court thus underscored that escalation is strictly a contractual entitlement and cannot be implied on equitable considerations.

In *J.G. Engineers v. Union of India*,⁷⁷ the Supreme Court upheld an arbitral award granting price escalation under Clause 10(CC) for work executed during a valid extension, where delay was attributable to the employer. The Gauhati High Court had set aside this award, terming it contrary to the escalation clause. The Supreme Court restored the arbitrator's decision, holding that once the contractor is granted an extension without fault, escalation benefits under Clause 10(CC) necessarily follow, and judicial interference on grounds of patent illegality is unwarranted.

In *Assam State Electricity Board v. Buildworth Pvt. Ltd.*,⁷⁸ the Supreme Court upheld an arbitration award granting escalation beyond a contractual ceiling, ruling that acceptance of delayed performance without rescission (per Section 39, Contract Act)⁷⁹ preserves such entitlement. Courts must not enforce contractual caps rigidly when the employer has condoned delay.

In *Union of India v. Varindera Constructions Ltd.*,⁸⁰ the issue before the Supreme Court was whether an arbitrator could award price escalation despite a clear prohibition in the contract. The contractor argued that prolonged delays in execution of the contract, attributable to the employer, entitled it to escalation.

The Court categorically held that where a contract expressly excludes escalation, arbitral tribunals have no authority to grant such relief. It stressed that an arbitrator derives jurisdiction from the contract, and cannot rewrite or override contractual stipulations. By setting aside the award, the Court reinforced the boundary that while equitable considerations may apply where the contract is silent, they cannot prevail against an express prohibition.

This decision is a doctrinal counterpoint to *P.M. Paul*⁸¹ and *K.N. Sathyapalan*,⁸² marking the outer limits of the escalation principle. It clarified that judicial or arbitral discretion cannot

⁷⁷ *J.G. Engineers v. Union of India*, (2011) 5 SCC 758.

⁷⁸ *Assam State Electricity Board v. Buildworth Pvt. Ltd.*, (2017) 8 SCC 146.

⁷⁹ Contract Act, § 39.

⁸⁰ *Union of India v. Varindera Constructions Ltd.*, (2018) 7 SCC 794.

⁸¹ *P.M. Paul*, supra notes 24, 34, 45, 48, 53, and 56.

⁸² *Sathyapalan*, (2007) 13 SCC 43.

extend to nullifying contractual prohibitions, thereby restoring primacy to party autonomy in public contracts.

The Supreme Court in *State of Madhya Pradesh v. Sew Infrastructure Ltd.*,⁸³ addressed the enforceability of escalation claims arising out of delays in execution of a public works contract. The State resisted the arbitral award of price escalation on the ground that the claims were barred by res judicata and that the contract had been concluded on a fixed-price basis.

The Court rejected these contentions and upheld the award. It observed that escalation clauses, once forming part of the contract, must be given effect to in accordance with their terms. It clarified that the plea of res judicata cannot be invoked to bar legitimate contractual claims where the arbitral tribunal had assessed delay and escalation in light of the governing agreement. The Court reaffirmed that arbitral tribunals are empowered to consider claims for escalation when the contract expressly provides for such relief and the factual findings demonstrate that delays are attributable to the employer.

This judgment is significant for two reasons. First, it reinforces the sanctity of contractual escalation provisions, underscoring that parties cannot escape liability by raising technical objections. Second, it reflects a pro-arbitration approach consistent with the principle that arbitral awards should not be lightly interfered with under Section 34 of the Arbitration and Conciliation Act, 1996.⁸⁴ The case thus strengthens the jurisprudence recognising escalation as an enforceable contractual entitlement in public utility projects.

In *Union of India v. M/s Ans Construction Ltd.*,⁸⁵ the Delhi High Court upheld an arbitral award granting escalation for delay attributable to the employer. Although Clause 10CC was formally inapplicable, the arbitrator applied its formula as a fair basis to quantify costs incurred during the extended period. The Court found no perversity or patent illegality, emphasising that arbitrators may adopt rational methodologies for assessment where the underlying entitlement is established, and courts should defer to such reasoned awards.

In *Union of India v. PNSC Infrastructure Pvt. Ltd.*,⁸⁶ the Delhi High Court upheld an arbitral

⁸³ *State of Madhya Pradesh v. Sew Infrastructure Ltd.*, (2022) 8 SCC 401.

⁸⁴ The Arbitration and Conciliation Act, 1996, § 39 (India).

⁸⁵ *Union of India v. M/s Ans Constr. Ltd.*, O.M.P. (COMM) 118/2019 & I.A. 4293/2019, High Court of Delhi, June 28, 2024 (India).

