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ROLE OF DOCTRINE OF FRUSTRATION IN INDIAN CONTRACT LAW

~ *Saif Alam*

ABSTRACT

The Indian Contract Act of 1872 states doctrine of frustration which is a significant exception to the rule of sacredness of contracts. In India, any such circumstance that falls short of impossibility is defined by section 56 of the Indian Contract Act 1872. It deals with contract which aligns with unexpected and unforeseen circumstances that make it impossible or unlawful for parties to perform such type of contract. This research paper studies the Indian legal system's changing nature and effort of balancing the enforceability of contracts and fairness in the face of changing circumstances by this doctrine. Declaring the law of frustration is easy on paper but putting it into practice is extremely difficult. A contracting party may seek relief from its obligations under the common law doctrine of frustration if the contract lacks a force majeure clause. Thus, this research paper also concludes with an example of such contract, for example, the unprecedented event of Covid-19, which impacted the performance of contracts.

KEYWORDS: Contract, Indian Contract Act, Impossibility, Performance, Doctrine of Frustration, Pandemic, Force Majeure, Remedy.

INTRODUCTION

In general, contracting is a commitment within more than one person to carry out or not carry out a specific act. How those responsibilities are fulfilled may be affected by unexpected or supervening events, which are those that neither party could have foreseen beforehand and that ultimately release the parties from their responsibilities under the contract. This paper discusses the frustration cases that are divided into three categories: (1) Performance impossibility; (2)

Performance illegality; and (3) "Frustration of object".¹ This doctrine's significance has only increased, especially in light of the increased likelihood of unanticipated disruptions, from pandemics to regulatory changes, due to contemporary business arrangements and intricate transactions. The World Health Organization declared COVID-19 a global pandemic in the month of March 2020 making it difficult or impossible to fulfill numerous contracts that had been signed before then. Thus, this research paper looks at the statutory framework of this doctrine, its important components, judicial interpretation, historical development, connection to force majeure, current applicability, and room for reform.

RESEARCH METHODOLOGY

This research paper is based on a comparative method to analyse different notions of the Doctrine of Frustration and its implementation over the whole globe. It also contains a multifaceted methodology along with secondary sources that uses various number of websites and several journal articles for the research.

REVIEW OF LITERATURE

The doctrine, within ICA's section 56, which tends to explain impossibility factor, is thoroughly explained by R.K. Bangia's textbook which highlights how unanticipated circumstances may make contractual performance impossible or illegal.² His analysis also clarifies when and how contracts may be discharged for supervening impossibility by referencing important cases, most notably *Satyabrata Ghose v. Mugneeram Bangur & Co.*³

In "Law of Contract and Specific Relief," Avtar Singh takes a critical stance, point out its drawbacks, and go over relevant Supreme Court judgments to clarify how the doctrine interacts with the concepts of fairness, restitution, and commercial certainty.⁴

HISTORICAL OVERVIEW

In *Paradine v. Jane* (1647)⁵, the English law first established a strict rule of strict contractual performance, holding that "a party must perform, come what may." The courts consequently established the theory of implied terms, most notably in *Taylor v. Caldwell* (1863)⁶, which

¹ Shivprasad Swaminathan, *Frustration: Navigating the Bramble Bush*, *Liverp Law Rev*, (2022).

² 7 R.K BANGIA, *CONTRACT-I* (Allahabad Law Agency 2017).

³ *Satyabrata Ghose v Mugneeram Bangur and Co* AIR 1954 SC 44.

⁴ 13 RAJESH KAPOOR, *AVTAR SINGH'S LAW OF CONTRACT & SPECIFIC RELIEF*, (Eastern Book Company 2022).

⁵ *Paradine v. Jane* (1647) Aleyn 26.

⁶ *Taylor v Caldwell* (1863) 3 B & S 826.

established the idea that an implied term excused parties if the basis of the contract was destroyed. Prior to Caldwell, the subject was thought the fact that both individuals may have incorporated clauses for such occurrences in the agreement when they wanted to.⁷ Caldwell lightened the Common Law's inflexibility.⁸ This section of ICA, that cuts out requirement of implied term analysis and broadens the doctrine's application, expressly codifies both initial and supervening impossibility, marking a significant advancement in Indian law.⁹

WHAT IS DOCTRINE OF FRUSTRATION?

