EXTENSION OF TIME IN GOVERNMENT WORKS CONTRACTS IN INDIA: A COMPARATIVE ANALYSIS OF STANDARD FORM CONTRACTS

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ABSTRACT

Extension of Time (EOT) is an important contractual tool in government works contracts where delays are not caused by the contractor. This becomes especially crucial in public infrastructure projects where delays can arise from employer defaults, contract variations, force majeure circumstances or any other situations leading to delay in performance of the contract. While all government works contracts in India are based on general constitutional and statutory law, not all contractual provisions regarding EOT are the same across government agencies. This article explains how the constitutional principles based on Articles 14, 298, 299 of the Constitution of India govern the EOT issue, along with the relevant statutory provisions of the Indian Contract Act, 1872. Additionally, it also compares the EOT provisions in the Indian Railways Standard General Conditions of Contract (IRSGCC), the Central Public Works Department General Conditions of Contract (CPWD GCC) and the Karnataka Public Works Department General Conditions of Contract (KW-4). The key areas of discussion include concepts such as employer-caused delay, contractor's default, force majeure event, procedural safeguards and remedies available under the contract, showing the differences in the way contracts are drafted by different government authorities while being contradictory with the same law.

Keywords: Extension of Time, Government Works Contracts, Standard Form Contracts, Indian Contract Act, Public Procurement.

1. Introduction

Infrastructure development has become key to the economic development, industrial growth and social welfare in India. The execution of highways, railways, airports, ports, irrigation projects and other public infrastructure projects is carried out mainly through government contracts, executed by the central and state governments.[1] These contracts constitute a major component of public expenditures that require the involvement of numerous institutions, technical expertise, approvals and long execution time. Thus, the successful implementation of these contracts directly affects the implementation of economic and social policies of the state. Nevertheless, due to the nature of infrastructure projects, significant obstacles to their execution are inevitable, resulting in issues associated with overrunning expenditures, delays, contract disputes and litigation.[2]

A delay in construction activity is hardly ever linked to one single reason. It could be due to delays in handing over the site, changes in the design, unexpected site problems, changes in legislation, availability of funds, force majeure incidents or faults of both the employee or contractor.[3] Most of the time such delays cannot be avoided, however, their effect depends on the terms of the contract and that is the reason why EOT is an essential part of public contracts.[4] Unlike the traditional approach that regards every delay as a breach of contract, EOT allows the parties to amend the term of completion and continue with their activities.[5]

The concept of the EOT, however, includes more than just project management or the convenience of contracts. Decisions made in granting or refusing the extension often resolve such issues as whether liquidated damages could be imposed; whether compensation for delays caused by the employer could be applied; whether contractual obligations remain effective in case of supervening events and who bears the risk of delays.[6] This significance of the decisions grows in case of government contracts where the use of the contracts is related to the

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[1] INDIA CONST. arts. 298-299.
[2] Project Management Institute & KPMG in India, *Study on Project Schedule and Cost Overruns* (prepared in consultation with the Ministry of Statistics & Programme Implementation, Government of India, June 2019); Ministry of Statistics & Programme Implementation, Government of India, *Flash Report on Central Sector Infrastructure Projects* (Jan. 2018).
[3] 2 JULIAN BAILEY, CONSTRUCTION LAW ch. 20 (3d ed., London Publishing Partnership 2020).
[4] HUDSON'S BUILDING AND ENGINEERING CONTRACTS ¶ 6-001 (13th ed., Sweet & Maxwell 2015).
[5] STEPHEN FURST & SIR VIVIAN RAMSEY, KEATING ON CONSTRUCTION CONTRACTS ¶¶ 8-001–8-032 (11th ed., Sweet & Maxwell 2021).
[6] FIDIC, CONDITIONS OF CONTRACT FOR CONSTRUCTION FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER (RED BOOK) (1st ed. 1999).

constitutional obligation of the State to act in a fair, reasonable manner and in the interests of the public.[7]

Although they are bound by a common set of constitution and laws, governmental organizations in India have adopted different ways of interpreting contracts pertaining to EOT. The standard forms of contracts used by entities such as the Indian Railways, Central Public Works Department and Karnataka Public Works Department shows notable departures in their treatment of various issues such as delay resulting from the contracting authority, contractor's fault, force majeure events resulting in delay, damages and dispute resolution.[8] Such differences lead to different meanings of the EOT in situations where the same legal principles would otherwise apply to the contracts.

Judicial interpretation has sought to tackle some of these complexities through elucidation of legal concepts linking contractual performance, delays in performance, mutual obligations and force majeure.[9] At the same time, the constitutional principles governing State action have been playing an increasing role in the administration of governmental contracts, especially when the exercise of contractual discretion may affect the rights of parties as well as their financial liabilities.[10] Therefore, the connection between matters of constitutional obligation, statutory rules and standard contract forms has become significant in establishing the legal framework governing EOT in the area of public procurement.

Despite the fact that EOT is an important concept in construction management, engineering practice and commercial arbitration, it has not been substantially discussed in legal literature. The existing literature consists of individual analyses of specific clause(s) or court ruling with little attention paid to how the main government standard forms function within the broader constitutional and legal context. The lack of comparative legal research leaves many questions related to coherence, fairness of contract enforcement and distribution of the risks arising from delay unresolved.

