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Applicability of the Doctrine of Impossibility under Section 56 of the Contract Act, 1872

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ABSTRACT

Unexpected events may obstruct the fulfilment of an agreement's duties, resulting in legally binding vulnerability. The theory of frustration anticipates the only possible consequence of a very unusual occurrence that occurs without permission from the contracting parties. In view of norms of fairness and equity, the theory compensates for a contract's deficiency in terms of supervening events. Given the enormous ramifications of a big contract's essential and restricted nature, it's vital to look at the courts' decision. In contrast to precedent-based law, Indian contract law explicitly recognises the concept of frustration. The aim of this research is to review the law on the theory of impossibility as it applies to India. The paper starts with an introduction to the topic and further goes on to explain the various instances in which this particular law can be invoked. Also the paper covers various facets regarding the topic, explaining in detail the various kinds of impossiblities. In the main body of the article, the difference between the doctrines of frustration and impossiblity is explained under the contract act. In the concluding sections of the article there is a critical analysis accompanied by a personal viewpoint conclusion that gives clarity to the topic at large. Through this paper, I attempt to elaborate the complex doctrines covered under section 56 of the act and provide a brief description that contrasts and compares the different tenets under an agreement. The paper sheds light on the different ways when it's impossible to perform a pre-agreed contract due to certain impossiblities and describes the many sorts of impossibilities in depth.

I. INTRODUCTION

Section 2(e) of the Indian Contract Act, 1872 defines an agreement as 'Every promise and every set of promises, forming the consideration for each other, is an agreement'.[3] In simple terms it is an understanding between at least two parties making commitments that are

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[3] The Indian Contract Act, 1872 § 2(e)

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enforceable.

Unexpected or occurring circumstances, i.e., scenarios that cannot be anticipated or prepared to be familiar ahead of time by both parties and, in the end, release them from their contractual responsibilities, may have an influence on the fulfilment of these obligations.

The impossibility doctrine is a "tenet" of uncommon instance of the discharge of agreement by an inconceivability to perform it.

The Black's Law Dictionary explains frustration in relation to contracts as "the doctrine that if a party's principal purpose is substantially frustrated by unanticipated changed circumstances, the duties of that party have been discharged and the contract is considered terminated," also known as the frustration of purpose.[4]

The impossibility doctrine refers to situations in which the parties' obligations under the agreement are not practical nor imaginable to fulfil.

According to Section 56 of the Indian Contract Act of 1872, "an agreement to undertake an act impossible in nature is invalid." It also describes a circumstance in which an act or an occurrence becomes impossible, illegal, or criminal after a contract has been signed.

It also considers the fact that if the act or occurrence becomes impossible or illegal, the contract is null and void. When the performance of a contract becomes impractical or unattainable, it is said to be 'frustrated.'

Section 56 contains a list of such scenarios. According to one example, a contract in which "A agrees with B to uncover riches and jewels through magic or witchcraft" is void. Another example said, "A contract to appear in a theatre for six months in exchange for an amount paid in advance by B," but "A is too unwell to act on several times." "In such cases, the contract to act is null and invalid."

The Supreme Court made it plain in a landmark 1953 decision, which is still upheld by courts when dealing with Section 56 cases, that the first portion of the rule "speaks of anything which is impossible intrinsically or by its very nature, and no one can evidently be led to an act."

An illustration of this "inherent impossibility" is the case of one party consenting to "find treasure by wizardry".

The second part of the provision discusses a "happening inconceivability or lawlessness of the act which is agreed to be finished". As to this, the court explained that the difficulty of this

[4] Bryan A Garner, Black's Law Dictionary (9th edn, West Group 2009)

being discussed in this provision isn't "physical or exacting inconceivability". "The showing of any demonstration may not be impossible," it said, "but it very well may be unfeasible and meaningless from the article's standpoint."

If the contract does not already include 'force majeure' situations, Section 56 discusses them. As a result, the provision covers both a contracting party's death or incapacity, as well as government action.

The Indian law on the notion of impossibility is more extensive than the English law on the subject of "Doctrine of frustration" since it covers both the underlying difficulty and resulting inconceivability. Then again, the "doctrine of frustration" applies in cases where the completion of contract is at first conceivable, yet it becomes impossible to execute the contract later because of some illegality or extraordinary event.

However, there's a subtle difference between the doctrine of frustration and supervening impossibility which is explained below.

II. IMPOSSIBILITY

With exception of precedent-based law, Section 56 expressly integrates the concept of frustration in Indian contract law.

The reason of this study is to review the law on the theory of impossibility as it solicits to India.

