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Force Majeure and Frustration under Indian Contract Law: A Legal Distinction under Sections 32 and 56 with Special Reference to *Energy Watchdog v. CERC*

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ABSTRACT

The law of contracts is built on the fundamental principle that agreements entered into voluntarily by competent parties must be honoured. This principle, reflected in the maxim *pacta sunt servanda* (agreements must be kept), promotes certainty, predictability, and confidence in commercial transactions. At the same time, the law recognises that circumstances beyond the control of the parties may arise after a contract has been concluded, making its performance impossible, unlawful, or substantially different from what was originally contemplated. In such exceptional situations, enforcing the contract without qualification may result in unfairness. To address this, the law provides limited exceptions that excuse parties from performing their contractual obligations when unforeseen events fundamentally affect performance.

The Indian Contract Act, 1872, deals with such situations through two separate legal mechanisms: Force Majeure under [1]Section 32 and the Doctrine of Frustration under Section 56. Although both provisions come into operation when supervening events interfere with the performance of a contract, they are founded on different legal principles. Force Majeure derives its authority from the terms of the contract itself. By incorporating a Force Majeure clause, the parties agree in advance on the consequences of certain specified events that may affect performance. The Doctrine of Frustration, on the other hand, is a statutory principle that applies by operation of law where an unforeseen event, not covered by the contract, renders performance impossible or transforms the nature of the contractual obligation so fundamentally that it would be unjust to enforce it.

[1] Indian Contract Act, No. 9 of 1872, §§ 32, 56

1. Introduction

The distinction between the Doctrine of Frustration and Force Majeure has frequently been the subject of judicial scrutiny. In many disputes, parties have attempted to invoke Section 56 even when their agreements already contained Force Majeure clauses governing the consequences of unforeseen events. This has required courts to determine whether the matter should be resolved according to the contractual allocation of risk under Section 32 or whether the statutory rule of frustration under Section 56 should apply. The issue has acquired particular importance in long-term commercial contracts, infrastructure projects, power purchase agreements, and other complex commercial arrangements where changes in economic conditions, government policies, or external circumstances may significantly affect contractual performance.

Indian courts have consistently maintained that Sections 32 and 56 operate in distinct fields. An important foundation for this approach was laid in the decision of Satyabrata Ghose, where the Supreme Court explained that the doctrine of frustration in India is governed by the language of Section 56 of the Indian Contract Act rather than by the broader principles of English common law. The legal position was further clarified in Energy Watchdog v. Central Electricity Regulatory Commission, which has become the leading authority on the subject. The Court held that when a contract expressly provides for the consequences of specified supervening events, the dispute must be decided under Section 32. Section 56 can be invoked only where the contract contains no applicable provision dealing with the event or where the circumstances fall outside the scope of the contractual clause.

The decision in *Energy Watchdog* has had a significant impact on Indian contract law by clearly defining the relationship between Force Majeure and the Doctrine of Frustration. It reaffirmed the principle that parties are bound by the contractual allocation of risk they have voluntarily agreed upon and restricted the application of Section 56 to cases where no contractual mechanism governs the supervening event. Since then, courts have regularly relied on this judgment while deciding disputes involving unforeseen events and contractual impossibility.

Against this background, the present paper examines the legal distinction between Force Majeure under Section 32 and the Doctrine of Frustration under Section 56 of the Indian Contract Act, 1872. It analyses the statutory framework governing both provisions, traces the evolution of judicial interpretation through *Satyabrata Ghose*, and explores the significance of *Energy Watchdog v. CERC* in shaping the modern legal position. The paper also reviews subsequent judicial developments and assesses whether the existing framework strikes an appropriate balance between respecting contractual autonomy and permitting judicial intervention in exceptional cases where unforeseen events prevent contractual performance.

2. Force Majeure under Indian Contract Law

Meaning and Nature

[2]The term *Force Majeure*, meaning "superior force," has its origins in French civil law and refers to extraordinary events that are beyond the control of the contracting parties and prevent them from fulfilling their contractual obligations. While many civil law jurisdictions recognise Force Majeure through legislation, Indian law does not treat it as an independent legal doctrine. Its applicability depends entirely on the terms incorporated into the contract by the parties.