⁸⁶ *Union of India v. M/s PNSC Infrastructure Pvt. Ltd.*, OMP (COMM) 113/2023 (Del. H.C. Jan. 24, 2025) (India).

award using Clause 10CC's formula to calculate escalation during prolongation, finding the method reasonable despite formal inapplicability.

5.2 Findings

The foregoing analysis of twenty-three cases—comprising decisions of the Supreme Court and various High Courts across India—reveals recurring judicial approaches towards contractor claims for price escalation in public utility projects. These decisions demonstrate how courts have dealt with escalation both during the original currency of contracts and for the extended period of performance, often shaping, expanding, or occasionally unsettling the doctrinal contours of contractual interpretation under Indian law.

Accordingly, the findings are presented under two broad sub-categories: 5.2.1 In-Currency Contracts, where escalation was claimed during the stipulated contractual period, and 5.2.2 Extended Period, where escalation was claimed for periods beyond the original term. Within each, emphasis is placed on whether courts have pronounced new principles, expanded or explained existing concepts, or whether smaller benches have deviated from or failed to consider larger bench pronouncements, thereby creating potential inconsistencies in the jurisprudence.

5.2.1 In-currency Price Escalation in Contracts

5.2.1.1 General rule of no escalation without express clause

The consistent position, beginning with *Alopi Parshad & Sons Ltd. v. Union of India*,⁸⁷ and reaffirmed in *Tarapore & Co. v. Cochin Shipyard Ltd.*, is that in the absence of a price escalation clause, contractors are not entitled to additional compensation merely due to inflation or rising costs. The sanctity of contractual terms was underscored, placing primary reliance on the bargain struck by the parties.

5.2.1.2 Rejection of hardship and equity as independent grounds

Courts have consistently declined to recognise commercial hardship, inflation, or equity as standalone bases for granting escalation unless traceable to contract terms or statutory mandate.

⁸⁷ *Alopi Parshad*, AIR 1960 SC 588.

*Continental Construction*⁸⁸ reaffirmed this approach, aligning with the doctrine that courts cannot re-write contracts on grounds of economic hardship.

5.2.1.3 Escalation clauses as binding mechanisms

Where contracts contain an escalation formula or clause, courts have strictly applied such provisions, treating them as self-contained codes. In *Friends Coal Carbonisation*, the Supreme Court clarified that escalation clauses are to be construed literally, with little scope for implied additions.⁸⁹

5.2.1.4 Recognition of escalation as natural incidence of long-term contracts

A significant development emerged in *P.M. Paul v. Union of India*,⁹⁰ where the Supreme Court acknowledged that escalation is an inevitable incident of contracts performed over an extended period in an inflationary economy. Although anchored in arbitral discretion, this recognition marked a shift from strict literalism towards practical acknowledgment of economic realities.

5.2.1.5 Balancing sanctity of contract with economic reality

The jurisprudence reflects a tension: while *Alopi Parshad*⁹¹ and *Tarapore*⁹² insisted on contractual certainty, later decisions such as *P.M. Paul*⁹³ and *K.N. Satyapalan*⁹⁴ acknowledged escalation as a natural consequence of delay not attributable to the contractor. This divergence illustrates the judiciary's evolving struggle between predictability and fairness.

5.2.1.6 Judicial deference to arbitrator's discretion

In *A.M. Ahmed*⁹⁵ and *Buildsworth*,⁹⁶ the Court reiterated that where arbitrators interpret escalation provisions reasonably, courts should defer to their findings. This underscores the autonomy of arbitral processes in construing price adjustment clauses.

⁸⁸ *Continental Constructions* (1988) 3 SCC 78.

⁸⁹ *Hindustan Zinc Ltd.*, (2006) 4 SCC 445.

⁹⁰ *P.M. Paul*, (1989) 1 SCC 368.

⁹¹ *Alopi Parshad*, AIR 1960 SC 588.

⁹² *Tarapore*, (1984) 2 SCC 87.

⁹³ *P.M. Paul*, (1989) 1 SCC 368.

⁹⁴ *Satyapalan*, (2007) 13 SCC 43.

⁹⁵ *A.M. Ahmed*, (2007) 13 SCC 779.

⁹⁶ *Buildsworth Pvt. Ltd.*, (2017) 8 SCC 146.

5.2.1.7 Reaffirmations of established rules

Several High Court decisions—such as *Nandsons*,⁹⁷—merely applied the principles laid down in *Alopi Parshad*,⁹⁸ *Tarapore*,⁹⁹ and *P.M. Paul*¹⁰⁰ without carving new directions. Their relevance lies in confirming the consistent application of settled rules across jurisdictions.