The first situation is called a "mistake," and it's a separate topic in and of itself. It will not be explored in this essay because there is no unanimity in this scenario by any stretch of the imagination. However, if the agreement becomes difficult to carry out after it has been agreed to – also known as 'supervening impossibility' - this is referred to as frustration and will be examined in further detail in the following section. Because it can only frustrate current agreements, frustration philosophy is linked to the larger question of impossibility. It will only apply after an agreement has been accepted if it is shown to be improbable.

Apart from this there is another setting in which impossibility occurs after a proposition has been made but before it has been accepted. Regardless, because this unique occurrence occurs so seldom, it is usually overlooked in talks.

Regardless, "impossibility" in the legal sense comprises not only physical, but there are also practical and practical components that go beyond the eradication of the topic matter.

The modern legal reasoning of impossibility is based on the court attempting to balance the society's curiosity in having contractual agreements mandated as per their terms against the commercial senselessness of requiring performance." Both the Code and the Restatement

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embrace this logic by using the term "impracticable" rather than "impossible."

Due to the principle's narrow scope, remedy was only granted if certain types of supervening events occurred, such as the death or incapability of an individual whose services were still due in the agreement; the elimination of that distinguishing object that was contracted for or was required for the arrangement to be fulfilled; or the imposition of a performance limitation as a result of a subsequent change in the law.

Under common law, the number and types of situations in which a party can utilise inability of performance as a defence has been growing.

Several experts have voiced their displeasure with using the application of the foreseeability test and using it regularly as a basis on barrier to execution of the provisions of impossibility.

III. CRITICISMS OF THE FORESEEABILITY TEST

The first objection levelled at this test is that it uses the reasonable man criteria to determine whether or not an occurrence is predictable." [5] Without a doubt, such a criterion is useful for the court, but it penalises someone who fails to anticipate the predictable. The foreseeability test presumes that the parties to a contract are aware of all potential eventualities at the time the contractual agreement is written. The foreseeability test presumes that the participants to an arrangement are aware of all possible outcomes the time the order is signed. This is not the case in reality. When parties begin the contractual process, they are usually unaware of all the potential stumbling blocks to their execution.

Rather, parties focus their interest on a few scenarios that they choose through a preliminary selection procedure. The most likely situations on which organisations focus their attention are those involving performance and pricing, rather than those involving performance disruption.

There have been incidents where the court has incorrectly ascribed the test.

If the unforeseeable incident could not have been envisaged or anticipated by a reasonable person, several courts have found that a party should have restricted his qualifications to writing.

[5] United States v. Buffalo Coal Mining Co., 345 F.2d 517 (9th Cir.1965); cf. Mineral Park Land Co. v. Howard, 172 Cal. 289, 156 P. 458 (1916).

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The foreseeability test presents the biggest challenges in instances when the source of the problem looks foreseeable but the type and extent of the hazard is not.

IV. FRUSTRATION

The frustration doctrine is a "doctrine" that applies in the specific instance of an agreement being discharged due to an inability to execute it.[6] The term frustration is not defined under the Contract Act. "The notion that if a party's primary purpose is significantly thwarted by unforeseen changing circumstances, that party's responsibilities are discharged and the agreement is deemed ended," in accordance with Black's Law Dictionary.[7]

When examining the idea of frustration, the incapacity to comply is almost often the result of a party's own misfortune, and that unless otherwise stated in the contract, one cannot avoid the consequences of not completing the contract.

Regarding this matter, impatience is a special "doctrine of justification" for contract non-performance that may only be used in exceptional situations.

A contract can be frustrated because of various reasons. Only in the scenarios where an event occurs without the fault of either party, only then can one apply for frustration.

When legislation is introduced that makes the contract or its future execution illegal, supervening illegality occurs in certain situations. For instance, suppose some contract which is scheduled to be fulfilled in a country that becomes enemy territory because of any conflict. Because of the Second World War, an English manufacturer was barred from providing machinery to a Polish firm in the Fibrosa case (1943).[8]

At a point when the subject's matter is dissolved, a physical impossibility occurs or when somebody or something essential to the contract's performance is unavailable. In this situation, the agreement should have indicated that the usage of anything specific or individual is an essential component of the agreement.

A musical venue rented for the performance purpose was destroyed by fire in Taylor v Caldwell (1863),[9] the leading case in frustration. The contract was dismissed since the subject matter had ceased to exist without fault on either party's part.

As Lord Radcliff noted while developing the theory of frustration, an irritating incident must leave the contractual duty "radically different" from what was agreed upon, rather than merely

[6] Joseph Constantine Steamship Line Ltd v Imperial Smelting Corporation Ltd [1942] AC 154.
[7] Bryan A Garner, Black's Law Dictionary (9th edn, West Group 2009)
[8] Fibrosa SA v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32
[9] Taylor V Caldwell, (1863) 3 B & S 826

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making it more burdensome.