A Force Majeure clause is included in a contract to address unforeseen events that may disrupt performance. Such clauses commonly cover situations such as natural disasters, war, government actions, epidemics, strikes, riots, or other exceptional occurrences. By incorporating these provisions, parties decide in advance how such events will affect their contractual obligations, whether by suspending performance, extending timelines, or permitting termination. In this way, the clause serves as a contractual mechanism for allocating future risks and reducing uncertainty.

The scope of a Force Majeure clause is determined by the language used in the contract. Courts do not assume that Force Majeure applies in every case, nor do they extend the meaning of contractual terms beyond what the parties have agreed. As a result, the availability of relief depends on whether the event falls within the wording of the clause and whether the contract prescribes any legal consequences for its occurrence.

Contractual Basis

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[2] Mansi Rana, *Force Majeure: Definition, Examples, and Legal Implications Under Indian Law*, Legistify (June11 2026)
https://legistify.com/learn/force-majeure/

Force Majeure is founded on the principle of contractual freedom. The parties themselves decide which future events will excuse or affect performance and agree on the consequences if those events occur. Rather than being imposed by law, the doctrine reflects the parties' own allocation of commercial risks.

Such clauses are particularly common in long-term commercial arrangements, including infrastructure projects, construction contracts, power purchase agreements, public procurement contracts, and international trade contracts. These transactions often involve uncertainties that cannot be fully anticipated at the time of contracting. A well-drafted Force Majeure clause enables parties to address these risks in advance, thereby reducing the likelihood of disputes and avoiding unnecessary reliance on statutory remedies.

When interpreting a Force Majeure clause, courts apply ordinary principles of contractual interpretation. The party seeking to rely on the clause must establish that the event in question falls within its scope and that the event directly prevented or substantially hindered contractual performance. Where the contract imposes a duty to minimise the impact of the event, that party must also demonstrate that reasonable steps were taken to mitigate the consequences.

Indian courts have consistently held that ordinary commercial difficulties do not amount to Force Majeure unless the contract expressly provides otherwise. Circumstances such as increased costs, reduced profits, inflation, or adverse market conditions generally do not excuse performance. This approach reflects the courts' commitment to preserving contractual certainty while respecting the allocation of risks agreed upon by the parties.

Section 32 of the Indian Contract Act, 1872

The legal basis for the enforcement of Force Majeure clauses in India is found in[3] Section 32 of the Indian Contract Act, 1872, which governs contingent contracts. A contract containing a Force Majeure clause is treated as contingent because its operation depends on the occurrence or non-occurrence of a specified uncertain event.

Section 32 provides:

"Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced unless and until that event has happened."

[3] Indian Contract Act, No. 9 of 1872, §§ 32

Where a contract expressly provides for the consequences of a supervening event, the rights and liabilities of the parties are determined by the contract itself. In such cases, courts simply give effect to the agreement reached between the parties instead of applying the statutory doctrine of frustration under Section 56.

The importance of Section 32 lies in the flexibility it offers contracting parties. It allows them to decide in advance what events will qualify as Force Majeure, whether performance will be suspended or terminated, how long any suspension will continue, the notice requirements to be followed, the extent of mitigation obligations, and the circumstances in which either party may terminate the contract.

Since the legal effect of a Force Majeure clause flows from the agreement itself, courts generally refrain from modifying or expanding its scope. Relief is therefore determined primarily by the wording of the contract rather than by judicial discretion.

3. Doctrine of Frustration under Section 56

Statutory Basis

[4]Unlike Force Majeure, the Doctrine of Frustration does not depend upon the existence of a contractual provision. It is a statutory doctrine embodied in [5]Section 56 of the Indian Contract Act, 1872. Under this provision, a contract becomes void when, after its formation, an unforeseen event makes its performance impossible or unlawful without the fault of either party.

Section 56 serves as an exception to the general rule that contractual obligations must be performed. Once the conditions for frustration are satisfied, the contract is automatically discharged by operation of law, relieving both parties from further performance. The doctrine applies irrespective of the intentions of the parties because its source is the statute rather than the contract itself.