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[7] INDIA CONST. art. 14; *Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly*, AIR 1986 SC 1571.

[8] Indian Railways, STANDARD GENERAL CONDITIONS OF CONTRACT (Apr. 2022); Central Public Works Department, GENERAL CONDITIONS OF CONTRACT (2019, as amended 2023); Karnataka Public Works Department, GENERAL CONDITIONS OF CONTRACT (KW-4).

[9] SIR DINSHAW FARDUNJI MULLA & SIR FREDERICK POLLOCK, POLLOCK & MULLA: THE INDIAN CONTRACT AND SPECIFIC RELIEF ACTS (15th ed., LexisNexis 2017).

[10] *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV),* Constitution Bench Judgment, Civil Appeal Nos. 9486-9487 of 2019 (Sup. Ct. Nov. 8, 2024).

The importance of the aforementioned questions becomes even more evident with the recent rise of public infrastructure projects in terms of their scale, difficulty and financial implicature. A more in-depth analysis of the implementation of the EOT clauses by the Indian Railways, Central Public Works Department and Karnataka Public Works Department will enable determining whether existing legal regulations offer a coherent and balanced approach to construction delays or whether it is time to unite the practice of contract enforcement in order to create legal clarity, administrative justice and efficiency of public procurement.

2. Constitutional foundations of Government Works Contracts

The contracts for government work have a unique significance in the Indian legal system because they go beyond being simple contracts between two parties. One party is the State or its instrumentality and its powers regarding contracts are derived from the Constitution and exercised while performing the duties of the State. As a result, it is not only the ordinary principles of the law of contracts that influence the making, performance and enforcement of these contracts. The constitutional provisions about the exercise of executive power, accountability and fairness of action must also be adhered to.[11] The rules regulating the EOT in the case of government works contracts should thus be considered from this constitutional point of view.

The Union and the States derive their constitutional power to engage in contractual activities from the Constitution of India. It grants the power to the Union and the States to undertake trade, business, own and dispose of property, perform contracts and undertake acts that are related to administration and governance.[12] In conformity with Article 298, further it lays down provisions that ensure that government contracts are executed in accordance with the Constitution and legally permitted methods of government operation.[13] Each of these articles thus demands that public contracts be entered into through a constitutional and legally recognized procedure.[14]

Understanding the nature of the executive powers enshrined in the Constitution of India provides an insight into the reason behind disparate contracts for public works being adopted by various government authorities. In this regard, it stipulates the executive power of the

[11] M. P. JAIN, INDIAN CONSTITUTIONAL LAW 1135-40 (8th ed., LexisNexis 2018).
[12] INDIA CONST. art. 298.
[13] INDIA CONST. art. 299(1).
[14] *K. P. Chowdhry v. State of Madhya Pradesh,* AIR 1967 SC 203.

Union,[15] provides for the executive powers of States[16] and lays down the legislative powers of each of the Union and the States as provided in the Seventh Schedule.[17] However, within this framework, public authorities such as the Indian Railways, Central Public Works Department and Karnataka Public Works Department carry out their executive functions through separate and distinct contract documents.

The government contracting process encompasses not only the power to enter into contracts but also how such powers are actually used. Accordingly, the State has a continuing duty to act fairly, reasonably, transparently and without arbitrariness while carrying out any of its activities, including those arising from a contract.[18] The requirement is particularly relevant in government works contracts since usually public officials prepare the template contracts and contractors have little freedom for negotiating them. Actions that are taken with respect to the approval or rejection of the EOT, imposition of liquidated damages or determination of who is responsible for the delay in construction works cannot be treated as purely contractual decisions. They are still subject to constitutional requirements of fairness and non-arbitrariness, especially since these actions have an effect on the rights and responsibilities of the parties involved in the contract.

Hence, the constitutional structure creates the legal framework that governs the government work contracts hence establishing the State's power of contracting and the aspects regulating that power. However, the issues connected to the delay in performance, mutual obligations, performance under the contract, damages and the legal implications of delays in construction are regulated by the statutes of the Indian Contract Act (ICA), 1872. The analysis of these statutes is the basis for understanding the legal mechanisms regarding the EOT clauses which are present in the government works contracts.

3. Statutory framework governing Extension of Time

The Constitutional framework specifies the powers of the government regarding its power to enter into various contracts but has given limits on its exercise of contractual powers. The liabilities and entitlements arising out of the performance of the contracts created are first governed by the various provisions laid down in the ICA, 1872. However, there is no separate

[15] INDIA CONST. art. 73.
[16] INDIA CONST. art. 162.
[17] INDIA CONST. art. 246.
[18] INDIA CONST. art. 14.

provision or notification regarding EOT in the ICA, although there are many provisions regarding the impact or consequences of delays in performance of contracts, thus determining the responsibilities of the parties involved and the impact of supervened events. Thus, it is important to decode the legal meaning of the various clauses dealing with EOT in government contracts in the light of established law.