The foundation of the doctrine of frustration is the idea that a party should not be held accountable for non-performance if circumstances outside of their control prevented them from fulfilling their end of the bargain.¹⁰ The Black's Encyclopedia of Law explains frustration as "the doctrine that if a party's principal purpose is substantially frustrated by unexpected changed circumstances, that party's duties are discharged and the contract is considered terminated." The ICA Act does not define the term.¹¹ The ICA's frustration section discusses the theory of impossibility, which relies upon the principle of "les non cogit ad impossibilia," that holds that a man is not compelled to perform an act that he is unable to do by legislation.¹² This legal remedy emphasizes that the contract is no longer enforceable as a result of unforeseen circumstances, such as natural disasters, war, legislative changes, or the destruction of the subject matter.¹³

WHAT IS A FORCE MAJEURE CLAUSE?

Force majeure is an unforeseen circumstance that prevents a contract from being performed as the parties are incapable to predict or control such an event.¹⁴ Similar to the theory of impossibility, which is embodied in the Act and which the individuals may invoke within the unlikely scenario that an agreement lacks a provision regarding the on-paper frustration clause, contracts usually contain a setup clause to address such circumstances, exempting the participants from their commitments in such circumstances¹⁵. When parties have used the

⁷ *Atkinson v Ritchie* [1809] 10 East 530.

⁸ 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 (2020).

⁹ Rishab Soni & Monesh Mehndiratta, *Doctrine of frustration*, iPleaders (2023).

¹⁰ Akash Deep, *Frustration Of Contract: An Analysis* IJLLR.

¹¹ 9 BRYAN A GARNER, *BLACK'S LAW DICTIONARY* (2009).

¹² Rishab Soni & Monesh Mehndiratta, *supra* note 9.

¹³ Akash Deep, *supra* note 10.

¹⁴ Rishab Soni & Monesh Mehndiratta, *supra* note 9.

¹⁵ *Id.*

doctrine of frustration, they can benefit from the principle of restitution, which states that any benefits obtained under a contract that later becomes frustrated must be given back to the party that received them.¹⁶

GROUNDS FOR FRUSTRATION

The Indian judiciary, particularly the Supreme Court, has clarified the requirements that need to be met for the theory of impossibility to be turned into effect.¹⁷ It is conditioned as follows:

- 1) A valid contract must exist.
- 2) It must become impossible or illegal to perform once the contract is formed.
- 3) The frustrating incident must be outside of the parties' control.
- 4) Neither party's fault must be the cause of the impossibility.
- 5) The incident must destroy the contract's core purpose or foundation, not just make it more costly or burdensome.
- 6) The occurrence wouldn't have been reasonably predicted during the moment the agreement was signed.

From above mentioned it is evident that, performance is impossible, and the contract is frustrated if the specific subject necessary to the agreement is destroyed without the parties' fault.¹⁸ If a contract is contingent on a party's personal abilities or qualifications, both parties are released upon that person's death or legal incapacity. When a later law change or government order renders performance unlawful, such as new export/import limitations or prohibitions, as in *Rozan Mian v. Tahera Begum*, the contract is frustrated. Even with physical possibility, the contract may be frustrated if unanticipated circumstances destroy its main goal, such as a massive government requisition during a war or a complete breakdown of a commercial object, as acknowledged in *Satyabrata Ghose's* case.¹⁹ The agreement may become impossible/unlawful if a war breaks out between the countries of the contracting parties or if government action forbids trade.²⁰ Depending on the facts and circumstances, unforeseen

¹⁶ *Id.*

¹⁷ *Satyabrata Ghose v Mugneeram Bangur and Co*, AIR 1954 SC 44.

¹⁸ Manas Shrivastava, *Doctrine of Frustration under the Indian Contract Act 1872*, Aashayein Law Education Center.

¹⁹ *Satyabrata Ghose v Mugneeram Bangur and Co*, AIR 1954 SC 44.

²⁰ Manas Shrivastava, *supra* note 18.

events such as pandemics, natural disasters, and acts of God can fundamentally change obligations and make contractual performance objectively impossible.²¹

COMPARATIVE VIEW OF FRUSTRATION

There are various ways to understand the frustration of contracts from a thinker's perspective. It is as follows:

1) Legal Aspect: Legal documents known as contracts outline the conditions of an agreement between parties and are supposed to be unambiguous, enforceable, and binding. But because it frequently entails intricate wording, drawn-out negotiations, and a great deal of attention to detail, the legalistic approach to contracts can be annoying. Furthermore, disagreements between parties regarding the meaning of a specific clause or provision can lead to disputes because contracts are frequently open to interpretation.