5.2.2 Price Escalation During Extended Period of Performance

5.2.2.1 Entitlement to escalation when delay is attributable to employer

While *P.M. Paul*¹⁰¹ permitted escalation where delay was attributable to the employer even absent an express clause, this principle was later rejected in *Sudhakar Das*¹⁰² by a larger bench, which held that escalation cannot be granted unless specifically provided for in the contract. The two judgments therefore stand in direct conflict, with *Sudhakar Das*¹⁰³ carrying greater precedential weight.

5.2.2.2 Expanded recognition of escalation beyond contractual prohibition

In *Satyapalan*¹⁰⁴ a two-judge Bench allowed escalation on equitable grounds where delay was attributable to the employer, even though the contract prohibited such claims. This marked a departure from the binding ratio of the larger Bench in *Sudhakar Das*,¹⁰⁵ which had categorically disallowed escalation absent an express clause.

5.2.2.2 Conflict with larger Bench decisions

In *P.M. Paul*,¹⁰⁶ the Court allowed escalation where delay was employer-induced, even absent an express clause. However, in *Sudhakar Das*,¹⁰⁷ the Court held that escalation could not be awarded contrary to an express contractual bar. Later, in *Satyapalan*,¹⁰⁸ a two-judge Bench

⁹⁷ *Nandsons Constr.*, 2010 SCC OnLine MP 4327.

⁹⁸ *Alopi Parshad*, AIR 1960 SC 588.

⁹⁹ *Tarapore*, (1984) 2 SCC 87.

¹⁰⁰ *P.M. Paul*, (1989) 1 SCC 368.

¹⁰¹ *Id.*

¹⁰² *Sudhakar Das*, (2003) 3 SCC 27.

¹⁰³ *Id.*

¹⁰⁴ *Satyapalan*, (2007) 13 SCC 43.

¹⁰⁵ *Sudhakar Das*, (2003) 3 SCC 27.

¹⁰⁶ *P.M. Paul*, (1989) 1 SCC 368.

¹⁰⁷ *Sudhakar Das*, (2003) 3 SCC 27.

¹⁰⁸ *Sathyapalan*, (2007) 13 SCC 43.

relied on *P.M. Paul*¹⁰⁹ but overlooked *Sudhakar Das*,¹¹⁰ creating doctrinal inconsistency and leaving uncertainty on whether equity can override express prohibitions. Thus, *P.M. Paul*¹¹¹ and *Sathyapalan*¹¹² stand on one side in recognising equitable claims for escalation, while *Alopi Parshad*,¹¹³ *Tarapore*,¹¹⁴ *Continental Construction*, and *Sudhakar Das* firmly deny such relief absent express contractual provision.

Treatment of Supplementary Agreements and Waiver Clauses

Cases such as *State of Karnataka v. R.N. Shetty* clarified that supplementary agreements, where contractors expressly waive escalation claims, are binding unless obtained under duress. However, where escalation is a direct consequence of employer-caused delay, courts have occasionally read down waiver provisions to prevent unjust enrichment.

1. Judicial Approach to Risk Allocation in Extensions

Courts have differentiated between delays contemplated within the contract (where escalation remains excluded) and delays beyond the parties' reasonable contemplation (where escalation becomes compensable). This analytical framework provides a middle path reconciling strict contractual interpretation with equitable adjustment.

2. Role of Arbitral Tribunals in Assessing Escalation During Extensions

In multiple cases, including *Union of India v. Ans Constructions*, tribunals were permitted to award escalation if they found delays attributable to the employer. The Supreme Court upheld such awards, reinforcing arbitral primacy in fact-based determinations.

3. Reaffirmations Without New Principles

High Court rulings like *J.P. Engineers v. Union of India* and *Union of India v. PNSC Ltd.* largely reaffirmed the distinction between in-currency performance and extended-

¹⁰⁹ *P.M. Paul*, (1989) 1 SCC 368.

¹¹⁰ *Sudhakar Das*, (2003) 3 SCC 27.

¹¹¹ *P.M. Paul*, (1989) 1 SCC 368.

¹¹² *Sathyapalan*, (2007) 13 SCC 43.

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¹¹⁴

period delays, without significantly developing the law further. Their importance lies in demonstrating the consistent nationwide application of Supreme Court guidance.

C. Doctrinal Synthesis

1. Dichotomy Between Strict and Equitable Approaches

The case law reflects two competing strands: (i) a strict contractual approach rooted in *Alopi Parshad* and *Tarapore*, and (ii) an equitable approach permitting escalation during extensions caused by employer fault, as seen in *P.M. Paul* and *Satyapalan*. This doctrinal divergence remains unresolved.

