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**CLAWBACK OF EXECUTIVE REMUNERATION IN INDIA: LEGAL
FRAMEWORK, CONTRACTUAL ENFORCEABILITY AND LIMITS
ON RECOVERY**

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Abstract

The remuneration of the executive employees consists of fixed salary along with performance linked bonuses, incentives, stock options and deferred compensation. These remuneration structures have become highly common and the companies are incorporating clawback provisions to recover remuneration that has already been paid on the occurrence of any specified circumstances. Clawback clauses may apply when a company changes its financial results, discovers misconduct, or finds that an executive was paid based on incorrect information. In India, the clawback mechanism is recognized in certain statutory and regulatory contexts, including the Companies Act, 2013 and regulatory frameworks issued by the Reserve Bank of India ("RBI"). The legal validity of clawback provisions in executive employment agreements requires thorough examination under the relevant principles governing contractual obligations in India. This article analyses how Sections 73 and 74 of the Indian Contract Act, 1872, along with Section 199 of the Companies Act, 2013, may influence an employer's right to reclaim remuneration previously paid to an executive. It further examines relevant judicial decisions with respect to monetary liabilities arising from employment arrangements. This article contends that the presence of a clawback clause in an employment agreement should not be sufficient, on its own, to justify recovery. Rather, the claim must be assessed by considering the circumstances in which recovery is sought, the relationship between the executive's

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actions and the payment in question, the extent of the proposed recovery, the availability of a fair decision-making process, and the requirements of applicable laws and regulations.

Keywords: Clawback, Executive Remuneration, Corporate Governance, Employment Contracts, Companies Act, 2013, Indian Contract Act, Proportionality

I. INTRODUCTION

The traditional exchange of salary for services has increasingly seen a radical shift in Executive Employment Agreements. Senior executives may be eligible for stock-based compensation, incentives, performance bonuses and deferred compensation based on the company's financial performance. Although the goal of these agreements is to match CEO interests with long-term business performance, they may also create problems if it turns out that the basis for compensation was flawed.

For example, an executive may receive a bonus when a company reports high profits. If the company later discovers that the reported profits were incorrect due to accounting errors or misconduct, it may seek to recover the bonus under a clawback clause in the employment agreement.

In India, the provisions relating to clawback are enumerated in certain statutory and regulatory frameworks. As per Section 199 of the Companies Act, 2013², the company can recover excess remuneration from the executives in specified circumstances. Likewise, the Reserve Bank of India recognises clawback arrangements for regulated entities under its compensation framework³. However, general contract law raises concern about the legality of clawback clauses in private employment agreements.

There can arise disputes in relation to the scope of the agreement and the amount that can be claimed legally during the recovery of remuneration. Therefore, it is imperative to examine the clear grounds for recovery and the reasonableness of the proposed recovery in the circumstances. A fair approach

²The Companies Act, No. 18 of 2013, § 199 (India).

³Reserve Bank of India, Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs, RBI/2022-23/36, DOR.GOV.REC.No.29/18.10.002/2022-23 (Apr. 29, 2022).

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must balance the company's interest in ensuring accountability with the executive's right to protection against unjustified financial claims. This article examines the enforceability of executive remuneration clawbacks in India, focusing on Sections 73 and 74 of the Indian Contract Act, 1872⁴, Section 199 of the Companies Act, 2013⁵ and relevant judicial principles. It asserts the terms of the agreement, the circumstances giving rise to the claim, the reasonableness of the amount sought and compliance with applicable legal requirements must be clearly examined and determined during the recovery.

II. UNDERSTANDING CLAWBACK CLAUSES

A clawback clause allows a company to recover remuneration already paid under certain specified circumstances. Clawbacks may apply in cases of fraud, serious misconduct, regulatory violations or incorrect financial information. Clawback provisions promote accountability by preventing executives from retaining benefits obtained through misconduct or inaccurate performance results. However, their enforceability depends on the contract's terms and applicable law.

In India, the Reserve Bank of India (RBI) recognises malus and clawback arrangements for certain regulated banks and non-banking financial companies (NBFCs). These arrangements may allow recovery or reduction of variable remuneration in specified circumstances, including misconduct and financial underperformance. Their application depends on the relevant regulatory framework⁶.

