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ROLE OF DOCTRINE OF FRUSTRATION IN THE INDIAN CONTRACT LAW

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ABSTRACT

The doctrine of frustration is an exception to the general principle of absolute contracts that provides relief when unforeseen events make the performance of a contractual obligation impossible or contravenes what was intended during the contract. Section 56 of the Indian Contract Act, of 1872 deals with the doctrine of frustration of contract in which it renders the contract void due to initial and subsequent impossibility. However, due to the statute's limited interpretation of the doctrine of frustration exceptions such as those arising from economic hardships, restitution, renegotiation and the determination of a just sum are excluded from the domains of contractual liability. This paper will address the scope of section 56 along with judicial interpretations, modern legal challenges arising from commercial contracts and the stance taken by the other jurisdictions to address the problem of frustration of contracts. In the end, it will also propose recommendations that can be taken into consideration to address the limitation of the doctrine of frustration within the Indian legal jurisprudence.

CONTENTS

I. INTRODUCTION

The doctrine of frustration is an exception to the general principle of absolute contracts that provides relief when unforeseen events make the performance of a contractual obligation impossible or contravenes what was intended during the contract.[1] Under common law, cases such as *Taylor v Caldwell* (1863)[2] recognized that if the very subject matter of a contract is destroyed then there is no fault of either party and they are excused from performance. Similarly, in the case of *Krell v Henry* (1903),[3] it was held that if the underlying purpose of a contract is rendered impossible to perform then it can be excused.

In India, the doctrine of frustration is statutorily enshrined in Section 56 of the Indian Contract Act, of 1872[4] (hereinafter referred to as "ICA 1872") which declares that an agreement to do an act which is impossible or unlawful is void. This paper describes the statutory basis of the doctrine of frustration in India along with its judicial interpretation, by the Courts in India. It also delves into the comparison of the Indian approach with that of the approaches of other jurisdictions.

II. STATUTORY BASIS OF SECTION 56 OF THE ICA, 1872

Section 56 of the ICA 1872 codifies the doctrine of frustration and declares that "an agreement to do an act impossible in itself is void" which deals with initial impossibility making the contract *void ab initio*.[5] The second clause of Section 56 addresses subsequent/supervening impossibility which states that "a contract to do an act which, after the contract is made, becomes impossible, or, because of some event which the promisor could not prevent, becomes void then the act becomes impossible or unlawful" which means that the impossibility need not be absolute but it can either be physical impossibility or impracticability.[6] The courts have held that "impossibility" in Section 56 should not be read as a mere physical impossibility but

[1] M.P. Ram Mohan, Promode Murugavelu, Gaurav Ray & Kritika Parakh, *The Doctrine of Frustration Under Section 56 of the Indian Contract Act*, Indian L. Rev. (Jan. 1, 2020), https://doi.org/10.1080/24730580.2019.1709774; IIMA Working Paper No. 2020-10-01, https://dx.doi.org/10.2139/ssrn.3710905.
[2] *Taylor v. Caldwell*, (1863) 122 Eng. Rep. 309 (Q.B.), https://lawlibrarycollections.umn.edu/sites/lawlibrarycollections.umn.edu/files/2024-05/taylor_v_caldwell.pdf.
[3] *Krell v. Henry*, [1903] 2 K.B. 740 (Ct. App.), https://corraltalciani.blog/wp-content/uploads/2018/01/priv_comp2.pdf.
[4] Indian Contract Act, No. 9 of 1872, § 56, https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf.
[5] *Id.*
[6] *Id.*

if an unforeseen event "totally upsets the very foundation upon which the parties rested their bargain," then the promise can be regarded as impossible to perform.[7]

Thus, if the existence of a valid contract whose performance is yet to be completed, and the occurrence of an external event is beyond the control of either party that makes the act impossible or unlawful and when these conditions are satisfied, the contract becomes void which discharges the parties from further obligations.[8] In case the contract contains an express *force majeure* clause covering then Section 56 does not apply. Furthermore, the Supreme Court in the case of *Raja Dhruv Dev Chand v. Raja Harmohinder Singh* (1968),[9] stated that Section 56 "exhaustively deals with the doctrine of frustration of contracts, and it cannot be extended by analogies borrowed from the English common law." Therefore, if the statute does not cover a particular situation, then the courts will be reluctant to invoke a broader notion of frustration which reflects the self-contained nature of the ICA 1872 and its restrictive nature which prevents it from being a wide equitable principle.

