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# LIMITATION OF LIABILITY CLAUSES AND THEIR ENFORCEABILITY IN INDIA

## I. Introduction:

Limitation of liability clauses are contractual provisions aimed at restricting, limiting or excluding a party's financial liability arising due to negligence, breach, or other contractual defaults. One of the main reasons why these clauses are included in commercial contracts is to mitigate risks. "These clauses are commonly found in standard form contracts, technology, agreements, service contracts, and agreements involving substantial financial investments."<sup>1</sup> However, their enforceability in India is not absolute. In India, courts subject these clauses to restrictions under statutory provisions particularly the Indian Contract Act, 1872. Through the statutes and their enforcement, the judiciary creates a balance between the freedom of contract and protection against unfair contractual terms. This article analyses the legal framework that governs limitation of liability clauses in India, its enforcement and recent judicial trends over the same.

## II. Concept and Rationale of Limitation of Liability Clauses:

Limitation of liability clauses are contractual provisions that are meant to limit the quantum of damages to be paid by a party and exclude liability for specific categories of losses. In modern contracting activities, such clauses are important for risk management and allocation, allowing one to predict pricing, exposure and structure insurance arrangements accordingly. These clauses also allow parties to determine liability and allocate risk ex ante as opposed to leaving it to be decided post-dispute. This promotes commercial assurance and transactional efficiency.<sup>2</sup>

Indian courts have, through various cases, emphasized that limiting one's liability does not permit parties to completely oust statutory rights or judicial scrutiny. Limitations clauses are subject to strict interpretive standards, particularly when the very purpose of the contract is set to be excluded from the scope of liability. As highlighted by legal scholars, the Courts have adopted a more cautious approach as they take note of the fact that exclusionary clauses can undermine the compensatory framework embedded in Section 73 of the Indian Contract Act 1872, which mandates compensation for loss arising naturally from contractual breach.<sup>3</sup> Hence, courts insist that such clauses are clearly drafted, vigorously negotiated and narrowly construed.

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<sup>1</sup> Lexology, 'Limitation of liability clauses and their applicability in India: a judicial perspective' <https://www.lexology.com/library/detail.aspx?g=f66a195d-44c6-4d60-bd67-17cfd76c1e02> accessed 28 January 2026.

<sup>2</sup> Ibid.

<sup>3</sup> Samisti Legal, 'Limitations on Liability Clauses in Commercial Contracts' (10 December 2024) <https://samistilegal.in/limitations-on-liability-clauses-in-commercial-contracts/#> accessed 28 January 2026.

<sup>4</sup> Lexology, 'Limitation of liability clauses and their applicability in India: a judicial perspective' <https://www.lexology.com/library/detail.aspx?g=f66a195d-44c6-4d60-bd67-17cfd76c1e02> accessed 28 January

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### III. Statutory Framework Governing Enforceability:

The Indian Contract Act 1872 primarily governs enforceability of limitation of liability clauses in India. The Act establishes the foundational principles regulating contractual validity, performance and remedies. Under the Act, limitation of liability clauses are subject to scrutiny through various key provisions, particularly Section 23, 28, and 73 of the Contract Act.<sup>5</sup>

Section 23 of the Indian Contract Act makes void any agreement whose object is consideration is unlawful, fraudulent, or opposed to public policy. Courts have expansively interpreted this provision to invalidate contractual clauses that seek to entirely exclude liability in circumstances where such exclusion would defeat the compensatory framework of contract law. Judicial interpretation has emphasized that while individuals can reasonably limit their financial exposure.<sup>6</sup>

Section 28 further restricts the enforceability of clauses that extinguishing legal rights. The provision invalidates contractual terms that either restrict parties from enforcing their rights through ordinary legal processes or impose time limitations shorter than statutory limitation periods.<sup>7</sup>

Section 73 of the Contract Act governs the compensation for loss or damage caused by breach, further informs judicial treatment of limitation of liability clauses. While parties may contractually agree to cap damages, courts have clarified that such caps cannot entirely negate the statutory principle that an injured party is entitled to reasonable compensation for foreseeable loss.<sup>8</sup>

Together these statutory provisions create a complete legal framework in which limitation of liability clauses are permitted but carefully regulated. Indian courts have consistently sought to balance the principle of freedom of contract with statutory mandates of fairness, access to justice, and public policy.

### IV. Judicial Approach to Limitation of Liability Clauses:

Indian Courts adopt a context-sensitive approach and examine the bargaining power of parties, nature of transaction (commercial vs. consumer) clarity and specificity of drafting and whether liability is excluded entirely or reasonably limited. The Supreme Court in *Bharati Knitting Co. v*

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2026.

<sup>5</sup> Asian Business Law Institute, 'Do You Know' Series- Exclusion of Liability Clauses under Indian Law (June 2024) <https://www.cyrilshroff.com/wp-content/uploads/2024/06/Do-you-know-series-exclusion-of-liability-India-final.pdf> accessed 29 January 2026.