The Companies Act, 2013, provides for the recovery of excess remuneration in specified circumstances. Section 199 allows recovery from managing directors, whole-time directors, managers and other specified managerial personnel when financial statements are required to be restated due to fraud or non-compliance with the Act and its rules⁷. However, this provision does not create a general right to recover every bonus or incentive following misconduct or poor performance.

⁴The Indian Contract Act, No. 9 of 1872, §§ 73 - 74 (India).

⁵Companies Act § 199.

⁶Reserve Bank of India, Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs, RBI/2022-23/36, DOR.GOV.REC.No.29/18.10.002/2022-23 (Apr. 29, 2022).

⁷The Companies Act, No. 18 of 2013, § 199 (India).

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In the United States, listed companies must have policies to recover certain incentive-based payments when financial statements are restated⁸. Similarly, the UK Corporate Governance Code 2024 expects companies to include clawback provisions in directors remuneration arrangements⁹. These examples show that clawback can be governed by law, regulatory requirements or contractual terms. In India, the enforceability of contractual clawback clauses depends on the terms of the agreement and the applicable law. Sections 73 and 74 of the Indian Contract Act, 1872, may be relevant when determining compensation for breach of contract, but they do not establish a general statutory clawback mechanism¹⁰.

III. CONTRACTUAL ENFORCEABILITY UNDER INDIAN LAW

i. Agreement and Clarity of the Clawback Clause:

A clawback clause must satisfy the basic requirements of the Indian Contract Act, 1872, including valid consent and lawful consideration¹¹. An important question is whether the executive was properly informed of the clause and agreed to its terms. Clawback conditions may appear in separate compensation policies or incentive plans rather than in the employment agreement. If introduced after employment begins, particularly for remuneration already awarded, questions may arise about whether the change was validly accepted. Whether continued employment alone is sufficient consideration for such a change remains open to argument under Indian law. The clause must also use clear language. Vague expressions such as “conduct harmful to the company” may create uncertainty about when recovery is permitted. Clearly defined terms help both parties understand their rights and reduce disputes.

ii. Public Policy and Unequal Bargaining Power:

Section 23 of the Indian Contract Act, 1872, provides that an agreement is void if its object or consideration is unlawful, including where it is opposed to

⁸ Securities Exchange Act of 1934 § 10D, 15 U.S.C. § 78j-4; 17 C.F.R. § 240.10D-1.

⁹ Fin. Reporting Council, UK Corporate Governance Code provision 37 (2024).

¹⁰ Indian Contract Act §§ 73–74.

¹¹ The Indian Contract Act, No. 9 of 1872, §§ 2(d), 10 (India).

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public policy. In *Central Inland Water Transport Corporation Ltd. v. BrojoNathGanguly*, the Supreme Court refused to enforce an unfair employment condition imposed by a powerful employer on employees with limited bargaining power¹². However, this does not mean that every unfavorable employment term is invalid.

In *Vijaya Bank v. Prashant B. Narnaware* (2025), the Supreme Court upheld a contractual obligation requiring an employee to pay Rs.2 lakh for leaving before completing the agreed three-year service period¹³. The decision shows that employment-related financial obligations are not automatically invalid. Their validity depends on their purpose, terms and applicable law. For senior executives, the main concern may therefore be whether the clause is clearly drafted and whether the amount sought is justified, rather than unequal bargaining power alone.

iii. Section 74 and the Recovery of Remuneration

Section 74 of the Indian Contract Act deals with contracts that specify an amount payable upon breach or contain a stipulation by way of penalty. It permits reasonable compensation, subject to the amount specified in the contract¹⁴. Therefore, the amount mentioned in a clause is not automatically recoverable in full.

In *Fateh Chand v. Balkishan Das*, *MaulaBux v. Union of India* and *Kailash Nath Associates v. Delhi Development Authority*, the Supreme Court examined reasonable compensation and contractual forfeiture. These principles may apply where an employer seeks to recover remuneration following a breach. For instance, demanding repayment of a substantial bonus for a minor breach may raise questions about the reasonableness of the amount claimed.

However, Section 74 may not apply in the same way to every clawback. Where recovery follows a breach of contract, the provision may be relevant. Where it follows a financial restatement or another event that does not

¹²*Central Inland Water Transport Corp. Ltd. v. BrojoNathGanguly*, (1986) 3 SCC 156 (India).

¹³*Vijaya Bank v. Prashant B. Narnaware*, 2025 INSC 691 (India).