III. MAJOR INDIAN CASES

(A) Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)[10]

In this case, the respondent company contracted to sell a parcel of land in Calcutta to the appellant Ghose (or his nominee). The development work (roads, drains) had no fixed time for completion and as the wartime requisition orders were later issued for military use over part of the land The appellant sued to enforce the contract, while the respondent claimed frustration under Section 56 due to the requisition orders issued by the military.

The Supreme Court held that the requisition did not render the performance of the contract impossible because even if the land was temporarily taken over the contract's main obligations could still be fulfilled after the military use ended. As time was not the essence of the contract, the delay caused by the requisition did not make the agreement void. The requisition order had not prevented the performance of the contract as a whole and therefore the contract had not become impossible as per section 56 of the ICA 1872.

[7] *Alopi Parshad & Sons Ltd. v. Union of India*, AIR 1960 SC 588.
[8] *Id*.
[9] 1968 AIR 1024
[10] 1954 AIR 44.

(B) Sushila Devi v. Hari Singh (1971)[11]

As per the facts of this case, after the India-Pakistan partition, the property ended up being on the Pakistan side rendering it impossible for the tenant (who was in India) to occupy the premises. Therefore, the Supreme Court held that due to supervening impossibility, there was frustration with the contract of lease and Section 56's notion of impossibility is not confined to something which is not humanly possible but even if it becomes impracticable or useless having regard to the object and purpose of the parties then it becomes void. In this case, as the very basis or object of the lease contract was destroyed due to partition it made the contract void. This illustrates the "loss of object" theory in which frustration occurs when a supervening event, unforeseen by the parties, destroys the foundation of their bargain and the case of *Krell v. Henry* (1903) is a classic case that resonates with this situation in which the cancellation of the coronation procession frustrated the contract.

(C) Raja Dhruv Dev Chand vs Harmohinder Singh & Anr (1968)[12]

In this case, the Supreme Court clarified the limits of Section 56 which the case involved the rescission of a ferry contract due to the submergence of a lake by the rising canal waters. The Court held that since the lake sunk due to a state project (which was foreseeable) then section 56 could not be invoked and it was also emphasized that it is exhaustive and the interpretation has to be strictly construed within the confines of the statutory text rather than imported doctrines.

IV. COMPARATIVE PERSPECTIVE WITH OTHER JURISDICTIONS

(A) United Kingdom

The doctrine of frustration was first formulated in the case of *Taylor v Caldwell* (1863),[13] where the destruction of a music hall discharged the parties' obligations. Later, the case of *Krell v Henry*, 1903[14] developed the "frustration of purpose" as a variant under the doctrine of frustration. The English courts treat contracts for the sale or lease of land differently from the equitable interest rule and even if performance was difficult, the frustration would not render the contract void once the buyer had taken an interest in the land. The Indian Courts expressly

[11] 1971 AIR 1756
[12] *Supra* note 9.
[13] *Supra* note 2.
[14] *Supra* note 3.

rejected this notion and stated that contracts for the sale of land are similar to other contracts under Section 56 which effectively render the land-sale agreements immune from frustration.[15]

In the UK, the Law Reform (Frustrated Contracts) Act 1943[16] provides for restitution of the contract but the Indian law has no specific statute like the 1943 Act. Section 65 of the ICA 1872[17] deals with restitution in void agreements and the extent is limited to void agreements because frustration operates without fault and fairness and it does not allow any party to claim unjust enrichment. Both English and Indian courts require that the supervening event be unforeseeable and materially alter the contractual obligations of the parties.