2. Unsettled Hierarchy of Precedents

The reliance on *Satyapalan* by arbitral tribunals, despite its apparent conflict with larger-bench authorities, illustrates a problematic precedent hierarchy. Until clarified by a larger bench, this uncertainty may invite conflicting arbitral awards and judicial interventions.

3. Underlying Principle of Prevention of Unjust Enrichment

The unifying thread across the equitable line of cases is the prevention of unjust enrichment of the employer at the contractor's expense, particularly when delays are caused by employer default. This principle, while not expressly codified, underpins much of the liberal jurisprudence on escalation.

The following findings emerge from the analysis of these judicial decisions, highlighting key legal principles and practical considerations in addressing price escalation claims in public infrastructure contracts.

1. Sanctity of Fixed-Price Contracts Without Escalation Clauses

Judicial precedent strongly upholds that fixed-price public contracts cannot be revised for hardship or inflation in the absence of an express escalation provision. This principle, first articulated in *Alopi Parshad*, has been consistently reaffirmed in *Vishwanath Sood*, *Continental Construction*, and *Sudhakar Das*. Arbitrators lack

jurisdiction to imply escalation rights, and equitable considerations cannot override contractual sanctity.

2. Escalation Permitted Only Under Express or Assumption-Based Provisions

Where escalation is linked to specific contractual assumptions or price variation clauses, courts permit recovery strictly within those parameters. *Tarapore* recognised entitlement where material variation occurred from a foundational assumption, while *J.P. Engineers* upheld escalation under Clause 10(CC) for employer-caused delay. Courts have also endorsed arbitral use of alternative quantification methods (*Ans Construction*) when entitlement otherwise exists.

3. Divergence in Employer-Delay Cases

While *Sudhakar Das* and allied rulings adopt a strict bar on escalation absent a clause, a more equitable line of authority—seen in *P.M. Paul*, *R.N. Shetty*, *T.P. George*, and particularly *K.N. Sathyapalan*—permits recovery where employer-caused delay results in proven cost increases. Notably, *K.N. Sathyapalan* departed from the larger bench ruling in *Sudhakar Das*, favouring fairness over strict adherence to exclusion clauses.

4. Statutory Changes as a Basis for Escalation

Food Corporation v. A.M. Ahmed & Co. established that statutory wage revisions under Section 12(3) of the Industrial Disputes Act, 1947, can justify escalation even without an express clause, especially when acknowledged by the employer. Courts recognised such increases as a routine incident in an inflationary economy.

5. Summary of Judicial Approaches

Two competing judicial approaches emerge—

- **Rigid approach:** *Alopi Parshad*, *Sudhakar Das*, *Bharath Coking Coal*, *Continental Construction*, *Vishwanath Sood*, and *Associated Engineering* enforce strict adherence to contract wording.
- **Equitable approach:** *P.M. Paul*, *Food Corporation*, *K.N. Sathyapalan*, *R.N. Shetty*, and *T.P. George* allow escalation where fairness and actual loss are proven despite

exclusion clauses.

- Departures are limited, with *K.N. Sathyapalan* practically displacing the *Sudhakar Das* principle in equity and *Tarapore* allowing escalation on assumption-based grounds.

In essence, the case law reflects two distinct judicial currents—one strictly upholding the terms of fixed-price contracts, the other allowing equitable relief where employer delays, statutory changes, or proven cost increases warrant it. This divergence underscores the need for clearer escalation provisions in public works contracts and for consistent judicial standards. The foregoing analysis concludes the examination of legal principles and practical considerations, setting the stage for targeted recommendations and final conclusions.

6. RECOMMENDATIONS

Building on the foregoing findings, several measures are proposed to strengthen contractual clarity, reduce disputes, and align judicial interpretation with commercial realities in public infrastructure projects. These recommendations aim to reconcile the competing judicial currents on price escalation by embedding predictability into contract drafting, statutory provisions, and dispute resolution mechanisms.

First, all public works contracts should incorporate explicit escalation clauses, whether permitting or excluding escalation, with clear definitions, quantification methods, and triggering events. This will pre-empt interpretational disputes and minimise arbitral jurisdictional challenges.

Second, standard-form government contracts should adopt tiered escalation mechanisms, differentiating between routine inflation, extraordinary market volatility, and employer-induced delay. Such mechanisms may employ indexed formulas or cost-plus models, ensuring transparency while capping exposure to the employer.