The principle that one has the duty to fulfil his contractual obligation or promise is the basis of this framework. The ICA, 1872 lays down that a contracting party is obligated to fulfil or offer to fulfil his obligations unless he is excused from performing them either under the provisions of the Act or as per contract terms.[19] With respect to contractor and employer in government works contracts, it can be noted that both parties have certain obligations which are interdependent and reciprocal. Completing the project on time depends not only upon contractor completing the work in time but also on the obligations of the employer; this includes handing over the site on time, getting the designs and drawings approved, giving direction about the work, making payments on time, supplying the contract materials and so on. Delays due to either party have an impact on the performance of contracts to an extent and hence reciprocal obligations are at the heart of the process of administering EOT.[20]

The reciprocal aspect of obligations in contracts is also determining the legal implications arising from the issue of late performance under the ICA, 1872. This provision distinguishes between contracts where timing is meant to be of the essence followed by those where late performance does not immediately terminate the contract.[21] In government construction projects, there are frequent changes in design, governmental consents, unforeseen site conditions, modifications in the scope of work, as well as administrative actions which do not make it possible for the parties to stick to the date set for the completion. If it happens, the EOT will save the contractual relationship by giving new dates for fulfilling obligations without necessarily terminating the existing rights and responsibilities of both parties. However, it is important to highlight that the grant of the extension does not resolve the questions about the issue of damage compensation, liquidated damages and liability for the delay, as these matters should be determined in line with the contract provisions and applicable legal norms.[22]

[19] Indian Contract Act, No. 9, Acts of Parliament, 1872, § 37 (India).
[20] MULLA & POLLOCK, *supra* note 9, at 730-35.
[21] Indian Contract Act, No. 9, Acts of Parliament, 1872, § 55 (India).
[22] BRIAN EGGLESTON, LIQUIDATED DAMAGES AND EXTENSIONS OF TIME 171–210 (4th ed., Wiley-Blackwell 2009).

Further, delays do not always occur due to the behaviours of the parties involved in the contract. Natural events and other factors that are beyond the parties' control may significantly interfere with contractual performance. The ICA, 1872 deals with the effects of impossibility and frustration of the contract but only in exceptional cases when it becomes impossible and unlawful to perform the contract.[23] In practice, contracts taken out by the state generally contain force majeure and EOT clauses to cater for such situations, thus preserving the relationship of the parties under the contract if such performance remains legally and practically possible.[24]

Along with statutory provisions regulating fulfilment of contracts, there is a condition that limits the ability of the parties to enter agreements, in that their contracts must comply with the norms and regulations of law as well as public policy.[25] This is especially relevant in the public works contracts where standard contracts are prepared by public authorities and contractors usually have less room for bargaining. Therefore, the clauses regarding EOT, liability exclusions, loss compensation and liquidated damages must adhere to the limits set by the Act and cannot be considered purely from the perspective of the contract. Their validity and effectiveness will still depend on the general principles of law relating to reasonableness, fairness and public policy.

Therefore, the ICA, 1872 offers a unified legal standard to control construction delays for all government contracts. This concept's actual application, however, is reliant on the type of contract used by different government authorities. Even though all the concerned parties, including the Indian Railways, the Central Public Works Department and Karnataka Public Works Department, operate under the same statutory and constitutional regime, they all have different provisions related to EOT, employer's responsibility, damages and remedies for delay. Thus, it is vital to analyse these standard form contracts to determine how a single legal framework can lead to different interpretations of regulations concerning EOT.

4. Comparative analysis of EOT Frameworks: IRSGCC *v.* CPWD GCC *v.* KW-4

The common legal basis for the implementation of EOT is a combination of constitutional and statutory principles governing contracts for government works. However, these principles are implemented in practice in accordance with the contractual framework laid

[23] Indian Contract Act, No. 9, Acts of Parliament, 1872, § 56 (India).
[24] EDWIN PEEL, TREITEL ON THE LAW OF CONTRACT ¶¶ 15-001-15-040 (15th ed., Sweet & Maxwell 2020).
[25] Indian Contract Act, No. 9, Acts of Parliament, 1872, § 23 (India).

down by the public body responsible for implementing the contract. In spite of the fact that government agencies operate under the same constitutional and statutory principles, they have developed their own formats for contracting. These contracts would differ in the manner in which they treat employer delay, contractor default, force majeure, compensation, price adjustment and dispute resolution so that they produce entirely different outcomes, even though the same principles of law would apply.[26]

By comparing different Standard General Conditions of Contract in relation to contracts carried out by different government agencies such as IRSGCC, CPWD GCC and KW-4, it is possible to understand how the allocation of time-related risks is approached by different authorities and how the same has implications for EOT provisions in such contracts.

4.1 EOT under the Indian Railways Standard General Conditions of Contract (IRSGCC)

Indian Railways, one of the largest public infrastructure agencies in India, has the IRSGCC, which came into force in its April 2022 edition, applicable to its works contract.[27] Even though revisions have been made in General Conditions of Contract from time to time due to the evolution of procurement practices and dispute settlement and administration of contract, the overall framework on EOT has not undergone any significant changes. The present format, in essence, has been constructed on Clauses 16, 17-A, 17-B and 17-C, which deal with force majeure, delays attributable to employer, delays attributable to contractors and incentives for timely completion.