(B) United States

The U.S. has recognized the frustration of contracts through precedents and the Restatements of Contracts.[18] The Restatement of Contracts distinguishes impossibility from frustration of purpose in which the doctrine of impracticability is governed by Restatement § 261[19] and by Uniform Commercial Code §2-615[20] for goods contracts. This rule excuses performance if, due to an unforeseen event the performance is rendered burdensome or injurious for one party to perform and the event must be extraordinary and unforeseeable.

U.S. law also recognizes the frustration of purpose doctrine in which a party's fundamental object is substantially frustrated by an unforeseen event and the contract is discharged. Compared to the U.S., the Indian legal framework's main differences are the lack of statutory relief in the form of monetary compensation and the formal requirement to fit within Section 56's words. However, under both systems, the underlying goal is to prevent unjust enrichment.

Another critical difference lies in remedies post-frustration where in the U.S., as per the doctrine of restitution, parties can recover benefits conferred under a frustrated contract to prevent unjust enrichment.[21] In India, however, there is ambiguity regarding whether Section

[15] Isha Janwa, *Navigating Contractual Non-Performance: Embracing CISG Article 79 in Indian Contract Law* (Mar. 14, 2024), https://doi.org/10.2139/ssrn.4759522.
[16] Frustrated Contracts Act 1943, 6 & 7 Geo. 6 c. 40 (UK), https://www.legislation.gov.uk/ukpga/Geo6/6-7/40/contents.
[17] Indian Contract Act, No. 9 of 1872, § 65, https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf.
[18] 3 Key Defenses to Contractual Performance: Force Majeure, Commercial Impracticability, and Frustration of Purpose, Foley & Lardner LLP (Sept. 2022), https://www.foley.com/insights/publications/2022/09/3-defenses-contractual-performance-force-majeure/#:~:text=In%20states%20that%20have%20adopted,3.
[19] Restatement (Second) of Contracts § 261 (Am. Law Inst. 1981), https://opencasebook.org/casebooks/11720-bruckner-howard-law-contracts-2024/resources/10.5.1-restatement-second-of-contracts-261/.
[20] U.C.C. § 2-615 (Am. Law Inst. & Unif. Law Comm'n 2020), https://www.law.cornell.edu/ucc/2/2-615.
[21] Ruchir Rai, *The Principle of Unjust Enrichment* (Apr. 16, 2012), https://doi.org/10.2139/ssrn.2353502.

65 of the ICA[22] (which provides for restitution where an agreement becomes void) applies to contracts that are void under Section 56[23] and the stance of the courts is ambiguous because some courts have applied Section 65 to allow restitution, while others have rejected such claims on grounds of equity or lack of privity.

(C) Germany

German law long acknowledged supervening hardship through the doctrine of *Wegfall der Geschäftsgrundlage* (loss of the basis of the transaction). In 2002 this was codified in §313 of the German Civil Code (BGB)[24] and it stated the circumstances upon which a contract materially changes and it is no longer reasonable to uphold unchanged obligations and the affected party can demand modification or rescission of the contract. Thus, German law explicitly empowers courts to revise or cancel contracts in extreme cases of hardship, reflecting a pragmatic balance between *pacta sunt servanda* and *Aequitas.*[25]

(D) France

Article 1195 of the Civil Code highlights that if an unforeseeable change of circumstances makes performance "excessively onerous" for a party who did not assume that risk, then that party may request renegotiation and if the parties cannot agree within a reasonable time, then the court can modify or terminate the contract.[26] Judges then have discretion to adjust contract terms "at his/her discretion" in a way that is just.

Article 1218 (*force majeure*) provides that an event beyond a party's control renders the obligation under the contract suspended temporarily permanently.[27] Therefore, the French legal system bridges the gap between frustration and renegotiation rather than simply rendering the contract void.