Unlike English law, where the doctrine of frustration developed gradually through judicial decisions, Indian law gives it statutory recognition. Accordingly, courts interpret and apply

[4] M. P. Ram Mohan, Promode Murugavelu, Gaurav Ray & Kritika Parakh, *The Doctrine of Frustration under Section 56 of the Indian Contract Act*, Indian Inst. Mgmt. Ahmedabad, Working Paper No. 2020-10-01 (Oct. 2020), https://www.iima.ac.in/sites/default/files/rnpfiles/8569076382020-10-01.pdf

[5] Indian Contract Act, No. 9 of 1872, §§ 56

the doctrine primarily on the basis of Section 56 rather than relying on principles evolved under English common law.

Supervening Impossibility

For Section 56 to apply, the contract must have been valid at the time it was entered into, and the impossibility must arise only after its formation. The supervening event must be beyond the control of both parties and must fundamentally interfere with the performance of the contract.

The expression "impossible" in Section 56 has been interpreted broadly by Indian courts. It is not confined to situations where performance is physically impossible. A contract may also be frustrated where subsequent events destroy the essential purpose or foundation on which the parties entered into the agreement.

Examples include situations where performance becomes unlawful because of legislative changes, the subject matter of the contract is destroyed, a necessary licence is permanently revoked, war makes performance legally impossible, or government action permanently prohibits the agreed transaction. In each case, the event must fundamentally alter the nature of the contractual obligation rather than merely make it more difficult to perform.

Meaning of Impossibility

Judicial interpretation has established that impossibility under Section 56 includes both physical impossibility and practical impossibility. However, practical impossibility does not arise merely because performance has become more burdensome or less profitable.

The test is whether the supervening event has changed the nature of the obligation so substantially that enforcing the contract would require something fundamentally different from what the parties originally agreed. Mere inconvenience, delay, hardship, or increased expenditure is insufficient to discharge the contract.

Accordingly, courts have consistently held that inflation, currency fluctuations, rising costs, labour shortages, or adverse market conditions do not ordinarily amount to frustration. Such circumstances are regarded as normal commercial risks that parties are expected to bear unless the contract specifically allocates them differently.

Limits of the Doctrine

The Doctrine of Frustration is applied sparingly because an expansive interpretation would undermine the certainty and stability of contractual relationships. Courts therefore refuse to apply Section 56 in several situations.

The doctrine cannot be invoked where the contract already contains a Force Majeure clause dealing with the relevant event, where the impossibility has been caused by the party seeking relief, where performance has merely become more expensive or commercially disadvantageous, where another reasonable method of performance remains available, or where the risk was foreseeable and consciously accepted at the time of contracting.

These limitations ensure that Section 56 remains an exceptional remedy rather than a means of escaping an unfavourable bargain. Indian courts have repeatedly observed that frustration is not established simply because performance has become difficult or financially burdensome. The impossibility must be genuine and must fundamentally affect the contractual obligation itself.

4. Legal Distinction between Force Majeure and the Doctrine of Frustration

[6]Although Force Majeure and the Doctrine of Frustration are frequently relied upon in disputes involving unforeseen events, they are not interchangeable concepts. While both doctrines come into play when circumstances arise that affect the performance of a contract, they differ in their legal foundation, scope of application, and consequences. Under Indian contract law, Force Majeure derives its validity from the agreement between the parties and is governed by Section 32 of the Indian Contract Act, 1872. In contrast, the Doctrine of Frustration is a statutory principle embodied in Section 56, which applies by operation of law when contractual performance becomes impossible or unlawful. Recognising this distinction is essential because it determines the legal principles that courts apply while resolving disputes arising from supervening events.

Contractual Nature versus Statutory Origin

The primary difference between the two doctrines lies in their source. Force Majeure is purely contractual. Its existence depends upon the inclusion of a specific clause in the agreement through which the parties identify certain future events that may affect performance and decide the consequences of such events. The role of the court is confined to

[6] Anant Merathia & Assocs., *FAQ on Force Majeure* (Oct. 2020), https://www.amalaw.in/wp-content/uploads/2020/10/FAQ-on-Force-Majeure-FINAL-AMA.pdf

interpreting and enforcing the clause in accordance with the intention expressed by the parties.