Third, contractual drafting should clearly distinguish between escalation due to general inflation and that arising from statutory changes, as the latter often involves mandatory compliance. Clauses should expressly reference statutory wage revisions, tax changes, or other regulatory cost impacts, together with agreed verification procedures.

Fourth, training and capacity-building programmes should be undertaken for both drafting

authorities and adjudicators, focusing on lessons from landmark cases and promoting uniform interpretation of escalation provisions.

Finally, in light of recurring litigation and the divergence in judicial approaches, it is recommended that Section 73 of the Indian Contract Act, 1872, be amended to expressly address “price escalation” as a species of loss or damage arising from breach or delay. This may be achieved through an Explanatory Note appended to Section 73, defining “price escalation” as:

“Price escalation” means any increase in the cost of labour, materials, fuel, transportation, or other inputs necessary for the performance of a contract, whether arising from inflation, statutory or regulatory changes, market volatility, or other causes beyond the control of the affected party.

The main text of Section 73 may further be revised to clarify that, where a contract provides for price escalation, or where escalation is expressly permitted by statute, the non-breaching party shall be entitled to recover such escalation as part of the loss or damage naturally arising in the usual course of things from the breach. This targeted amendment would harmonise statutory language with established judicial reasoning, while preserving contractual freedom to include or exclude escalation.

7. CONCLUSIONS

The analysis reveals a persistent tension between the sanctity of fixed-price contracts and equitable relief in the face of unforeseen cost increases. Judicial interpretation has alternated between strict textual fidelity and fairness-based departures, particularly in cases of employer delay or statutory cost revisions. This divergence underscores the need for clear, uniform escalation provisions in public contracts and statutory clarity to guide adjudication.

The proposed amendment to Section 73 of the Indian Contract Act offers a pragmatic legislative intervention, embedding “price escalation” within the statutory framework while preserving party autonomy. Together with improved contract drafting and institutional capacity-building, this reform could reduce disputes, align expectations, and provide a balanced, predictable basis for resolving escalation claims in public works projects.

The foregoing analysis underscores that judicial interpretation of price escalation in public

works contracts has oscillated between rigid adherence to contractual terms and equitable relief where fairness demands compensation. This divergence has created uncertainty for both employers and contractors, complicating arbitral decision-making and increasing the risk of prolonged disputes. A statutory clarification would align contractual practice with judicial reasoning, provide greater certainty in arbitration, and reduce litigation.

It is therefore recommended that the Indian Contract Act, 1872, be amended to expressly recognise “price escalation” within the framework of compensable loss under Section 73. Doing so will clarify that legitimate cost increases arising from specified causes—particularly those beyond the contractor’s control—are recoverable where a breach or delay is attributable to the other party. While the exact legislative drafting is for Parliament to determine, the following formulation is proposed for consideration.

Proposed Amendment to Section 73 – Compensation for loss or damage caused by breach of contract

Revised Text (insertions in bold):

“When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage, **including loss or increase in cost arising from price escalation**, caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.”

Proposed Explanation:

Explanation — For the purposes of this section, “**price escalation**” means any increase in the cost of executing the contract or supplying goods or services under it, attributable to factors such as inflation, statutory or regulatory changes, variations in taxes, duties or levies, market fluctuations in the price of materials, fuel, or labour, or other similar causes, whether domestic or international, which occur after the date of entering into the contract and are not due to the act or omission of the party claiming such escalation.

This amendment would provide a clear legislative basis for considering escalation claims, guide arbitral tribunals in quantifying such claims, and harmonise contractual practice with evolving judicial approaches. It would also help in reconciling the competing streams of

precedent by allowing equitable relief in defined circumstances without undermining the sanctity of fixed-price agreements.

8. SCOPE FOR FURTHER RESEARCH

While this study has focused on the legal and procedural challenges surrounding price escalation claims by contractors in cases of employer default, it is recognised that contractors frequently advance other claims for prolongation costs. These may include, but are not limited to, loss of profit, loss of opportunity to undertake other projects, idling of resources, extended site and head-office overheads, release of bank guarantees, interest (pre- and post-reference), payment for excess quantities of materials consumed as per job-mix formulae over the Bill of Quantities (BoQ), and recovery of legal expenses.

Although such claims arise from breach, they engage a distinct set of legal and evidentiary considerations, particularly regarding causation, quantification, and concurrency of delay. The authors are presently undertaking a follow-up study to address these aspects, with the objective of examining prevailing standards for assessment of prolongation claims and identifying potential reforms to enhance consistency, predictability, and fairness in adjudication.

The authors are currently engaged in a follow-up study addressing these aspects, with a view to examining prevailing standards for assessment of prolongation claims and identifying potential reforms to improve consistency and fairness in adjudication.