[22] *Supra* note 17.
[23] *Supra* note 4.
[24] Bürgerliches Gesetzbuch [BGB] [Civil Code], https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html (last visited May 31, 2025).
[25] New Judgement on § 313 of the German Civil Code (BGB) in Connection with COVID-19, Hogan Lovells (Apr. 2021), https://www.hoganlovells.com/en/publications/new-judgement-on-313-of-the-german-civil-code-bgb-in-connection-with-covid-19 (last visited May 31, 2025).
[26] Swiss Code of Obligations, Art. 1195, https://www.admin.ch/opc/en/classified-compilation/19110009/index.html (last visited May 31, 2025).
[27] Code civil [C. civ.] art. 1218 (Fr.), https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070721/ (last visited May 31, 2025).

V. INTERNATIONAL MODELS: HARDSHIP AS A MEANS TO DISCHARGE THE CONTRACT

Many international frameworks recognize hardship as a means to discharge the contract.

(A) UNIDROIT Principles (2016)

Article 6.2.2 defines hardship as an "unforeseen event fundamentally upsetting the contractual equilibrium."[28] Under this principle, the parties can request for renegotiation without undue delay and the courts or arbitrators can either adapt the contract or terminate the contract.

(B) United Nations Convention on Contracts for the International Sale of Goods (1980), Article 79

The United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as "CISG 1980") recognises the exception of non-performance only if it causes an impediment that is unforeseeable during the formation of the contract and Article 79 does not explicitly address hardship but it relieves a party from paying damages only if the breach was due to an impediment which is beyond its control.[29] However, some arbitral tribunals have extended Article 79 to "economic impediments" which is substantially a form of hardship.[30]

VI. CONSEQUENCES OF FRUSTRATION: RESTITUTION AND APPORTIONMENT

Under ICA 1872, the consequences of frustration are guided by the principle of unjust enrichment. However, there is no detailed statutory guidance in case of restoration to prevent unjust enrichment and there is ambiguity in case of restoration in partial performance. In contrast, the UK's Law Reform (Frustrated Contracts) Act 1943 addresses these gaps enables recovery of money paid and allows the return of "valuable benefits" conferred.[31] It also empowers courts for a "just sum" for expenses of partial performance, rather than forcing one party to bear all the losses. Nevertheless, in India, there is no in-house legislative mechanism

[28] UNIDROIT Principles of International Commercial Contracts (2020), art. 6.2.2, https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2020.
[29] United Nations Convention on Contracts for the International Sale of Goods art. 79, opened for signature Apr. 11, 1980, 1489 U.N.T.S. 3.
[30] CISG Advisory Council, Opinion No. 20: Hardship under the CISG (Feb. 2024), https://cisgac.com/wp-content/uploads/2024/02/Opinion-No-20-CISG-and-Hardship-Official.pdf (last visited May 31, 2025).
[31] *Supra* note 16.

for "just" apportionment and legislative reforms are required to standardize the outcomes of frustration of contract.[32] For instance, the codification of the sums paid that are recoverable (subject to permitted deductions) would prevent litigants from losing their hard-earned advances. Similarly, allowing courts to award expenses fairly rather than outright barring recovery in long-term contracts will be more fruitful.

VII. APPLICATION AND LIMITATIONS IN MODERN COMMERCIAL CONTEXTS

(A) Contracts with Force Majeure Clauses

Modern commercial contracts include *force majeure* clauses, which list the events that excuse the performance of the contract. In the case of *Energy Watchdog v. CERC* (2017),[33] the Supreme Court held that the stringent interpretation of the *force majeure* clause does not cover the eventuality and Section 56 can be invoked if an applicable term is absent. This reinforces the principle that Section 56 can be applicable only when the risk has not been allocated contractually.