The Doctrine of Frustration, however, has a statutory foundation. It operates under Section 56 of the Indian Contract Act and does not depend upon the existence of any contractual provision. When the conditions laid down in the statute are fulfilled, the contract is discharged automatically because the law regards its further performance as impossible or unlawful. The parties' intentions are not decisive in determining whether frustration applies.

This distinction reflects the different objectives of Sections 32 and 56. Section 32 gives effect to the parties' freedom to regulate future risks through contractual terms, whereas Section 56 provides a legal remedy in situations where the contract itself offers no solution to an unforeseen event.

Contemplated Events and Unforeseen Circumstances

Another important point of difference concerns the nature of the event that interferes with contractual performance. A Force Majeure clause generally deals with events that the parties had anticipated as possible, even though their occurrence remained uncertain. At the time of entering into the contract, the parties consciously identify these contingencies and decide how they should affect their rights and obligations if they arise in the future.

For instance, parties to a construction agreement may provide that events such as floods, earthquakes, war, labour unrest, or government restrictions will temporarily suspend contractual obligations. Although these events may never occur, the parties choose to allocate the risks associated with them in advance.

The Doctrine of Frustration applies in a different situation. It comes into operation only when the supervening event is not governed by the contract and is of such a nature that it destroys the very basis of the agreement. Where the contract already contains a Force Majeure clause covering the relevant event, the dispute is ordinarily governed by that clause, leaving no scope for the application of Section 56.

Therefore, the real distinction is not simply whether an event was foreseeable but whether the parties had already addressed its consequences through the terms of their contract.

Party Autonomy and Freedom of Contract

Force Majeure is an expression of the principle of freedom of contract. It allows parties to determine the extent of their contractual obligations in the event of unforeseen circumstances. They may specify the events that qualify as Force Majeure, prescribe notice requirements, impose duties to minimise losses, decide whether performance will be suspended or terminated, and provide for extensions of time or renegotiation.

Such flexibility enables commercial parties to distribute risks in a manner best suited to their transaction. Since these terms are the product of mutual agreement, courts generally respect them and avoid interfering with the allocation of risks deliberately chosen by the parties.

The Doctrine of Frustration does not offer similar flexibility. Because it is created by statute, parties cannot alter its requirements or decide when it should apply. It is the responsibility of the court to determine whether the supervening event has made performance legally or practically impossible, or whether it has fundamentally altered the nature of the contractual obligation.

Accordingly, Force Majeure gives priority to contractual autonomy, whereas frustration represents an exception imposed by law in exceptional circumstances.

Allocation of Commercial Risk

The two doctrines also differ in the manner in which they allocate risk. A Force Majeure clause enables the parties to distribute future risks before any dispute arises. By identifying particular contingencies and prescribing their consequences, the parties themselves determine who will bear the burden if those events occur.

When such an arrangement exists, courts generally uphold it because it reflects the commercial intentions of the parties. Judicial intervention becomes unnecessary as the contract itself provides the answer.

Section 56 serves a different purpose. It operates only where the contract does not contain an effective mechanism for dealing with the supervening event. In those circumstances, the law steps in to decide whether the contract should be discharged because continued performance has become impossible or unlawful.

Thus, while Section 32 is based on contractual allocation of risk, Section 56 functions as a residual statutory safeguard where no contractual allocation exists.

Role of the Courts

The function performed by courts also differs under the two provisions.

When dealing with a Force Majeure clause under Section 32, the court's task is limited to interpreting the contract. It must determine whether the event relied upon falls within the language of the clause and whether the procedural and substantive conditions for invoking it have been satisfied. Courts do not expand the scope of the clause or create rights that the parties themselves did not agree upon.

In contrast, cases arising under Section 56 require a broader judicial inquiry. The court must assess whether the supervening event has fundamentally affected the contract to such an extent that performance has become impossible or unlawful. This requires an examination of the nature of the agreement, the surrounding circumstances, and the practical impact of the event on the contractual obligations.

Even so, Indian courts have consistently observed that the doctrine of frustration must be applied with restraint. A liberal application of Section 56 would weaken the certainty and predictability that are essential to commercial transactions.

Legal Consequences

The consequences flowing from the application of the two doctrines are also markedly different.