Finally, frustration can happen if an agreement could in any case be completed yet would be radically dissimilar as what was visualized by the participants when going into the arrangement.

However, it isn't enough that a contractual obligation proves to be inconvenient when applying for annoyance. Increased costs – or even a catastrophe – should never be used as source of disappointment. In the case of Tsakiroglou v Noblee Thorl, a retailer was not allowed to ship items from Sudan to Germany due to the Suez Canal blockade (1962). It was speculated that he may yet choose a different path, implying that a good performance was not out of the question.[10]

It's helpful to compare the instances of Krell v Herny and in the case of Herne Bay Steam Boat Co v Hutton to grasp this idea (both 1903).

The coronation was postponed for the first time due to the king's sickness. The contract was thwarted in the first example, where apartments had been rented along the route, because the procession was its foundation. As a consequence, meeting the contract's criteria was tough, and dissatisfaction was evident.

Nonetheless, in the instance of Herne Bay, where a ship had been authorized for assessing the maritime audit and performing a voyage around the armada, there was no disappointment. Regardless of whether the marine audit was abandoned, the steamboat might still have been used for a journey. As a result, the agreement did not turn out as drastically different, and it was not frustrated.

It might be difficult to determine if a contract has become unenforceable because if carried out, it would be dissimilar than what the participants intended, as this case indicates. Practically speaking, two important components must be considered in order to address this issue.

To begin with, the parties' obligations should become more diversified in character as a result of the frustrating occurrence, and the convention should also do equity between the parties. Of course, this is usually very contingent on the circumstances and facts of a particular instance.

Because the contract was dismissed due to frustration, neither party can claim damages for breach of contract.

[10] Tsakiroglou & Co Ltd v Noblee Thorl GmbH [1962] AC 93

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V. Difference between section 32 and section 56 of Indian Contract Act

There is a distinction between the two aforesaid sections of the Contract Act. First, in Section 32, the contract is dissolved on its own, but in Section 56, the contract's destroyed when it becomes impossible to execute and collapses owing to external circumstances.

When an event occurs that makes contract performance impossible and is related to the contract's terms, the situation is covered under section 32; if the event is unrelated to any of the contract's clauses, it is covered by section 56.

In Satyabrata Ghose v Mugneeram Bangur & Co.[11], the Supreme Court said decided that "When a court concludes as a matter of construction that the contract itself contained an implied or express term that the contract would be discharged if certain events occurred, the contract would be dissolved under the terms of the contract itself, and such cases would fall outside the purview of Section 56 entirely. Although these instances are regarded as frustrations under English law, they would be dealt with in India under Section 32 of the Contract Act."

It has been argued that section 32 rules should include the full territory of the inferred term rule of frustration. Relief is allowed under section 56 where the Court determines that the whole basis of the contract was undercut by the likelihood or occurrence of an unforeseen change of circumstances that was beyond what the parties anticipated when they entered into an agreement.[12]

Contracts that require permission or consent for performance may become void if the performance is conditional on such permission or consent[13], with the refusal of permission declaring the contract void.[14] Section 32 will hold not only where the contract expressly says that execution is contingent on the occurrence of a certain event, but also when, in the absence of such a provision, such a requirement is inferred.[15]

The UOI has consented to get milk containers from a third party. The containers had to be coated with "hot dip tin coating" as part of the contract. The parties were aware of the necessity of tin ingots for "hot dip tin coating" of the required cans when they signed the deal. Tin ingots were included on the canalised items list and could not be obtained without a release order on the open market. The supplier frequently requested that the Director General of Supplies and

[11] Supra note 6
[12] Supra note 6
[13] See section 32 above: "Sections 32 and 56 of the Act".
[14] Nirmala Anand v Advent Corporation Pvt Ltd, (2002) 8 SCC 146
[15] Motilal (Re) v Nanhelal, AIR 1930 PC 287

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Disposals receive the requisite tin ingot fraction, but the Director was unable to obtain the necessary tin ingot quota. The contract became difficult to perform due to the reality that tin ingots were not available, which was out of the promisor's control.[16]

VI. AN OVERVIEW OF SECTION 56

(A) Commitment to perform an impossible act: An agreement to carry out an impossible act is null and invalid.

(B) When an agreement for the execution of an undertaking becomes impossibly difficult or unlawful to fulfil: The contract becomes null when the fulfilment of an undertaking becomes unimaginable or illegal after the agreement has been made due to a circumstance that the creditor could not avoid.

(C) Reimbursement covering losses incurred as a result of a failure to accomplish an act that was previously recognised to be impossible or prohibited: Where an individual has vowed to do something that he knew, or could have known with reasonable effort, was impossible or unlawful, but which the promisee did not know, The promisor must reimburse the promisee regarding any losses incurred as a result of the promise's failure to be fulfilled.