(B) COVID-19 and Frustration of contract

The COVID-19 pandemic rendered many contracts void and constituted frustration under Section 56. In the case of *Halliburton Offshore Services v. Vedanta Ltd.* (2020),[34] the Delhi High Court noted that COVID-19 was unprecedented and the frustration of the contract can be assessed in light of the specific contract and the nature of the disruption. The Court emphasized that economic hardship alone cannot suffice and there must be destruction of the fundamental object of the contract. Similarly, in the case of *Standard Retail Pvt. Ltd. v. GS Global Corp.* (2020),[35] the Bombay High Court refused to excuse the performance of a supply contract because the lockdown did not render performance impossible but it merely caused delays and financial strain.

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[32] *Ibid.*
[33] AIR 2017 SC (SUPP)
[34] *Halliburton Co. v. Chubb Bermuda Insurance Ltd.*, No. (S.D.N.Y. 2020), https://images.assettype.com/barandbench/2020-04/511470b3-76f6-47a2-9ac7-12474a6029ca/Halliburton_Jugement.pdf (last visited May 31, 2025).
[35] *Standard Retail Pvt. Ltd. v. GS Global Corp.*, C.A. No. 404/2020 (Bomb. H.C. Apr. 9, 2020), https://bombayhighcourt.nic.in/generatenewauth.php?bhcpar=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9vcmlnaW5hbC8yMDIwLyZmbmFtZT1DQVJCUDQwNDIwMDgwNDIwLnBkZiZzbWZsYWc9TiZyanVkZGF0ZT0mdXBsb2FkZHQ9MDkvMDQvMjAyMCZzcGFzc3BocmFzZT0zMDA2MjAxODQ2NTg= (last visited May 31, 2025).

(C) Economic Restraint and frustration of contract

The rigidity of Section 56 can be inadequate for addressing the complex scenarios arising from international trade, cyber contracts, and long-term commercial engagements. In an era where businesses operate on complex supply chains, there is a need for greater flexibility when unforeseen events occur. A purely legal impossibility standard may not suffice to mitigate the restraint in economic impracticability because future jurisprudence will have to address challenges ranging from political sanctions, technological disruptions, or even sudden regulatory changes causing economic hardships.[36]

(D) Absolute impossibility and Partial Impossibility under the contract

Indian law remains under the strict interpretation of Section 56 unless the parties themselves contractually incorporate *force majeure* and hardship clauses to allocate risks. However, global trends of codification such as the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law suggest the harmonisation of contract law. For instance, the UNIDROIT Principles (Article 6.2.2)[37] allow a party to renegotiate or terminate the contract if subsequent performance becomes difficult (there is hardship) or due to unforeseen events.[38] These approaches the gap between the absolute and partial impossibility of the contract which reflects an enhanced understanding of “fairness” in the contractual laws.

VIII. RECOMMENDATIONS TO ADDRESS THE *STATUS QUO*

(A) Statutory Hardship/Impracticability Clause

The introduction of a new provision that expressly addresses unforeseen hardship or distinguishes between *force majeure* and absolute impossibility can be adequate as it can grant fair and adequate relief when the performance of the contract becomes affected due to hardship. Similarly, Article 1195 of the French Civil Code[39] can be considered as it permits renegotiation in case of unforeseeable events that make performance “excessively onerous.”

[36] Saloni Khanderia, Commercial Impracticability under the Indian Law of Contract: The UNIDROIT Principles as the Way Forward? *UCL J. Law & Jurisprudence*, Vol. 7, No. 2 (2018), https://discovery.ucl.ac.uk/id/eprint/10061332/1/3%20-%20Khanderia%20-%20COMMERCIAL%20IMPRACTICABILITY%20UNDER%20THE%20INDIAN%20LAW%20OF%20CONTRACT.pdf.
[37] *Supra* note 28.
[38] *Ibid.*
[39] *Supra* note 26.