Invoking a Force Majeure clause does not automatically bring the contract to an end. The effect depends entirely on the terms agreed by the parties. In many cases, contractual obligations are only suspended until the Force Majeure event comes to an end. Some agreements also provide for extensions of time, renegotiation of obligations, or termination if the event continues for a prolonged period.

The Doctrine of Frustration operates differently. Once the requirements of Section 56 are satisfied, the contract becomes void by operation of law from the time the supervening impossibility arises. Neither party is required to elect to terminate the agreement, and both parties are discharged from their future contractual obligations.

Therefore, whereas Force Majeure generally seeks to preserve the contractual relationship by temporarily suspending performance, frustration usually results in the complete discharge of the contract.

Comparative Overview

Force Majeure (Section 32)	**Doctrine of Frustration (Section 56)**
Arises from the contract between the parties	Arises directly from statute
Based on express contractual terms	Operates by operation of law
Applies to events covered by the contract	Applies where the contract does not provide for the event
Parties allocate the risks in advance	The law determines the legal consequences
Court interprets the contractual clause	Court decides whether the contract has become impossible to perform
Performance is usually suspended or modified	The contract is automatically discharged
Relief depends upon the wording of the contract	Relief depends upon the requirements of Section 56

The distinction between these two doctrines has become a settled principle of Indian contract law. It received authoritative recognition in the Supreme Court's decision in *Energy Watchdog v. Central Electricity Regulatory Commission*, where the Court made it clear that whenever a contract contains a valid Force Majeure clause dealing with the relevant supervening event, the dispute must ordinarily be decided under Section 32 rather than Section 56.

5. Judicial Foundation: *Satyabrata Ghose v. Mugneeram Bangur & Co.* (1954)

Before the Supreme Court delivered its decision in[7] *Energy Watchdog v. CERC*, the principles governing the Doctrine of Frustration under Indian law had already been firmly established in [8]*Satyabrata Ghose v. Mugneeram Bangur & Co.* (1954). This landmark judgment remains one of the leading authorities on the interpretation of Section 56 of the Indian Contract Act, 1872. It clarified the scope of the doctrine, explained the meaning of "impossibility" under

[7] *Energy Watchdog v. Cent. Elec. Regulatory Comm'n*, (2017) 14 SCC 80.
[8] *Satyabrata Ghose v. Mugneeram Bangur & Co.*, AIR 1954 SC 44

Indian law, and drew an early distinction between contingent contracts under Section 32 and contracts discharged by frustration under Section 56. Even today, Indian courts continue to rely on this decision while deciding cases involving supervening events.

Facts of the Case

The dispute arose out of an agreement for the sale of a plot of land that formed part of a residential development project. Under the agreement, the respondent company was required to develop the land before handing over possession to the purchaser. However, during the Second World War, the Government requisitioned a substantial portion of the land for military purposes. As a result, the company was temporarily prevented from carrying out the necessary development work within the agreed period.

The purchaser argued that the Government's action had made the contract impossible to perform and, therefore, the agreement had become void under Section 56 of the Indian Contract Act. The principal question before the Supreme Court was whether a temporary government requisition amounted to frustration of the contract.

Interpretation of "Impossibility" under Section 56

While delivering the judgment, Justice B.K. Mukherjea rejected the view that the word "impossible" should be interpreted in a strictly literal or physical sense. The Court observed that performance may become impossible not only when it is physically incapable of being carried out but also when a supervening event fundamentally changes the circumstances on which the contract was based.

The Court explained that impossibility includes situations where the contractual object can no longer be achieved because of unforeseen events. However, it made it equally clear that mere inconvenience, delay, increased expenditure, or commercial hardship cannot by themselves amount to frustration. The doctrine applies only where the change is so significant that it destroys the very foundation of the contract.

Applying this principle to the facts of the case, the Court held that the Government's requisition was temporary in nature. Since the land would eventually be released and the contract could still be performed thereafter, the agreement had not become impossible to perform. Consequently, Section 56 was held to be inapplicable.

Section 56 as a Rule of Statutory Law

One of the most significant aspects of the judgment was the Court's explanation of the legal basis of the Doctrine of Frustration in India. Unlike English law, which historically developed the doctrine through judicial decisions based on the theory of implied contractual terms, Indian law derives the doctrine directly from Section 56 of the Indian Contract Act.