2) Philosophical Aspect: Contracts are an expression of our social contract, which is the commitment we all make to uphold particular social norms and laws. The breakdown of contracts can be viewed philosophically as a conflict between the need for social order and individual liberty. On the one hand, contracts give people the freedom to freely make agreements and follow their own interests but by guaranteeing that agreements are reasonable, fair, and obey the law, contracts also serve to safeguard the interests of society at large.²²

Each country may have different laws pertaining to frustration of contract.

In the United Kingdom, common law acknowledges frustration and permits a contract to terminate automatically if an unforeseen circumstance renders the agreement impossible or drastically altered. Similar ideas are applied in the US under phrases like "impossibility," "impracticability," or "frustration of purpose," with the Uniform Commercial Code establishing guidelines for products. This idea is incorporated into the specified section dealing with impossibility factor in ICA in India, which handles these circumstances in compliance with the rule of impossibility, which states that an agreement is void if performance is illegal or impossible.²³ After its 2016 legal reforms, France allows contract renegotiation if performance becomes unduly burdensome due to unanticipated changes, whereas Germany permits contract adjustment or cancellation if the agreement's foundation collapses. China also recognizes this in its civil code, which gives judges the authority to modify or cancel contracts when conditions

²¹ *Rule of Frustration of Contracts under Indian Contract Law*, Legal Well Being (2024).

²² JOHN RAWLS, *A THEORY OF JUSTICE* (Harvard University Press 1999).

²³ *Satyabrata Ghose v Mugneeram Bangur and Co*, AIR 1954 SC 44.

materially change. Thus, generally speaking, the majority of nations acknowledge frustration of contract as a legitimate legal defence under specific conditions.²⁴

EFFECTS OF FRUSTRATION

According to Indian contract law, frustration results in the contract's automatic discharge, which releases the parties from further performance as soon as an unforeseen circumstance makes it impossible or illegal to perform. According to Section 56 of the Indian Contract Act 1872, the contract is nullified now of the frustrating event, relieving the parties of any liability for breach because it would be unfair and impractical to enforce it further.

To prevent unjust enrichment, Section 65 also establishes the doctrine of restitution, which requires that any benefits granted prior to the frustrating event be reimbursed or returned and since the possibility of unanticipated events is regarded as inherent in contractual dealings, recovery of anticipated profits lost because of frustration is not allowed.

Court decisions, particularly in *Alopi Parshad & Sons Ltd v. Union of India*, affirm that while frustration fulfils contractual obligations, it does not grant parties the right to further compensation.²⁵ By recognizing that extraordinary, unanticipated circumstances must excuse performance and shield parties from disproportionate liability, the discharge via frustration thus acts as a legal and fair reset, encouraging commercial certainty.

CASE LAWS

1. *Taylor v Caldwell* (1863): In this set, parties had decided on a specific location for the music festival. However, a fire destroyed the venue before the festival could begin. The destruction of the venue rendered it unattainable to carry out the terms of the agreement, so the tribunal agreed that it was turned impossible.²⁶

2. *Krell v Henry* (1903): In this case, a lease agreement for an apartment was signed by the parties during King Edward VII's coronation. The lease was intended to allow the tenant to watch the coronation procession from the apartment. However, The coronation was put off due to the monarch's sickness. Due to the procession's termination defeating the purpose of the lease, the court found that the arrangement turned impossible.²⁷

²⁴ Akash Deep, *supra* note 10.

²⁵ *Alopi Parshad & Sons Ltd v. Union of India*, AIR 1960 SC 588.

²⁶ *Taylor v Caldwell* (1863) 3 B & S 826.