The IRSGCC states about the situations where the performance of contract is disrupted by events of force majeure which are beyond the control of parties to the agreement. The clause mentions the conditions like, war, equal conflict, natural disasters, viruses, strike and lockout, which cause hindrance in the execution of the works. The contractor has to communicate to the railway administration within prescribed time limit and provide evidence for the claims made by him, showing the occurrence of the event and effect of that event on the performance of the contract. If the force majeure event continues for a long time, contract could be terminated by any of the parties without any financial implications, reflecting the principle that obligations

[26] International Bar Association Construction Law Committee, CONSTRUCTION LAW: COMPARATIVE DEVELOPMENTS REPORT-INDIA CHAPTER (2021); Indian Railways, STANDARD GENERAL CONDITIONS OF CONTRACT (Apr. 2022).
[27] Indian Railways, STANDARD GENERAL CONDITIONS OF CONTR ACT (Apr. 2022).

which became impossible due to supervening events cannot be enforced reasonably.[28]

The IRSGCC includes the core methodology for the EOT. This Clause includes many types of delays that cannot be held against the contractor. There are three major types of delays covered: changes made by the Railway administration, external occurrences that neither party can control and delays caused by the Railway, which include delayed handover of sites, delayed approval of imprints, non-supply of materials from the company and involvement by other companies. Thus, it must be said that the clause under investigation recognizes that the completion of public works in time depends on the fulfilment of commitments from both sides (employers and contractors).[29]

Although recognising that the delay had been caused by the employer, the IRSGCC employs discretionary language allowing the Railway to grant an EOT. This wording has caused serious practical difficulties because the contractor's right of extension depends on the exercise of discretion and not on the automatic operation of the contract following a default of the employer.[30] Such discretion must be exercised in accordance with the doctrine of fairness under the ICA, 1872 and the obligation of public authorities to adopt fair and reasonable means. In a situation where the extension is denied despite the fact that the delay was caused by the Railway administrations, the contractor's right to compensation under the statutes will survive and in addition, the exercise of discretion might be challenged in court if it is discovered that it was arbitrary.

Further, The IRSGCC governs cases of delay caused by the contractor. The Railway administration may grant an EOT with application of liquidated damages at the specified rate laid down by the General Conditions of the Contract. The clause helps maintain a balance in the contract as it allows for the continuation of the project even if there is a delay in performance while ensuring the right of the employer to claim compensation for all delays due to the act of the contractor.[31] In addition to that, IRSGCC provides for incentives for organizations completing the work ahead of schedule and specifies that some contracts worth certain amounts may receive bonuses for early completion.[32]

[28] *Id.* cl. 16.
[29] *Id.* cl. 17-A.
[30] *Id.* cl. 17.
[31] *Id.* cl. 17-B.
[32] *Id.* cl. 17-C.

The process of applying for extensions of time in construction is governed by a specific application procedure, requiring the construction contractor to state the reasons for the delay, the time-frame of the extension required and any reservation concerning possible claims in the future. The Railway seeks to inform the contractor of its decision within the specified period; if this does not occur, the contractor may resort to dispute resolution under the General Conditions of Contract.[33] The process aims to provide administrative certainty, however, conflicts over delayed decisions and the usage of contractual discretion are still substantial sources of arbitration and litigation.

Thus, the IRSGCC provides a procedural framework for dealing with construction delays, which makes it possible to differentiate between delays caused by the Employer and Contractor defaults through the use of exclusive discretion. However, it should be noted that the feature of discretionary nature of Clause 17-A sets the Railway practice apart from the practices of other standardized governmental contracts and raises a lot of questions concerning the nature of the balance between bureaucratic discretion and the certainty of contracts, as well as the legal protection of the contractors. This difference is further highlighted when it comes to comparing EOT provisions in the General Conditions of Contract of the Central Public Works Department General Conditions of Contract.

4.2 EOT under the Central Public Works Department General Conditions of Contract (CPWD GCC)

The IRSGCC has a systematic framework with layers to cover delays resulting from Employer negligence, Contractor fails and Force Majeure events. On the contrary, the CPWD GCC approach for EOT is a much simpler contractual framework.[34] The EOT clause mainly rests on Clauses 5 and 2, covering reasons for grant of extension, procedures of applying for it and financial effects of delay. While all the provisions have the same purpose of balancing the timely execution of project and fairness, there are differences between railway system provisions and the IRSGCC in terms of the administration of the procedures and compensation for delays.

The CPWD GCC provides the key stipulations for the EOT process. This clause takes into account the delays caused by hindrances attributable to the employer such as late site

[33] Id. Annex. VII; cls. 63-64.
[34] Central Public Works Department, GENERAL CONDITIONS OF CONTRACT (2019, as amended 2023).

handing over, late supply of departmental materials, late approval of drawings and design as well as changes made to the works during execution. The clause covers the delays arising from extraordinary events and other issues causing hindrances to the contract performance beyond the control of the contractors.[35] If the delay has been caused by the contractor, it can still apply for the EOT although the conditions set by Clause 2 need to be observed. The recent edits to the General Conditions of Contract have changed the requirements as now the relevant authority is required to respond to the EOT application within the timeframe stipulated, which should be aimed at decreasing possible uncertainty in administration and speeding up the process of making decisions within the contracting process.