¹⁴*Fateh Chand v. Balkishan Das*, AIR 1963 SC 1405 (India); *MaulaBux v. Union of India*, (1969) 2 SCC 554 (India); *Kailash Nath Assocs. v. Delhi Dev. Auth.*, (2015) 4 SCC 136 (India).

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necessarily involve a breach, its application is less clear. In such cases, the clause may instead define the conditions under which remuneration can be retained.

The English decision in *Cavendish Square Holding BV v. Makdessi* distinguishes between financial consequences triggered by a breach and those that are not. It examines whether a consequence imposed for breach is disproportionate to the legitimate interest being protected¹⁵. Although not binding in India, it provides a useful comparative perspective. Section 72 of the Indian Contract Act may also provide a separate basis for recovering money paid by mistake in appropriate circumstances¹⁶.

Ultimately, the enforceability of a clawback depends on the wording of the agreement, the event triggering recovery and the applicable legal principles. Clear drafting can reduce disputes, but it does not automatically guarantee recovery of the entire amount claimed.

IV. STATUTORY AND REGULATORY FRAMEWORK FOR CLAWBACK IN INDIA

The clearest clawback provisions in India are found in the banking sector. The Reserve Bank of India (Commercial Banks - Governance) Directions, 2025, issued on 28 November 2025, consolidated relevant governance requirements and replaced earlier instructions, including the RBI's 2019 compensation guidelines¹⁷. Under paragraph 63, the compensation requirements apply to private-sector banks and, subject to specified modifications, foreign banks operating in India. For covered executives and material risk takers, at least 50 per cent of total compensation must generally be variable, and at least 60 per cent of variable pay must be deferred for a minimum of three years. An exception applies to variable pay where its cash component is below Rs.25 lakh¹⁸. Deferred remuneration may be subject to malus or clawback in cases of subdued or negative financial performance, with banks required to specify

¹⁵ *Cavendish Square Holding BV v. Talal El Makdessi*, [2015] UKSC 67, [2016] AC 1172 (UKSC).

¹⁶ The Indian Contract Act, No. 9 of 1872, § 72 (India).

¹⁷ Reserve Bank of India, Reserve Bank of India (Commercial Banks—Governance) Directions, 2025, RBI/DOR/2025-26/149, DOR.HGG.GOV.No.68/29.67.001/2025-26, paras. 73–74 (Nov. 28, 2025)

¹⁸ Id. para. 63, Guideline 3.

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the relevant circumstances and period of application¹⁹.

Clawback provisions can promote corporate accountability by allowing companies to recover remuneration in circumstances such as misconduct or irregularities in financial reporting. Such provisions can also encourage responsible decision-making by making executives accountable for certain actions even after remuneration has been paid²⁰. The dispute involving ChandaKochhar and ICICI Bank provides a practical example of these issues. The bank sought to recover bonuses previously paid to Kochhar and take action concerning her stock options following allegations of misconduct. The dispute illustrates how concerns about an executive's conduct may lead a financial institution to seek the return of remuneration already granted. However, recovery depends on the applicable contractual terms, internal policies and regulatory requirements, and the dispute should not be treated as establishing that every clawback clause is automatically enforceable²¹.

The directions define clawback as a contractual arrangement requiring an employee to return remuneration in specified circumstances. Banks must therefore establish appropriate contractual provisions. For example, ICICI Bank's compensation policy provides for recovery from former employees through legal proceedings²². However, these requirements should not be assumed to apply identically to every category of bank, and small finance banks, payments banks and local area banks are excluded from the definition of commercial banks under these Directions²³.

The Companies Act, 2013, provides two specific recovery mechanisms. Under Section 197(9) - (10), a director of a public company must refund remuneration exceeding statutory limits, and the company cannot waive recovery without Central Government permission²⁴. Section 199 separately provides for recovery of excess remuneration in specified cases involving

¹⁹Reserve Bank of India, Reserve Bank of India (Commercial Banks—Governance) Directions, 2025, RBI/DOR/2025-26/149, DOR.HGG.GOV.No.68/29.67.001/2025-26, para. 63, Guideline 3(g), (Nov. 28, 2025)

²⁰Shrishti Sharma, Clawback Provisions and Corporate Governance in India, Int'l J. for Legal Rsch. & Analysis, vol. II, issue 7 (July 2024).

²¹ChandaKocchar v. ICICI Bank Ltd. 2022 SCC OnLineBom 4748.

²²ICICI Bank Ltd., Compensation Policy (Apr. 27, 2024).