(B) Enhanced the scope of Restitution under Section 56

After a contract is discharged due to frustration then section 56 does not detail interest, damages, or equitable apportionment of the frustrated contract. To address this situation amendments can be made under Section 56 to specify fair adjustment of benefits and losses, aligning with the UK's Frustrated Contracts Act 1943 which allows courts to apportion prepayments so that unjust enrichment could be prevented.[40] The reformed statute could provide for the return of all deposits or part-performance monies, credit for benefits received, interest on repayments, and recovery of reasonable costs expended.

(C) Prevention of discharge through Renegotiation

The French legal system formally obligates renegotiation under Article 1195 of the Civil Code and empowers courts to renegotiate before discharging the contract due to frustration. A similar provision could be added in the ICA 1872 to encourage renegotiation rather than abrupt discharge of the contractual obligations due to the frustration of the contract.[41]

(D) Amendments in the *Force Majeure* clauses

The Act could enumerate typical force majeure events and clarify that performance can be suspended during such events rather than rendering the contract void. After the adoption of a separate provision for hardship or expansion of Section 56, the parties can receive relief proportionately without undermining contractual stability.[42]

(E) "Just sum" to achieve fairness and discharge contractual liabilities

The statutory language of ICA 1872 along with the UK Act's notion of apportionment can limit litigation on grounds of mere interpretation or waiver which can increase the latitudinal breadth to balance losses and benefits if the contract is discharged. The goal is to prevent unjust enrichment where one party is left with nothing despite doing significant work, and the other receives the windfall gains.[43]

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[40] M.P. Ram Mohan, Promode Murugavelu, Gaurav Ray & Kritika Parakh, *The Doctrine of Frustration under Section 56 of the Indian Contract Act*, IIMA Working Paper No. 2020-10-01 (Oct. 2020), https://www.iima.ac.in/sites/default/files/rnpfiles/8569076382020-10-01.pdf.
[41] *Ibid.*
[42] C. Hose, You Get What You Pay For: Reasonable Endeavours and Force Majeure, 83 *Cambridge L.J.* 433, 433–36 (2024), https://doi.org/10.1017/S0008197324000618.
[43] N. Sage, Contractual Liability and the Theory of Contract Law, 30 *King's L.J.* 459, 459–88 (2019), https://doi.org/10.1080/09615768.2019.1686224.

(F) Judicial interpretation and suggestions for reforms

The courts and law commissions can set a precedent through guidelines and judgments to distinguish between difficulty and impossibility of performance. These along with the scope of the economic hardships, renegotiation and other challenges can render significant changes in the provisions of the ICA 1872.[44]

IX. CONCLUSION

The doctrine of frustration remains a vital exception in the contractual law. It recognizes that if unexpected events occur without the fault of the parties, then the performance may become impossible. In today's world due to global economic volatility, climate-induced disasters, pandemics and rapid technological change, this principle is vital to discharge the obligations of the parties. Events such as the COVID-19 pandemic, supply-chain breakdowns, etc. highlight that contracts can be prevented in case of unforeseeable events. Similarly, as climate change makes disasters more predictable, parties can increasingly negotiate specific clauses and also recognize the broader statutory recognition of hardship to allocate the risks flowing from these events. At the same time the principle of "*pacta sunt servanda"* must be balanced by the courts aligning with the suggestions discussed above that can ensure that contractual obligations are balanced under the ICA 1872. The incorporation of pristine hardship rules and international standards will make the law better protect innocent parties from losses and maintain contractual stability. The goal must be based on a fair outcome when circumstances change either through statutory provision, judicial intervention, or through well-drafted contractual clauses. In an era of unprecedented uncertainty, amendments to the doctrine of frustration under the ICA 1872 are crucial to suit the needs of modern commerce.

[44] Leon E. Trakman, Frustrated Contracts and Legal Fictions, 46 *Mod. L. Rev.* 39, 39–55 (1983), http://www.jstor.org/stable/1095751.