Section 56 establishes a rule of positive law that determines the outcome without relying on the parties' intentions.[17]

VII. EVOLUTION OF THE DOCTRINE OF IMPOSSIBILITY

This concept has its roots in Roman Deal Law, where the participants were freed from the contract since the contract's goal had become impossible to achieve.

The court, on the other hand, decided in favour of the Plaintiff, finding the defence useless since the contract's obligation was total and without exceptions. The judge ruled that the contract's responsibility should be fulfilled in all situations.

Due to the aforementioned instance, the Doctrine of Impossibility was developed. In some situations, the contract could not be executed owing to circumstances beyond the defendant's control, and the rigidity of the English rule was deemed to be unjust and unfair, necessitating the creation of an exception to the norm.

VIII. GENERAL IMPOSSIBILITY

A contract that is incapable of performance at the time it is made is generally void ab initio;

[16] Punj Sons Pvt Ltd v UOI, AIR 1986 Del 158
[17] Naithati Jute Mills Ltd. V. Khyaliram Jagannath, AIR 1968 SC 522

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nevertheless, subsequent impossibility terminates a lawful contract from the moment it becomes incapable of execution, and further performance is excused. The latter refers to impossible in more than just a physical or literal sense, but also to events that take place at the contract's foundation, causing the contract's practical aim to be frustrated.[18]

In Satyabrata Ghose v Mugneeram Bangur & Co, the Supreme Court defined this theory. In the same way as it is in England, the legislation is spelled down in the first paragraph of the section.

The law governing contract termination due to unanticipated inability or illegality of the agreed-upon conduct is discussed in the next section. The terminology in this part is quite broad, and irrespective of how brilliant the pictures are, they pale in comparison to the overall number of words utilised in the paragraph. To say the least, it's obvious that the word "impossible" hasn't been used in the sense of physical or literal impossibility in this context. Execution of a deed may not be innately impractical, but it may be unreasonable and fruitless in light of the article and reason intended by the parties; or when an unforeseen event or some unfavourable circumstances completely disrupt the very basis on which the parties based their agreement, the promisor is highly likely to believe the act he vowed to perform was impossible.

When the judge determines a duty or levies a charge on an individual and that person is unable to carry out that obligation or levy owing to circumstances beyond his control, the law will frequently pardon him. Because of the resulting impossibility, the legislative requirement retains its obligatory nature.[19]

It is then a general rule, like an overall guideline that concedes to sufficient viable delineation, that impotentia excusat legem; where an obligation or charge is created by the law, and the participant is incapacitated to perform upon the decided contract, with no delinquency in him, and no remedy over, the law most of the times will reason him, and while the difficulty in execution is generally not a good reason for incapacity in carrying out a commitment that a party has explicitly attempted by contract.

IX. IMPOSSIBILITY AFFECTING PART OF CONTRACT

It really isn't absolutely impossible to execute a contract if a portion of the topic of discussion no longer exists, according to Section 13 of the now-defunct Specific Relief Act of 1877. In divisible contracts of that part, which can and should be specifically performed, specific performance can and should be ordered; and for the purposes of section 12 of the Act, an entity

[18] DDA v Kenneth Builders & Developers Pvt Ltd, (2016) 13 SCC 561.
[19] Chandra Kishore Jha v Mahavir Prasad., (1999) 8 SCC 266

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can be said to be unable to fulfil the entirety of his share when an element of the contract's subject-matter has ceased to exist at the time of completion.

Similarly, Section 108 of the Transfer of Property Act of 1882 states that if there is some material which belongs to the leased property and is totally obliterated, the lease will be null and void at the lessee's option.

X. TYPES OF IMPOSSIBLITY

There are several sorts of impossibilities that are also covered under this doctrine. Each of these discuss about the varied kinds of impossibilities that exist, which prevent the completion of some pre agreed contractual obligation between the two parties.

(A) Commercial Impossiblity

The term "impossible" used in the second sentence of this section doesn't contain "commercial impossibility," which is defined as a high or unexpected cost or difficulty in completing a work.[20]

As a result, merely though freight could only be obtained at a high cost, a contract to deliver freight cannot be deemed to be impossible under such circumstances. So, if a government regulation prohibits a large percentage of transportation,[21] or a contractor for bridge tolls has no legal recourse against the District Board if floods render it impossible to utilise the bridge for a considerable portion of the contract time.[22]

If A agreed to purchase a tapestry from B with the thought of reselling it in Australia. Following that, imports to Australia were forbidden. The contract was rescinded by A. The agreement was allegedly frustrated in a legal action brought by B against A for damages. It was determined that A's ability to sell the goods in Australia was not a requirement of the contract.[23]