The Supreme Court rejected the English approach that assumes every contract contains an implied condition allowing the parties to be discharged if unforeseen events destroy the contractual foundation. Instead, the Court held that Parliament had expressly incorporated the doctrine into Section 56, making it a rule of statutory law rather than a principle based on implied intention. Therefore, Indian courts must determine questions of frustration by interpreting the language of the statute itself instead of relying on legal fictions developed under English common law.

Distinction between Sections 32 and 56

Although the dispute primarily concerned the interpretation of Section 56, the Court also highlighted the difference between contingent contracts under Section 32 and contracts discharged under Section 56.

The Court observed that where the parties themselves have provided for the consequences of a future uncertain event, the contract is governed by Section 32 because its performance depends upon the occurrence or non-occurrence of that event. In such cases, the rights and obligations of the parties arise from the contract itself.

Section 56, on the other hand, applies only where the agreement contains no provision dealing with the supervening event and performance subsequently becomes impossible or unlawful by operation of law. This distinction laid the foundation for the modern understanding that the two provisions operate independently and are applicable in different situations.

Although the Court did not examine Force Majeure clauses in detail, its observations established the conceptual framework that was later reaffirmed and expanded by the Supreme Court in *Energy Watchdog v. CERC*.

Continuing Importance of the Decision

The decision in *Satyabrata Ghose* continues to occupy an important place in Indian contract law for several reasons. It firmly established that the Doctrine of Frustration in India is governed by Section 56 of the Indian Contract Act and not by the principles of English common law. The judgment also clarified that impossibility is not confined to physical impossibility but may include situations where the essential purpose of the contract has been destroyed. At the same time, it emphasised that the doctrine must be applied cautiously and cannot be invoked merely because performance has become difficult, delayed, or commercially unprofitable.

Equally important, the Court recognised that Sections 32 and 56 operate in separate fields. This observation later became the foundation of the Supreme Court's reasoning in *Energy Watchdog v. CERC*, where it was conclusively held that when a contract contains an effective Force Majeure clause, disputes arising from the specified supervening events are governed by Section 32, leaving no scope for the application of Section 56.

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Section 56, on the other hand, applies only where the agreement contains no provision dealing with the supervening event and performance subsequently becomes impossible or unlawful by operation of law. This distinction laid the foundation for the modern understanding that the two provisions operate independently and are applicable in different situations.

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Force Majeure clause, disputes arising from the specified supervening events are governed by Section 32, leaving no scope for the application of Section 56.

9. Conclusion

Force Majeure and the Doctrine of Frustration serve a common purpose of addressing unforeseen events that interfere with the performance of contractual obligations, but they operate on fundamentally different legal principles. Force Majeure derives its authority from the agreement between the parties and is governed by Section 32 of the Indian Contract Act, 1872. In contrast, the Doctrine of Frustration is embodied in Section 56 and comes into operation only where the contract does not provide for the consequences of the supervening event and performance has become genuinely impossible or unlawful.

The distinction between these two doctrines has been firmly settled through judicial interpretation. While *Satyabrata Ghose v. Mugneeram Bangur & Co.* laid the foundation by explaining the scope of Section 56 and recognising the separate operation of Sections 32 and 56, the Supreme Court's decision in *Energy Watchdog v. Central Electricity Regulatory Commission* provided a clear and authoritative framework for their application in commercial contracts. The Court reaffirmed that where parties have consciously allocated risks through a valid Force Majeure clause, their rights and liabilities must be determined according to the terms of the contract. Section 56 cannot be invoked merely because performance has become more difficult or financially burdensome.

The present legal position strikes a balance between two important objectives of contract law. On the one hand, it respects the freedom of parties to allocate risks and define their contractual obligations. On the other, it preserves the Doctrine of Frustration as a limited statutory safeguard for exceptional situations where performance has become impossible in a legal sense and no contractual mechanism governs the event. By maintaining this distinction, Indian courts have strengthened commercial certainty while ensuring that genuine cases of supervening impossibility continue to receive appropriate legal protection.