The financial implications of delay caused by the contractor are governed under the CPWD GCC, which permits the imposition of compensation through the imposition of liquidated damages in case the contractor fails to carry out the work in the time specified by the contract or any extension of the time mentioned therein. This clause further states that the decision of the authority shall be final in relation to the imposition of such compensation and shall not, in ordinary circumstances, be subject to arbitration.[36] This, on the face of it, seems to preclude the possibility of arbitration in the event of delay caused by the contractor. However, judicial interpretation has always adopted a narrower interpretation of this clause.

In this sense, the distinction provided by the Supreme Court in the case of *Union of India v. Tantia Construction Pvt. Ltd*.[37] is of great importance; the Court explained that the exclusion referred to in Clause 2 is the exclusion of the department's decision regarding liquidated damages imposed on the contractor. The exclusion does not extend to a suit for damages that arise from delay caused by the employer. Claims relating to claims about idle machinery prolongation costs, overheads and other consequential damages can still be considered under Section 73 of ICA, 1872 so they can be resolved by arbitration under the dispute resolution mechanism established in CPWD GCC. This interpretation thus secures substantive interests of the contractor while implementing the main idea of the contractual separation of power provided on Clause 2, i.e. the separation of the power to adopt decisions from the power to determine causes of actions.

In contrast the CPWD approach commonly is likely to appreciate an even-handed

[35] *Id.* cl. 5.
[36] *Id.* cl. 2.
[37] *Union of India v. Tantia Construction Pvt. Ltd.*, (2011) 5 SCC 697.

approach by differentiating between the delays in the execution which result from the fault of the employer, the contractor and the occurrences beyond the parties' control but also enforcing logic in a consistent way by fixing time frames with regard to the procedures handling extension requests. Moreover, the role of judiciary is of paramount importance for ensuring that contractors will not be deprived of the right to receive the compensation for the delays caused by the employer, despite the contractual restrictions on arbitration processes featured in the contracts. It might be noted that the process involving the cooperation between the contract drafting and the judicial practice demonstrates that the effectiveness of EOT provisions lies in the terms of the contracts and in the terms of the relevant statutory provisions on the contractual performance and remedies as well.

4.3 EOT under the Karnataka Public Works Department General Conditions of Contract (KW-4)

In contrast to the reliance upon administrative discretion in the IRSGCC and the CPWD GCC in determining the entitlement to EOT, KW-4 offers a more disciplined and contractor-friendly solution. Whereas the KW-4 is governed by the statutory provisions of the Karnataka Transparency in Public Procurement Act, 1999,[38] the framework of the KW-4 has been substantially influenced by the FIDIC Conditions of Contract for Construction (Red Book), 1999.[39] The inclusion of various concepts including the Intended Completion Date, compensation event and mandatory EOT signifies the contractual philosophy that is based on certainty, equitable risk-sharing and pre-dispute contract administration principles in contrast to post-dispute resolution.[40]

The main mechanism for extending time is that the Employer shall extend the Intended Completion Date whenever a compensation event occurs or a variation made completion within the original time period impossible.[41] The term "shall" shows that this is a fundamental difference from the wording used in IRSGCC and CPWD GCC, which has made the clause much more mandatory than it was before. As a consequence, once the necessary factual conditions arising out of the contract are satisfied, the employer has no right not to grant an

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38 Karnataka Public Works Department, GENERAL CONDITIONS OF CONTRACT (KW-4); Karnataka Transparency in Public Procurement Act, No. 29, Acts of Karnataka State Legislature, 1999 (India).

39 FIDIC, CONDITIONS OF CONTRACT FOR CONSTRUCTION FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER (RED BOOK) (2d ed. 2017).

40 BRIAN W. TOTTERDILL, FIDIC USERS' GUIDE: A PRACTICAL GUIDE TO THE 1999 RED BOOK (2d ed., Thomas Telford Ltd. 2006).

41 KPWD GCC, *Supra* note 38, cl. 26.

extension. This mandatory requirement approximates the reciprocity rules developed in ICA, 1872,[42] as a result of which contractors will not suffer any losses because of delays.

The mandatory extension mechanism complemented under the CPWD GCC creates detailed catalogue of compensation events in which the contractor is entitled, separately from the specific monetary compensation, to apply for some more time in performing contractual obligations.[43] The compensation events include delay in getting the site possession, variations, delay in issuing instructions or drawings, suspension of works, unexpected physical conditions, bad weather situations that could not be reasonably anticipated, force major and other acts or omissions of the employer preventing from performing the contract. Consequently, the KW-4 clarifies the definition of EOT entitling the contractor to certain benefits in a more straightforward manner than the IRSGCC and the CPWD GCC do.[44]

A further distinctive characteristic of the KW-4 is its approach to the consequences of having an extended period because of employer-caused delays. The contractor is entitled to revise its pricing for the extended period in accordance with the Karnataka Public Works Department rules and regulations if the duration of the contract has been extended on the basis of a recognized event that is not attributable to it. This indicates an understanding of how delays caused by factors beyond the contractor's control frequently results in increased costs in terms of labour, materials and operational expenses and the aim is to ensure that the contractor does not suffer financial losses because of the delays.[45] However, under the traditional approach of the IRSGCC and the CPWD GCC, the escalation benefit has generally been denied during prolonged periods even if there is a valid reason.