It was decided that the part was attracted and that the cause for the breakdown was not a business problem, inconvenience, or hardship, but rather a contract breakdown, where the contract was granted as a result of the award of a larger contract for a project that was shelved.[24]

(B) Indefinite Impossiblity

Even if the participants have expressly accounted for the scenario of interruption, frustration

[20] Energy Watchdog v Central Electricity Regulatory Commission, 2017 (4) Scale 580
[21] President of the District Board South Kanara v G Santhappa Naik, AIR 1925 Mad 907: (1924) 86 IC 362.
[22] Panakkatan Sankaran v Dist. Board, Malabar, AIR 1934 Mad 85: 66 Mad LJ 108: 147 IC 964
[23] Samuel Fitz & Co Ltd v Standard Cotton & Silk Weaving Co, AIR 1945 Mad 291.
[24] MW High Tech Projects India Private Limited v Grauer & Weil (India) Limited, (2018) 1 ALT 480 (DB) : (2018) 2 ALD 251 (DB).

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develops when unforeseeable occurrences that are not owing to either party's default render contract performance indefinitely impossible, and there is no obligation to be bound in any case.[25]

An example is when goods sent by rail were confiscated by the police in a theft case, and the carrying contract became impossible as a result.[26]

However, simply imposing a ban on the use of the land for the duration of the prohibition is insufficient to void a contract.[27] A statute imposing a restriction on the transfer of urban property, whose restriction was reloadable and temporary, did not thwart a land sale agreement.[28] Where the major debtor's liability was continuing under the Nationalisation Act, the contract of guarantee, which was not on the basis of or related to the Nationalisation Act, had to be honoured, and section 56 did not apply.[29]

Failure to fulfil a contractual obligation can occur for a variety of reasons. A statutory injunction issued by a statutory authority might be one of these causes; nevertheless, a person who issued the order cannot seek to be discharged. The burden of proof for proving self-inflicted dissatisfaction is on the party alleging it.[30]

(C) Initial impossibility

Parties who pretend to commit to do something clearly impossible must be considered as not taking things seriously or clearly unaware of their actions; moreover, a promise to do something clearly impossible as having any value, cannot be recognised by law and hence such a pledge is for no consideration.

The question posed in Illustration (a) is fascinating. Is it feasible for A to seek compensation from B, and if so, may it do so within the terms of the agreement by rejecting the definition of the means to be employed as immaterial, or under section 70 of the Act? Is it possible for A to reclaim any reward from B, and if so, on what terms? Can A collect any payment from B if he undertakes to uncover by magic a treasure that is said to be buried within specified boundaries at an unknown place, and after conducting magic rituals, by good fortune discovers the treasure, and both A and B believe the magic was efficacious?

[25] Supra note 7
[26] Firm Laxmi Dutt Roop Chand v UOI, AIR 1971 All 479 .
[27] Supra note 6
[28] Ved Prakash Gupta v Shishu Pal Singh, AIR 1984 All 288 .
[29] Industrial Finance Corporation of India Ltd v Cannanore Spinning and Weaving Mills Ltd, AIR 2002 SC 1841 : (2002) 5 SCC 54 .
[30] MD, Army Welfare Housing Organisation v Sumangal Services Pvt Ltd, AIR 2004 SC 1344 : (2004) 9 SCC 619

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The situation of performance being impossible throughout the agreement because the contract's subject matter did not exist has been addressed under section 20— "Mistake." Even though it appears to fall under the first paragraph of section 56, a problem involving mutual error is not covered by that section.[31]

(D) Subsequent impossibility

The most essential parts to consider while dealing with frustration in India are sections 32 and 56. If the occurrence that generates frustration is connected to an express or implied contract provision, it is governed by section 32; if it occurs outside of the contract, it is governed by a rule of positive law under section 56.[32]

If indeed the Judge says in your favour and finds that the agreement's entire purpose or foundation has been thwarted by the occurrence or commencement of an unanticipated event or the emergence of situations that the parties could not have anticipated at the time of the contract, you may be entitled to damages; or the contract's performance has been hampered by the encroachment or onset of an unforeseen situation or change of conditions that was not expected at the time of the contract; or the contract's performance has been hampered by the intrusion or occurrence of an unexpected event or change in conditions that was not envisioned by both parties at the time of the contract; or when the contract's performance is hampered by the incursion or development of an unforeseen situation or change in conditions that neither party anticipated, the Court may provide remedy later on the basis of impossibility if the parties' initial objective and purpose have become impractical or useless.[33]

The term "impossible" must be construed in a business sense in the situation of a contract between two or more commercial persons, and the impossibility test is to make sure if it is actually impossible to execute the agreed contract within the specified time period.[34]

The next paragraph has the reverberation of converting the restricted objections in English law into a prevalent norm. A promise is discharged if execution becomes impossible owing to circumstances outside the promisor's control, such as:

(i) the dissolution of the specified subject-matter expected to exist or continue to exist by the parties;

[31] Sheikh Bros Ltd v Ochsner, [1957] AC 136 . [1957] 2 WLR 254 , (PC).
[32] Supra note 19
[33] Sushila Devi v Hari Singh, AIR 1971 SC 1756 .
[34] DL Sooryaprakasalingam Guru v Shaw Trikamlal, AIR 1917 Mad 509 .