²³*supra* note 16

²⁴Companies Act, No. 18 of 2013, § 197(9) - (10) (India).

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financial statement restatements resulting from fraud or non-compliance with the Act or its rules²⁵. These provisions do not create a universal clawback right for every instance of poor performance or misconduct.

Other jurisdictions have broader rules. In the United States, Rule 10D-1 requires listed issuers to recover specified incentive-based compensation following certain accounting restatements, generally without requiring proof of executive fault. The recovery period ordinarily covers three completed fiscal years²⁶. In the United Kingdom, Provisions 37 and 38 of the UK Corporate Governance Code 2024 address malus and clawback arrangements for directors and related disclosures²⁷. India has sector-specific clawback provisions but no generally applicable mandatory recovery rule for all listed companies comparable to the US framework. For executives outside these specific regimes, enforceability therefore depends substantially on the contractual terms and applicable principles of Indian contract law.

V. LEGAL LIMITS ON RECOVERY OF EXECUTIVE REMUNERATION

The existence of a clawback clause does not automatically entitle a company to recover any amount from an executive. Recovery must be supported by the contract, the circumstances triggering the clause and the applicable law. Indian law places particular limits on restrictions on employment, deductions from wages and the withholding of statutory benefits.

i. Restraint of Trade

Section 27 of the Indian Contract Act, 1872, generally makes agreements restraining a person from carrying on a lawful profession, trade or business void, subject to the statutory exception concerning the sale of goodwill. Indian law does not recognise a general exception merely because a post-employment restriction appears reasonable. However, courts distinguish between restrictions operating during employment and those continuing after

²⁵Id. § 199.

²⁶17 C.F.R. § 240.10D-1 (2025); Securities Exchange Act of 1934 § 10D, 15 U.S.C. § 78j-4; Listing Standards for Recovery of Erroneously Awarded Compensation, Securities Act Release No. 33-11126, Exchange Act Release No. 96,159, 87 Fed. Reg. 73,076 (Nov. 28, 2022).

²⁷FIN. REPORTING COUNCIL, UK CORPORATE GOVERNANCE CODE provisions 37–38 (2024).

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employment ends. A restriction operating during employment may be valid where it protects the employer's legitimate interests²⁸. A restriction preventing an employee from working elsewhere after leaving the job is generally unenforceable²⁹.

In *Vijaya Bank v. Prashant B. Narnaware*, the Supreme Court upheld, on the facts of that case, a condition requiring an employee to complete a minimum service period or pay Rs.2 lakh for leaving early. The Court found that the condition furthered the employment relationship rather than preventing future employment³⁰. However, the judgment does not validate every service bond or clawback clause. A clause recovering a joining bonus following early departure may be defensible, depending on its terms and circumstances. Similarly, a clawback triggered by fraud or misconduct during employment is not automatically a restraint of trade. The more difficult question arises when an executive must repay vested remuneration merely for joining a competitor. Such a clause may face challenge if, in substance, it penalises the executive for taking up lawful employment. Since the enforceability of such a clawback has not been directly settled by the Supreme Court, its validity must be assessed carefully, considering its wording, purpose and effect.

ii. The Code on Wages, 2019

The Code on Wages, 2019, came into force on 21 November 2025³¹. Section 18 regulates deductions from wages and permits only those deductions authorized by the Code. It also addresses payments made by an employee to an employer as deductions from wages. This provision is relevant where a company seeks to recover remuneration by adjusting an executive's salary or making a deduction through payroll. Section 18(3) generally limits the total deductions in a wage period to 50 per cent of the wages³².

The effect of these provisions on a clawback depends on the nature of the payment and the method of recovery. Section 2(y) defines wages and excludes

²⁸*Niranjan Shankar Golikari v. Century Spinning & Mfg. Co.*, AIR 1967 SC 1098.

²⁹*Percept D'Mark (India) (P) Ltd. v. Zaheer Khan*, (2006) 4 SCC 227.

³⁰*Vijaya Bank v. Prashant B. Narnaware*, 2025 INSC 691 (May 14, 2025).

³¹Code on Wages, No. 29 of 2019, § 1(3) (India); Ministry of Labour & Employment, Notification No. S.O. 5322(E), Gazette of India, Extraordinary, pt. II, (Nov. 21, 2025)

³²Code on Wages, No. 29 of 2019, § 18(1), (3) (India).