Thus, KW-4 illustrates a different method for carrying out EOT. In this method the principles of obligatory extensions, clearly identified compensation events together with the relevant entitlement to time and cost relief are used to limit the field for administrative discretion and improve the confidence in contract availability. The frame of this approach is derived from FIDIC agreements and allows a fairer approach to sharing of responsibilities by the contractor and the contract issuer that still meets the general requirements set out by the

[42] Indian Contract Act, No. 9, Acts of Parliament, 1872, § 37 (India).
[43] KPWD GCC, *Supra* note 38, cl. 26.
[44] Nicholas Braimah & Isaac Ndekugri, Consultants' Perceptions on Construction Delay Analysis Methodologies, 134 J. CONSTR. ENG'G & MGMT. 599 (2008).
[45] S. A. Assaf & S. Al-Hejji, Causes of Delay in Large Construction Projects, 24 INT'L J. PROJECT MGMT. 349 (2006).

law on reciprocity and enforceability of contracts in India from 1872. Such specifics can be seen more obviously if parallel comparisons are made.

4.4 Comparative Evaluation

A comparison of the IRSGCC, the CPWD GCC and the KPWD GCC shows that, despite meeting the same constitutional and statutory requirements, the three instruments each adopt very different approaches to the management of the process of granting EOT. These differences do not just relate to the wording, as they also affect the distribution of the risk involved in the contract, the discretionary power of the authorities, the possibility of obtaining financial relief and the effectiveness of the remedies of the affected contractors with regard to construction delays. Therefore, a comparative assessment is required for evaluating the effectiveness of each model.

The essential difference is in the very nature of the EOT obligation. The IRSGCC and CPWD GCC place significant reliance on the discretion of the employer or the competent authority to decide if an extension should be granted after considering the causes of delay. While it is expected that the employer or competent authority would use this discretion reasonably and within the confines of law, in practice it often gives rise to contractual disputes. Alternatively, the KW-4 is based on a mandatory requirement that the employer has to grant an extension of Intended Completion Date if the completion is delayed by an event of compensation or other contractual variation. This approach alleviates a lot of uncertainty by making it possible to link entitlement to some event of contract rather than to the judgement of employer or competent authority regarding the reasons for the delay.[46]

These frameworks have variations in defining the basis for EOT. For instance, IRSGCC and CPWD GCC classify delays into broad categories like employer, contractor, force majeure and variations. There is significant flexibility in terms of interpretation when it comes to delays covered by these frameworks. KW-4, on the contrary, identifies specific compensation events triggering defined consequences as per the contract. The existence of such a strict catalogue contributes to invention’s predictability and helps both parties to understand their rights and obligations better during the implementation of the project.[47]

[46] C. R. Seppälä, The Development of the FIDIC Forms of Contract, 26 INT’L CONSTR. L. REV. (2009).
[47] D. Arditi & T. Pattanakitchamroon, Selecting a Delay Analysis Method in Resolving Construction Claims, 24

The treatment of delay caused by employers marks another area of deviation. The IRSGCC and the CPWD GCC allow for an EOT to protect the contractor from the immediate impacts of a delay in completion, but at the same time do not specifically provide for full contractual means of recovering losses incurred from such delays. The recovery of losses is often contingent upon the application of general rules set forth by the ICA, 1872 and judicial interpretation of the contract. In contrast, the KW-4 combines time and cost relief under compensation event provisions, thus recognizing that delays caused by employers usually incur additional costs that cannot be fully taken into account through an EOT.

A comparable segregation can be marked in respect of the approach to price adjustment during prolonged performances. The traditional viewpoint, as embodied in the IRSGCC and CPWD GCC, practically limits the advantages of price escalation when the contract period is extended, irrespective of the cause for such delay. The KW-4 gives a fairer solution. The price adjustment is allowed when the EOT is caused by compensation events that do not lie in the contractor's province. This way of allocating the financial risk is more in line with the idea that a contracting party should not face loss in economic terms because of the delays caused by the situations beyond its control or the breach of contract committed by the employer.[48]

The efficiency of procedure is also inconsistent between the three contract types. Every type of contract gives a way of arranging the EOT, but the periods of deciding on these issues are very different. The CPWD GCC has smaller timeframes of making EOT decisions compared to the IRSGCC, which provides a longer time span for the contractor to resolve disputes. KW-4 deals with the procedural aspect through its unique mechanism of integrated compensation event, which incentivizes resolving delays in contract administration and not after the completion of the project.[49]

Despite the aforementioned differences in contracts, all three frameworks remain subject to the same constitutional and statutory rules governing government contracts. Judicial interpretation has effectively ensured that contract provisions are not implemented to contradict statutory entitlements or enable arbitrary exercise of power under the contract. That is why contractors still have access to arbitration and litigation for time delays caused by the employer,

INT'L J. PROJECT MGMT. 145 (2006).