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(ii) the dissolution of the specified subject-matter presumed to exist or continue to exist by the parties;[35]

(iii) the non-existence of a condition of affairs believed to constitute the contract's foundation;

(iv) unforeseen events that make performance within the period in the manner envisaged impossible, despite the fact that compliance with the contract's terms is possible [36] or due to the promisor's death or infirmity, if the promise was to execute anything in person.[37]

No discharge despite impossibility

Even if a subsequent occurrence rendered performance impossible or unlawful, a contract would hold value if:

- The contract's terms are non-negotiable, and it can be enforced to cover the annoyance[38];
- For a specific contingency, the contract makes full and complete provisions;
- It is reasonable to assume that it was on the contractual parties' thoughts when they signed it.[39];
- When something happens that neither of the parties might have expected or envisaged with reasonable care;
- When only a portion of the contract becomes impossible or difficult to perform[40];
- If the contract's goal and purpose are not rendered meaningless by intervening events, and the agreement if not exactly in accordance with the agreement, it may be executed substantially in accordance with the parties' original purpose.

XI. FORCE MAJEURE U/S 56

The term "force majeure" comes from a French word that means "superior force."

Force Majeure is defined by Webster's Dictionary as: "(1) A powerful or unstoppable force. (2) an occurrence or consequence that is impossible to predict or control."

The Indian Contract Act of 1872 defines "force majeure." If an agreement specifies 'Force

[35] Kunjilal Manohar Das v Durga Prasad Debi Prasad, AIR 1920 Cal 1021 : 24 Cal WN 703 : 58 IC 761
[36] Krell v Henry, [1903] 2 KB 740 : [1900–03] All ER Rep 20 (CA)
[37] Robinson v Davison, (1871) LR 6 Ex 269 quoted in Satyabrata Ghose v Mugneeraam Bangur & Co, AIR 1954 SC 44 : [1954] SCR 310 .
[38] Supra note 6
[39] Kesari Chand v Governor-General in Council, (1949) Ngp 718 at 736
[40] Ganga Singh v Santosh Kumar, AIR 1963 All 201

Majeure' events, then it is represented by Chapter III, which deals amidst extraordinary and unexpected contacts, and specifically Section 32, which is a provision or arrangement that is enforceable if a doubtful future (unforeseen) event occurs. If a Force Majeure event happens outside of the agreement, it is regulated by Section 56, which states that a contract that becomes impossible or unlawful to fulfil due to an intervening event is empty in itself, as is a contract that becomes impossible or unlawful to fulfil due to an intervening event.

The severity of this force majeure clause varies depending on the scenario. Force Majeure is a legal phrase that refers to events outside the power of other parties that hinder the implementation of a contract. As a result, Force Majeure is a unique circumstance.

What is force majeure?

Non-performance gets dismissed if a party can demonstrate that it was induced by an external element it could not have reasonably predicted at the time the contract was formed, and that it could not have averted or minimised its consequences. If the impediment is only temporary, an excuse will be provided for the period it interferes with the contract's execution. The participant who is unable to perform must tell the other participant of the obstacle and its impact on its ability to perform; otherwise, for neglecting to provide notice, the party who is unable to comply may be held liable for damages.

To establish if an occurrence fits under the concept of force majeure, force majeure provisions must be construed narrowly, and the contract must be read in its entirety.[41] Force majeure terms must be understood narrowly, and the contract must be read in its whole, to determine if an incident falls within the purview of force majeure.[42]

XII. COMPARE AND CONTRAST

(A) A Force Majeure clause differs from contract of frustration in the following ways

The theory of contract frustration or inability of performance is commonly confused with Force Majeure. It is said to have been frustrated when the execution of a contract becomes unattainable. The term "impossible" was used to cover a broader range of possibilities. It may not be possible in the physical sense to execute an act, but it may be impractical and useless in light of the participants' stated aim and purpose. As a result, a party wanting to construct a safeguard outside the agreement can rely on Section 56 if the agreement does not clearly or implicitly contain exclusions for non-execution in the case of Force Majeure. In all situations,

[41] Supra note 19.
[42] Bharat Heavy Electricals Limited v G+H Schallschutz GMBH, 2018 SCC Online Del. 9798 .

the aim of Force Majeure is to safeguard the performing party from the consequences of an event outside its control, such as altering the appearance of a contract.