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specified components, subject to the statutory rule concerning excluded components that exceed the prescribed proportion of remuneration³³. The treatment of a particular bonus or variable payment must therefore be assessed according to its character under the statutory definition.

The Code should not be interpreted as automatically prohibiting every contractual repayment obligation. Equally, a company cannot assume that an employment agreement permits deductions that the law otherwise restricts. Whether a particular repayment obligation falls within the restrictions on deductions from wages depends on the relevant facts and applicable law. The distinction between a deduction through payroll and a separate contractual repayment claim should therefore be considered carefully.

iii. Set-off and Fair Process

Recovering money by adjusting an executive's final salary or other dues may appear convenient, but the company must first establish that the adjustment is legally permitted. The restrictions governing deductions from wages must be considered where the proposed recovery involves salary. Similarly, gratuity cannot be forfeited merely because an employment agreement contains a general clawback clause. Section 53(6) of the Code on Social Security, 2020, permits forfeiture only in the circumstances specified by that provision, including certain cases involving damage or loss caused to the employer, riotous or disorderly conduct, violence, or an offence involving moral turpitude committed in the course of employment³⁴.

A fair procedure can also reduce disputes. The agreement should identify the events that trigger recovery, explain how the amount will be calculated and provide a reasonable process for examining the relevant facts. Giving the executive notice of the allegation and an opportunity to respond can improve transparency and reduce the risk of arbitrary decisions. Any specific procedural requirements imposed by applicable law must also be followed.

If voluntary repayment is not made, the company may pursue an appropriate legal remedy rather than assume that disputed amounts can automatically be

³³Id. § 2(y).

³⁴Code on Social Security, No. 36 of 2020, § 53(6) (India).

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deducted from salary or statutory benefits. An effective clawback clause therefore requires a valid basis for recovery, a lawful calculation of the amount and a recovery process consistent with applicable contractual and statutory protections.

VI. RECOMMENDATIONS FOR EFFECTIVE CLAWBACK PROVISIONS

For clawback provisions to work effectively, they should be drafted in clear and simple terms. The agreement should specify the circumstances in which recovery may be made, such as fraud, serious misconduct, regulatory violations or material financial restatement, instead of using vague terms like “poor performance.” It should also identify the types of remuneration covered, including cash bonuses, deferred compensation, incentives and stock-based remuneration.

The clause should establish a reasonable connection between the event and the remuneration being recovered. Recovery should generally focus on amounts affected by the misconduct or inaccurate information rather than unrelated earnings. The amount recovered should also be proportionate to the circumstances. Recovering an entire remuneration package for a minor or unrelated breach may raise legal concerns under the principles of reasonable compensation in Section 74 of the Indian Contract Act, 1872.

Procedural safeguards are equally important. The executive should receive notice of the alleged violation and a reasonable opportunity to respond before recovery begins. The agreement should explain how misconduct or financial irregularities will be established and specify a reasonable period within which recovery can be initiated. A defined time limit provides certainty to both parties while allowing the company sufficient time to identify irregularities.

The agreement should also explain what happens if voluntary recovery fails. The company may pursue legal action or adjust unpaid or deferred remuneration where legally permitted. The terms should clearly state the available remedies and the procedure for resolving disputes. Any recovery action must comply with applicable laws and the terms of the agreement.

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Finally, clawback provisions should comply with relevant statutory and regulatory requirements, including the Companies Act, 2013, and applicable RBI or SEBI regulations. A well-drafted clause should protect the company's interest in recovering improperly obtained remuneration while ensuring that executives are treated fairly and are not subjected to excessive or arbitrary recovery.

VII. CONCLUSION

In India Clawback clauses are becoming a significant component of corporate responsibility and CEO compensation. The legality of contractual clawback clauses relies on their contents and the applicable law, even though Section 199 of the Companies Act, 2013 and other RBI criteria recognize the recovery of compensation in certain instances.

The conditions that lead to recovery, the type of compensation, and the applicable legislative constraints determine the legal situation. Clauses addressing misconduct or regulatory violations may have a stronger justification, while recovery without fault, restrictions affecting future employment and deductions from wages raise more difficult legal questions. A balanced approach requires clear contractual terms, proportionate recovery, reasonable time limits and a fair procedure. Clearer judicial guidance and regulatory standards would help protect companies against improper remuneration while safeguarding executives from excessive or arbitrary recovery demands.