[48] Nael G. Bunni, The Four Criteria of Risk Allocation in Construction Contracts, 26 INT'L CONSTR. L. REV. 4, 6 (2009).

[49] S. A. Assaf & S. Al-Hejji, Causes of Delay in Large Construction Projects, 24 INT'L J. PROJECT MGMT. 349 (2006).

despite the existence of special clauses in contracts attempting to eliminate such claims.

From a broad perspective, the above analysis indicates that KW-4 provides a more organized and well-balanced system for performing EOT than IRSGCC or CPWD GCC. The fact that the KW-4 stipulates specific extensions, defines compensation events clearly and provides an integrated right to get time and cost compensation gives a greater degree of certainty and allows for more equitable distribution of risk. Differences among three contractual frameworks do not come from differences in the applicable constitutional or statutory provisions, but rather from the differences in the way contracts were drafted in different institutions.

5. Judicial Delineation

Although the EOT clauses in each of the IRSGCC, CPWD GCC and KW-4 of Contract vary from each other, the interpretation of such clauses will, however, depend on the ruling principles from the courts. It has been well established through court decisions that it is not possible to look at the EOT clauses while ignoring the statute, as contained in the ICA, 1872, particularly the provisions of Sections 37, 55, 56 and 73 and the mandate imposed on public authorities to act fairly, reasonably and without arbitrariness in exercising their contractual powers.

It has been noted by the Supreme Court that the EOT provision does not lead to the cancellation of the contractor's right to compensation in case the delay is because of the employer's actions. The provision for additional time simply allows the continuation of the contract without affecting the liability ensuing from the delay.

In the landmark case of *Asian Techs Ltd v. Union of India*[50] in which the Supreme Court ruled that the presence of a contractual clause in the agreement granting EOT does not automatically bar a contractor from filing a claim for damages resulting from employer-caused delays unless liability is explicitly and legally excluded in the contract. Likewise, the case of *Union of India v. Tantia Construction Pvt. Ltd.*[51] clarified that contractual provisions prohibiting arbitration related to the compensation award under a contract do not stop arbitration tribunals from addressing instances of damages caused by the fault of the employer

[50] *Asian Techs Ltd. v. Union of India,* (2009) 10 SCC 354.
[51] *Union of India v. Tantia Construction Pvt. Ltd.*, (2011) 5 SCC 697.

according to the general rules of damages. The rulings in these cases confirm that contracts and laws regarding damages operate not in exclusion but together.

Judicial examination has targeted contractual terms and conditions known as "No Damage for Delay" clauses at the same time. These clauses usually allow for the EOT but do not allow for any financial compensation for the contractor because of the extension period. In the recent years, Indian courts are inclined to follow a restrictive approach concerning the enforcement of these clauses, especially in cases of breaches initiated by default of the employer. In the case of *Simplex Infrastructure Ltd. v. Union of India*,[52] Delhi High Court remarked that contractual provisions should not be interpreted in a manner contradicting the entitlement of the party to claim for damages arising from the employer's failure to perform reciprocal obligations. The ruling is rooted in a general idea in contract law that one cannot rely on its breach in order to get freed of the consequences of that breach.

The judicial oversight with respect to the exercise of contractual discretion by public authorities has been strengthened further by recent constitutional jurisprudence. In *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV),*[53] the Constitution Bench of the Supreme Court has reiterated the position that the contractually exercised powers of the State remain within the supervision of Article 14 of the Constitution. It held that the provisions of the contract that provide unilateral procedural advantages to public authorities may be struck down if they are contrary to the basic constitutional tenets of equal treatment and fairness. Although it was only about the issue of appointment of arbitrators in a unilateral manner, it provided a foundation for the broader proposition that government standard form contracts could not confer arbitrary and unlimited powers on public authorities under any circumstances. The very same principles are evident in administering the provisions related to EOT when the employer is exercising its discretionary powers.

The influence of the theory of unequal bargaining power explored in the case of *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*[54] remains ever relevant in the area of government contracts for works. The Supreme Court recognised that the so-called 'adhesion contracts' drafted by stronger parties, in this instance public authorities, allowed little

[52] *Simplex Infrastructure Ltd. v. Union of India*, 2019 SCC OnLine Del 7812.
[53] *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, Constitution Bench Judgment, Civil Appeal Nos. 9486-9487 of 2019 (Sup. Ct. Nov. 8, 2024).
[54] *Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly*, AIR 1986 SC 1571.

bargaining room for the weaker party. Given the fact that government contracts for works are usually awarded following tender processes based on minute detail and pre-determined conditions, contractors are deprived of any power to negotiate the terms of the Extensions of Time Clause or terms of compensatory payments for delays.[55] Judicial review is therefore absolutely essential for ensuring consistent application of due diligence in contractual enforcement.