If force majeure is indicated, it means that the performing party is protected out from consequences of anything over which he has no control. A force majeure clause, as such a stipulation is commonly known, must be construed in each case, taking into account the type and general conditions of the agreement, along with the precise contents of the clause.[43] Force majeure is meant to protect the performing party from the effects of anything of the like mentioned above or over which he has no control.[44]

The term "force majeure" relates to just about any condition that is beyond a person's control and that he is unable to manage, and that is sufficient to justify the breach of a contract. As a result, war, flooding, and epidemics are examples of force majeure.

XIII. FORCE MAJEURE AND ITS JURISDICTION IN INDIA

The word "Force Majeure" comes from the French Code Napoléon, which means "more strength" or "more force." In general, it refers to a significant or systematic shift in the circumstances that is caused by some occurrence which is beyond the parties' control, leading to non-performance of their legal obligations.

Because the idea of force majeure is not established in Indian law. As a result, these clauses, along with confidentiality and dispute resolution terms, are now included in most contract standard clauses.

In the framework of the idea of frustration, Section 56 will apply to contracts that do not contain a "force majeure" term. Section 56 creates two different kinds of impossibilities:

(i) An impossibility that existed at the time of conception of the contract, and

(ii) An agreement that was feasible and lawful when it was written but later became impossible and illegal owing to a subsequent occurrence.

XIV. ESSENTIALS REQUIRED WHEN INVOKING FORCE MAJEURE DEFENCE

(A) The occurrence will make it impossible to fulfil the contract: It was decided in Satyabrata Ghose v. Mugneeram Bangur and Company and Anr. that when an incident or alteration in a situation strikes at the heart of the agreement as a whole, the agreement is considered as frustrated and terminated. The question is if the new situation has completely undermined the fundamental principles of the agreement and the underlying goal. As a result,

[43] Podar Trading Co Ltd, Bombay v Francois Tagher, Barcelona, [1949] 2 KB 227: [1949] 2 All ER 62 (DC).
[44] Serajuddin v State of Orissa, AIR 1969 Ori 152

it may be proved that for an incident to be considered force majeure, it must occur in a way that completely overturns the fabric upon which parties' contract is based. As mentioned in the case of Smt. Sharda Mahajan v. Maple Leaf Trading International (P) Ltd.[45], What has to be looked at is if the change brought about by an incident that neither party could have predicted resulted in the parties' contractual duties being completely breached. It was also mentioned that the courts acknowledge that a contract that is difficult to fulfil in a practical sense does not have to be fulfilled.

(B) The incident must be unavoidable, and economic hardship cannot be the sole cause of Force Majeure: this doctrine can't be applied only due to an increase in cost and will not frustrate a contract solely on that basis. The question is whether Force Majeure or contract dissatisfaction can excuse a party from completing its contract due to financial difficulties during contract execution. When the contract allows for an alternate manner of performance, the force majeure clause won't generally be understood to apply.[46] A more difficult technique of performance would not be a frustrating occurrence in and of itself. The occurrence should be inevitable and completely beyond the debtor's control.[47] In reality, even a totally anomalous fluctuation in prices, a rapid devaluation of currency, and a minor barrier to execution or the like, as discussed in Satyabrata Ghose v. Mugneeram Bangur & Co[48], cannot by itself change the agreement struck between the parties. In another example, a contract is not terminated simply because it is difficult or onerous to fulfil, according to common law.[49] In other words, burdensomeness is not a required condition for attracting the theory of frustration; the true criterion is the inability of a performance contract.

(C) The occurrence must be unexpected: the occurrence should in no way be anticipated i.e. It should not be something that can be predicted via due diligence. In the case of Vedanta Limited v. Global Energy Private Limited[50], a forewarning of an anticipated Force Majeure event does not trigger the Force Majeure clause, according to the court. One of the most important elements in proving a Force Majeure claim is the test of foreseeability at the time of contracting.[51] In the case of Satyabrata Ghose v. Mugneeram Bangur & Co.[52], when a war/warlike scenario developed in the 1950s, the defence tried to demonstrate that the

[45] Sharda Mahajan v. Maple Leaf Trading International (P) Ltd (2007) 78 SCL 367
[46] Treitel, Frustration and Force Majeure (3rd Edn Sweet & Maxwell 2004)
[47] French Civil Code. art 1148.
[48] Supra Note 6
[49] Boothalinga Agencies v. V. T. C. Poriaswami Nadar AIR 1969 SC 110
[50] Vedanta Limited v. Global Energy Private Limited 2017 SCC Online Bombay 9439
[51] Delhi Development Authority v. Kenneth Builders and Developers Private Limited and Ors., (2016) 13 SCC 561
[52] Supra Note 6

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government had requisitioned a block of land for military purposes, and the developer was obligated to develop it. It was established that a state of war existed at the time of contract performance and that the contract was not rendered impossible or frustrating in the end.