²⁷ *Krell v Henry* [1903] 2 KB 740 (CA)

3. *Herne Bay Steamboat Co v Hutton* (1903): In this case, a steamboat rental agreement was made between the parties to transport passengers to Spithead for the naval review. However, the maritime investigation had to be abandoned due to a smallpox outbreak. Because the smallpox outbreak did not conflict with the goals of the agreement, the tribunal decided that the agreement had not been turned impossible.²⁸

4. *Satyabrata Ghose v Mugneeram Bangur and Co* (1954): The Apex Court provided an interpretation of the word "impossible" in this instance. The panel determined this because restitution is only temporary, the impossibility section of ICA, is not applicable. The failure to perform duties cannot be interpreted as a plea of frustration.²⁹

5. *NAFED v. Alimenta S.A.* (2020): NAFED and Alimenta S.A. entered a contract for the export of groundnut kernels. Only a portion of it was delivered because of a cyclone and the ensuing export restrictions. The government's prohibition hindered the contract's performance. The High Court turned the arbitrator's decision in favor of Alimenta into a decree. Nonetheless, the Supreme Court made a distinction between frustrated and contingent contracts, concluding that the former was void under 32nd section of ICA because it depended on government policy. In accordance with Indian public policy, the parties were released, and the foreign arbitral award was not enforced.³⁰

6. *R. Narayanan v. Government of Tamil Nadu* (2021): The petitioner paid license fees in advance and obtained a shop license. He was unable to renew the license due to financial difficulties brought on by the COVID-19 lockdown. The petitioner asked that fees for the lockdown period be waived. The theory of impossibility and impossibility clause on paper were distinguished by the Madras High Court. Force majeure excuses performance temporarily while the contract is still valid, while frustration discharges contractual duty by making performance impossible and nullifying the agreement. License fees were waived during the COVID-19 lockdown because the tribunal determined that it constituted as an unforeseeable situation.³¹

²⁸ *Herne Bay SteamBoat Co v Hutton* [1903] 2 KB 683 (CA).

²⁹ *Satyabrata Ghose v Mugneeram Bangur and Co*, AIR 1954 SC 44.

³⁰ *National Agricultural Coop. Mktg. Fed'n of India v. Alimenta S.A.*, Civil Appeal No. 2818 of 2020; Rishab Soni & Monesh Mehndiratta, *supra* note 9.

³¹ *R. Narayanan v. Government of Tamil Nadu*, Writ Petition No. 12316 of 2020; Rishab Soni & Monesh Mehndiratta, *supra* note 9.

FRUSTRATION DURING COVID-19 PANDEMIC

However, the corona dark period, that imposed lockdowns in the majority of the planet as an additional prevention measure, brought attention to the doctrine of frustration.³² In addition to taking many lives, the worldwide epidemic destroyed numerous people's means of subsistence and brought the worldwide financial system down on its knees.³³ Contract-related concepts like the theory of impossibility and the clause regarding on-paper clause regarding impossibility, were highlighted as a result of the disease's substantial impact on number of offices and the underlying bond by the agreement they entail.³⁴ For instance, laws, ordinances, and orders from the government that forbid or limit particular activities, such as travel restrictions; the absence or postponement of a transaction or occurrence that serves as the basis of a deal.³⁵ There are very few situations in which frustration can be used, and it is unlikely that any COVID-19-related circumstances will give rise to contract frustration, thus, the specifics of each case will determine this, including how much COVID-19 impacted performance.³⁶ Contracting parties may negotiate compensation that is particular according to their conditions and specify a wide range of events because of a force majeure clause, which strongly encourages parties to use it to delegate risk by clearly stating what is expected to happen to their agreement in the event of specific circumstances, such as COVID-19.³⁷

COMMERCIAL IMPOSSIBILITY IN INDIA

A party to a contract is fully responsible for fulfilling its duties and obligations under the well-established principle "Pacta sunt servanda."³⁸ The act's section mainly recognizes following insolvency in India, that happens when an unforeseen circumstance renders a previously enforceable contract unfeasible to execute.³⁹ It does not, however, address impracticability or commercial impossibility which means, in theory, a contract can be carried out, but it might not benefit either party and either party may lose money or it may not be profitable.⁴⁰ Parties cannot be released from their contractual duties under such conditions and unless there are

³² Sheela Jayabalan, *The Legality of Doctrine of Frustration in the Realm of Covid-19 Pandemic*, 3 Sociological Jurisprudence Journal, 84 – 90 (2020).

³³ *Id.*

³⁴ Ogochukwu Joshua Ogwu, *Imminent Contractual Issues in the COVID-19 Era 'The Legal Implications'*, SSRN, (2020).

³⁵ Sheela Jayabalan, *supra* note 32.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Rishab Soni & Monesh Mehndiratta, *supra* note 9.

³⁹ Indian Contract Act 1872, § 56, No. 9, Acts of Parliament, 1872 (India).