<sup>6</sup> Himnesh Thakur, Fazl Askari and Vaibhav Mishra, 'Limitation of Liability Clauses and Their Applicability in India: A Judicial Perspective' (13 February 2024) PLS Chambers <https://www.pslchambers.com/article/limitation-of-liability-clauses-and-their-applicability-in-india-a-judicial-perspective/> accessed 29 January 2026.

<sup>7</sup> Ibid.

<sup>8</sup> Samisti Legal, 'Limitations on Liability Clauses in Commercial Contracts' (10 December 2024) <https://samistilegal.in/limitations-on-liability-clauses-in-commercial-contracts/#> accessed 28 January 2026.

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DHL Worldwide Express upheld a limitation clause restricting liability to a nominal amount, emphasizing commercial certainty and mutual assent between sophisticated parties.<sup>9</sup>

However, courts refuse enforcement where clauses attempt to exclude liability for fraud or willful misconduct, contravene statutory compensation regimes, operate unconsciously in standard form contracts.

## V. Recent Judicial Developments: January 2026

### 1. *Natasha Oberoi v Rajaraman Shankar & Ors-*

The Delhi High Court looked at contractual interpretation principles in this case, focusing especially on the strict interpretation of exclusionary clauses. The Court ruled that courts should not extend contractual immunity beyond the contract's express language and that any omissions or exclusions must be carefully considered and clearly stated. "What appears to be excluded has been excluded consciously... omission becomes an expression of intent," the Court noted.

The idea that liability-limiting clauses must be interpreted narrowly and that any ambiguity must be decided against the party seeking exclusion is strengthened by this. Despite the fact that the case was arbitrated, the Court's findings have important ramifications for limitation clauses because they uphold the contra proferentem principle and the judiciary's unwillingness to infer contractual immunity.<sup>10</sup>

### 2. *Bombay High Court Order, Interim Application No. 5306 of 2025-*

In addressing the question of unlawful liability expansion during execution proceedings, the Bombay High Court ruled that liability cannot be increased beyond what has been decided by a court or contract. The Court decided that contractual or adjudicated liability limits cannot be overridden by enforcement mechanisms.

The Court ruled unequivocally that: Execution courts are not permitted to "travel beyond the decree" and impose obligations that are neither judicially nor contractually established. This upholds the idea that, once judicially recognized, limitation of liability clauses serve as legally binding exposure ceilings and cannot be avoided by using procedural enforcement techniques.<sup>11</sup>

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<sup>9</sup> Obhan & Associates, 'Indemnity and Limitation of Liability Clauses: Strategic Risk Allocation in Commercial Contracts' (12 November 2025) <https://www.obhanandassociates.com/blog/indemnity-and-limitation-of-liability-clauses-strategic-risk-allocation-in-commercial-contracts/> accessed 29 January 2026.

<sup>10</sup> *Natasha Oberoi v Rajaraman Shankar and Others* (Delhi High Court, OMP (I) (Comm) 373/2025, decided 15 January 2026. <https://indiankanoon.org/doc/40671418/> accessed 29 January 2026.

<sup>11</sup> *Manjeet Singh T Anand v Nishant Enterprises HUF through its Karta and Another* (Bombay High Court, Ordinary Original Civil Jurisdiction, Commercial Division, Interim Application No 5306 of 2025 in Commercial Execution Application No 19 of 2025, decided 8 January 2026) <https://bombayhighcourt.nic.in/generatenewauth.php?bhcpair=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9vcmlnaW5hbC8yMDI2LyZmbmFtZT0yOTA3MDAwNTMwNjIwMjVfMzIucGRmJnNtZmxhZz10JnJqdWRkYXRIPSZ1cGxyYWRkdD0wOC8wMS8yMDI2JnNwYXNzeGhyYXNIPTEyMDEyNjAyNTMlNjY210YXRpb249JnNtY210YXRpb249JmRpZ2NlcnRmbGc9WSZpbmRlcmZhY2U9TmV%3D%3D> accessed 29 January 2026.

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## **VI. Conclusion:**

Limitation of liability clauses may be enforced in India and have conditional or qualified enforceability. Indian courts respect the right of business autonomy and the allocation of risk through contract but remain vigilant against the enforcement of: (i) unfair limitations on liability; (ii) avoidance of the consequences of statutes; and (iii) violations of public policy.

Recent court decisions issued in January 2026 demonstrate heightened standards of interpretation will be applied to enforceability of limitation of liability clauses and are consistent with limited interpretations of the law. Although India will continue to develop and reflect an evolutionary jurisprudence of contract law, which demonstrates a balance of economic efficiency and legality, it is important for all parties to contract to have clear and durable contractual expectations.

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