(D) Casual test: The incident had to have happened because of the preceding occurrence, not because of the party's own fault. The "causal test" determines whether non-performance is a direct result of a supervening event and if the contract would have been fulfilled "but for" the supervening event. This is the most crucial test, and you must pass it by citing evidence. If a Force Majeure event occurs, but the circumstance does not preclude the party from completing the contract, the Force Majeure provision will not apply.

(E) Precedent conditions must be met: Most Force Majeure provisions require a non-performing party seeking relief from a contract's Force Majeure clause to notify the other party. These criteria are prerequisites to invocation; if these provisions are not met, a party may be unable to take refuge under Force Majeure.

(F) Duty to mitigate: A party relying on the Force Majeure provision must take all possible efforts to lessen the impact of the loss from its inability to perform. The Supreme Court in Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd.[53] stated that under section 56, three elements must be met in order to invoke the concept of frustration:

a) There must be an active contract;

b) a portion of the contract must still be fulfilled; and

c) Once a contract is signed, it is impossible to execute it.

XV. CONCLUSION

Section 56 of the Contracts Act, 1872, defines frustration as exception to the general rule of contracts, which requires recompense if loss occurs. As a result, it's easy to understand how a contract may be let down if the contract's execution becomes impossible owing to circumstances beyond either party's control.

According to a study of decisions involving the idea of impossibility, courts should be more conscious of the need to apply a more realistic foreseeability test to commercial contract scenarios. The fear that a more realistic test will allow the impossibility theory to be abused is unfounded. To avoid misuse, the limitation of reasonableness is sufficient.

[53] Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd. (2002) 5 SCC 54

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The necessity of providing legal clarity or the plain application of the doctrine does not justify the court's inability to offer relief to a party in the appropriate situation. Furthermore, understanding that foreseeability is only one component in determining risk assumption, and that in some cases, relief should be granted regardless of foreseeability, would lead to just and equitable outcomes under the concept of impossibility.

This Paper goes over the criteria that courts consider when determining whether section 56 is applicable or not. Situations in which the contract's subject matter has been destroyed, performance has become illegal, performance has been unreasonably delayed, or the performer has died or is incapable of performing are examples of factors that would trigger section 56's provisions. When the risk is built into the contract; when the frustration is self-inflicted; when the deal is finished; the contract can still be completed; or the agreement's foundation is not significantly damaged; these are examples of reasons that would not draw the terms of section 56. Regardless of the fact that Indian courts have often applied section 56 wrongly to circumstances involving dependent contracts, if the components and conditions necessary to alleviate frustration in a contract are in place, the contract should be regulated by section 32 rather than section 56. Nevertheless, if the contract's provisions don't consider the degree of the intervening events and situations that genuinely interfere with the performance of the relevant contract, the contract may be discharged under section 56 despite the expressed clause.

By including well-drafted and properly specified conditions in the contract, such as a force majeure clause, the contractual parties can prevent the realm of uncertainty created by any future occurrence. Such provisions may divide the risk of a subsequent incident amongst the parties. However, whether or not such a phrase contains the supervening event depends on its scope; otherwise, section 56 may be necessary.

Unusual supervening circumstances might obstruct the fulfilment of a contract's duties, resulting in contractual uncertainty. The theory of frustration opens the path for an equitable outcome in the face of such an unpleasant occurrence that occurred without the contractual parties' fault. Based on principles of justice and equity, the theory fills the vacuum in a contract about supervening event.

Given the importance of determining the elements that lead the courts in determining whether or not a legal contract is obligatory and binding, it is necessary to examine the factors that guide the courts in determining its applicability. Unlike common law, section 56 of the Contract Act clearly integrates the idea of frustration in Indian contract law.

An examination of instances involving the impossibility doctrine reveals that the courts must

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have a better understanding of the necessity to apply a much more practical foreseeability test to wide variety of commercial circumstances. The worry that a more realistic test will allow the theory of impossibility to be abused is false. To avoid misuse, the limitations of good conscience and rationality are sufficient.

The failure of the court to provide relief to a party in the proper case is not justified by the necessity to establish certainty in the law or the simple administration of the doctrine. Furthermore, understanding that foreseeability is only one component in determining risk assumption, and that in some cases, relief should be granted regardless of foreseeability, would result in more just and equitable outcomes under the concept of impossibility.

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