⁴⁰ Rishab Soni & Monesh Mehndiratta, *supra* note 9.

extraordinary circumstances, financial loss is not regarded as a legitimate defense.⁴¹ Basically, commercial impracticability only occurs when an unforeseen circumstance beyond the parties' control makes it impossible to carry out a contract.⁴²

REFORMS AND SUGGESTIONS

Given the speed at which technology, international trade, and business practices are developing, some reforms could improve the Doctrine of Frustration's applicability, clarity, and fairness.

1. To consider contemporary business realities and technological breakthroughs, the doctrine must be modified.
2. Parties are not specifically compensated by Indian law for costs incurred or labour completed before frustration, so, parties would be safe from unjust forfeiture by the inclusion of comprehensive restitution and loss apportionment rules, particularly in long-term contracts.⁴³
3. Indian jurisprudence excludes situations of hardship where performance is commercially impracticable but not impossible, and limits frustration to impossibility or illegality. In line with new international business practices, acknowledging hardship principles may promote renegotiation and avoid early contract termination.⁴⁴
4. There would be less room for interpretational disputes and more contractual certainty if model force majeure clauses addressing pandemics, governmental orders, cyberattacks, and natural disasters were standardized and approved by legislation.
5. To address impossibilities beyond physical destruction, statutory clarification on the scope of frustration in technological failures is crucial as digital contracts, blockchain, and AI-driven systems revolutionize commerce.
6. Lastly, the doctrine's inconsistent application by judges breeds uncertainty. Increased business confidence and consistent application could be fostered by improved judicial training, the release of authoritative guidelines, and appellate clarity.⁴⁵

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ayush Goyal, *Doctrine of Frustration of Contract*, 3 PenAcclaims (2018).

⁴⁴ Manas Shrivastava, *supra* note 18.

⁴⁵ Shubhi Srivastava, *An analysis of doctrine of frustration under ICA, 1872*, iPleaders (2024).

CONCLUSION

When an unforeseen circumstance makes execution unthinkable, the doctrine provides an option to safeguard the individual or participants.⁴⁶ When something happens that prevents the contract from being performed or drastically alters the nature of the obligation under the contract, it is referred to as frustration of the contract.⁴⁷ The doctrine's application calls into question the contract's sanctity in specific altered situations.⁴⁸ Events like natural disasters, war, or governmental regulations that prevent the contract from being performed are a few examples of what can frustrate a contract.⁴⁹ The Framework of European Contract Regulation and the principles outlined by UNIDROIT ought to be used as a benchmark for best practices in contract law reform, especially when dealing with a contractual situation like COVID-19, rather than relying on the outdated principle of impossibility, which refuses the tribunal its power to alter the agreement to accommodate the new conditions.⁵⁰ Regarding contract frustration, the Indian Contract Act has undergone some revisions. To strengthen the legal foundation for contract frustration, the Ministry of Law and Justice received a report in 2018 titled "Legal Framework: Frustration and Force Majeure," which suggested several changes to the Indian Contract Act.⁵¹ Thus, it is a necessary exception to the rule that contracts must be upheld to shield parties from unforeseen difficulties, that is, only when genuinely unexpected circumstances render it unfair to continue enforcing the contract do courts carefully apply this doctrine.⁵² Despite having Common Law origins, the doctrine of frustration has undergone significant and consistent development under Indian law, as well as codification in section 56.⁵³

⁴⁶ M P Ram Mohan, Promode Murugavelu, Gaurav Ray & Kritika Parakh, *supra* note 8.

⁴⁷ 13 AVTAR SINGH, LAW OF CONTRACT AND SPECIFIC RELIEF (Eastern Book Company 2022).

⁴⁸ M P Ram Mohan, Promode Murugavelu, Gaurav Ray & Kritika Parakh, *supra* note 8.

⁴⁹ 2 EWAN MCKENDRICK, FORCE MAJEURE AND FRUSTRATION OF CONTRACT (Lloyd's of London Press 1995).

⁵⁰ Sheela Jayabalan, *supra* note 32.

⁵¹ LAW COMMISSION OF INDIA, REPORT NO. 258, LEGAL FRAMEWORK: FORCE MAJEURE AND FRUSTRATION OF CONTRACT (2018).

⁵² Manas Shrivastava, *supra* note 18.

⁵³ M P Ram Mohan, Promode Murugavelu, Gaurav Ray & Kritika Parakh, *supra* note 8.