Therefore, these judicial pronouncements indicate that the EOT clauses cannot be regarded as self-contained contractual provisions immune from statutory and constitutional review. The courts have consistently reconciled contractual provisions with the mutual obligations stipulated under the ICA which governs the law regarding damages for breach of contract as well as the constitutional requirement that governmental actions be fair, reasonable and non-arbitrary. Thus, judicial interpretation has emerged as an important tool for ensuring consistency in the implementation of government works contracts despite the continued existence of a variety of standard-form terms and conditions adopted by different public sector authorities.

6. Way Forward

The comparative study of the contracts examined shows the problems connected with EOT questions in the area of government contracts arise not from any flaws in the constitutional and legislative framework regulating public procurement. The constitutional articles and provisions of the ICA,1872 provide reliable legal background for the conclusion, execution and enforcement of the government contracts. The problem is that different government authorities have construed these provisions in their contracts differently.

A domain which requires the utmost consistency is the implementation of the commercial discretion while providing the EOT. The comparative study has demonstrated that contractual clauses involving discretionary expression “may grant” are among the most frequent reasons for unnecessary disputes, especially when the delays happen due to employer’s fault. Although it is crucial to apply administrative discretion to determine the objective situation of construction delays, it is important that the implementation of discretion meets the objective criteria provided by the contract. A contractual scheme which clearly indicates the situations

[55] R. Goel, Unequal Bargaining Power in Indian Government Contracts, 12 INDIAN L. REV. 163 (2022).

under which a contractor is entitled to receive the EOT can minimize the number of disputes and enhance the trust in public procurement system.[56]

It is important to pay close attention to the links between time relief and financial relief. As a matter of practical application, an EOT usually enables contractors not to bear the immediate impact of postponed completion of a project, without properly accounting for the financial implications of the prolonged execution of work. Given that the causes of delays belong to the employers or have been labelled as compensable events, the lack of an adequate mechanism for cost adjustment can lead to an unjust sharing of contractual risk. The integrated approach used in KW-4 shows that the entitlement to additional time and the entitlement to relevant financial relief do not have to be treated as separate issues but can work within the framework of working contracts.[57]

Procedural efficiency is a crucial element of effective contract management. The delays in making decisions on EOT applications continually result in uncertainty regarding the contracts, difficulties in planning the course of the project and greater chances of disputes. The implementation of specific deadlines for considering EOT applications, making justified decisions based on the record and informing about the made decisions would increase the accountability of the administration and provide contractors with an opportunity to make decisions regarding the implementation of projects and the resolution of disputes.[58]

The comparative analysis shows that more uniform approach to drafting government standard form contracts would help achieve greater legal certainty, without compromising the operational needs of individual departments. While specialised organisations may continue to use contractual provisions specific to particular contracts, the basic principles related to EOT, liability of the employer, compensation for the delays caused by the owner, cases of force majeure and procedural measures could be unified through the use of standard contractual provisions.

An improved framework for contracts would result in a better management of both

[56] DAVID MOSEY, COLLABORATIVE CONSTRUCTION PROCUREMENT AND IMPROVED VALUE (1st ed., Wiley-Blackwell 2019).
[57] J. R. MURDOCH & W. HUGHES, CONSTRUCTION CONTRACTS: LAW AND MANAGEMENT (6th ed., Routledge 2021).
[58] DAVID CHAPPELL, UNDERSTANDING JCT STANDARD BUILDING CONTRACTS 74–79 (10th ed., Routledge 2018).

procurement processes and contract performance. This would lead to more certainty regarding the allocation of time-related risks and the reduction of unavoidable conflicts and disputes resulting in better project management processes and proper treatment of the contracting parties. Even more importantly, this would guarantee that the mechanisms of the contract variation comply with the constitutional provisions regulating the State actions and the laws and regulations related to the performance of contracts.

7. Conclusion

The concept of EOT is recognized as one of the most consequential contractual tools applicable in government construction agreements as it dictates the legal repercussions of construction delays and the distribution of liabilities between the employer and the contractor. Government contracts are subject to the common law framework consisting of the provisions found in Articles 14, 298 and 299 of the Constitution and the ICA, 1872 but this research illustrates that they perform very differently in practice among different standard forms of contracts employed by various government entities.

The comparison conducted between the IRSGCC, CPWD GCC and KW-4 of Contract shows that all of them differ greatly in relation to adhering to the delay caused by the employer, contractor failure, compensation matters, as well as regard to the procedural details and the degree of discretion exercised in the process of contract administration. The Karnataka Public Works Department model tends to demonstrate the most advanced features characterized by the introduction of compulsory extensions alongside clearly identified events of compensation thus boosting the degree of certainty of agreements and the balance of risks.

Therefore, the study emphasis understanding of the application of EOT in the contract form, fulfilling not only a role of a procedural mechanism, but also important legal task of preserving contractual relationships through recognition of reciprocal obligations and creating fair distribution of delay-related risks. Proper implementation of EOT is thus determined not only by statutory regulations but by precise formulation of contracts and clarity of decision making. Accordingly establishing proper uniformity in the formulation of EOT provisions for public works contracts will ensure better correctness of contract execution and reduce the number of disputes arising from delays. The improved balance in terms of legal construction of the contracts can contribute to the sense of fairness and accountability in the process of state contracting.