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Beyond Impossibility: Force majeure, War, and Natural Events in International Contracts - An Analytical Comparison between Indian Contract Law and Transnational Commercial Norms

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ABSTRACT

The escalating global and domestic conflicts of the twenty-first century ranging Covid-19 pandemic, Russia-Ukraine war to the Red Sea maritime crisis and now the disruption due to Iran – Israel – USA war, have fundamentally disrupted compliance of domestic and international commercial contracts, thrusting into sharp focus a legal doctrine that was long treated as boilerplate, the force majeure clause. This research article undertakes a comprehensive doctrinal and comparative analysis of force majeure provisions as they relate to acts of war and acts of nature (acts of God) under the Indian Contract Act, 1872, benchmarked against major international mercantile law instruments including the United Nations Convention on Contracts for the International Sale of Goods (CISG), the UNIDROIT Principles of International Commercial Contracts (PICC), and the International Chamber of Commerce (ICC) Model Force majeure Clause (2020). The article critically investigates which contractual terms become unenforceable during wartime conditions, the legal threshold for triggering force majeure, the provisions under the Indian Contract Act that address impossibility and frustration, the circumstances under which compensation must be paid, and the doctrinal distinction between the force majeure clause, the doctrine of frustration, and supervening impossibility. Drawing upon landmark Indian Supreme Court judgments Satyabrata Ghose v. Mugneeram Bangur & Co. (AIR 1954 SC 44) and Energy Watchdog v. CERC (2017) and leading international precedents, this article develops a cross-referential framework to assist contracting parties, legal practitioners, and policymakers in drafting war-resilient contracts.

Keywords: *Force majeure, Indian Contract Act 1872, Acts of War, Acts of God, Doctrine of Frustration, UNIDROIT Principles, International Commercial Contracts, Compensation,*

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I. INTRODUCTION

The world in 2024-2026 is witnessing an unprecedented convergence of armed conflicts, geopolitical tensions, and natural disasters that are collectively unravelling the fabric of international trade and commercial contracts. Earlier natural calamity we have seen in recent past due to Covid-19 pandemic, the Russia-Ukraine war, the Israel-Gaza conflict, Houthi attacks on Red Sea shipping lanes, and heightened India-Pakistan tensions, disruption of recent outbreak of Iran-Israel- USA war have thrown multinational supply chains, shipping agreements, energy procurement contracts, and infrastructure concessions into a state of profound legal uncertainty. In this volatile environment, legal practitioners, corporate entities, and State instrumentalities are urgently revisiting one of the oldest and most debated provisions of commercial law: the *force majeure* clause.

Force majeure derived from the French phrase meaning 'superior force' describes a contractual mechanism that excuses one or both parties from performing their obligations when an extraordinary and unforeseeable event beyond their control prevents such performance. At its doctrinal core, the clause asks a fundamental question of contract law: who bears the risk when circumstances beyond the parties' control make a contract impossible or commercially impracticable to perform?

In India, this question is governed principally by the Indian Contract Act, 1872 ('the Act'), a statute enacted over 150 years ago under British colonial administration but still serving as the backbone of Indian commercial law. The Act does not use the phrase '*force majeure*' expressly, yet its provisions particularly Sections 32 and 56 have been interpreted by Indian courts through a rich body of jurisprudence to accommodate the concept. The doctrine of frustration under Section 56, as authoritatively expounded in Satyabrata Ghose v. Mugneeram Bangur & Co. (AIR 1954 SC 44) and later in Energy Watchdog v. CERC (2017 SCC Online SC 378), forms the cornerstone of *force majeure* law in India.

Internationally, the same question is addressed through a mosaic of instruments, Article 79 of the CISG provides the primary treaty-level response for international sales of goods; Article 7.1.7 of the UNIDROIT PICC addresses *force majeure* across international commercial contracts generally; and the ICC's 2020 Model *Force majeure* Clause provides parties with a standardised contractual template. A rich comparative analysis of these instruments against the Indian Contract Act reveals significant convergences and divergences both of which carry profound practical implications for cross-border contracting parties.

This article is structured as follows: Part II examines the foundational concepts. Part III

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critically analyses the relevant provisions of the Indian Contract Act. Part IV surveys the international mercantile law framework. Part V undertakes a cross-referential comparative analysis. Part VI investigates the specific consequences when war or natural disaster strikes which clauses fail, when compensation must be paid, and when relief is available. Part VII develops drafting recommendations and reform proposals. Part VIII presents the research outcomes and conclusions. The research methodology employed is doctrinal, analytical, and comparative, drawing upon primary legal sources (statutes and case law) and secondary sources (academic commentary and international legal instruments).

II. CONCEPTUAL FRAMEWORK: *FORCE MAJEURE*, ACT OF GOD AND ACT OF WAR

A. The Meaning and Scope of *Force majeure*

The concept of *force majeure*, literally translated as 'superior force', describes those uncontrollable events that are neither anticipated nor preventable and that disable the performance of contractual obligations. As Black's Law Dictionary defines it, *force majeure* refers to events that 'can be neither anticipated nor controlled' and constitutes 'a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled.' The term has its roots in French civil law and has been absorbed into international commercial practice through widespread contractual usage and treaty codification.

Under the broader concept of *vis major* a term used interchangeably but with slight nuance both acts of God (natural phenomena) and acts of war (human-triggered catastrophes) are included. As distinguished from the narrow common law concept of act of God (which addresses only natural forces), *force majeure* encompasses a wider range: war, hostilities, blockades, sanctions, terrorism, strikes, epidemics, government-ordered trade restrictions, and natural disasters alike. The defining characteristic is not the nature of the event per se, but rather its externalness, unforeseeability, and the impossibility or impracticability of performance it creates.

The operative elements of a *force majeure* event, recognised consistently across national and international legal systems, may be distilled as follows:

Externality: The event must be entirely beyond the control of the affected party.

Unforeseeability: The event could not reasonably have been anticipated at the time of contract formation.

Inevitability: The party cannot avoid or overcome the event or its consequences despite

reasonable mitigation efforts.

Causal nexus: There must be a direct causal link between the *force majeure* event and the non-performance.

Good faith: The affected party must act in good faith, notify the other party promptly, and attempt to limit the damage.

These elements are reflected, with varying degrees of strictness, in the Indian Contract Act, the CISG, the UNIDROIT Principles, and the ICC Model Clause. What differs significantly across legal systems is the threshold of proof required, the consequences upon invocation, and the treatment of partial impossibility and commercial impracticability.

B. Acts of God vs. Acts of War: Definitional Precision

A critical distinction that pervades *force majeure* jurisprudence is the difference between an 'act of God' and an 'act of war'. An act of God traditionally understood in mercantile law as an act of nature refers to events such as earthquakes, floods, hurricanes, volcanic eruptions, tsunamis, famines, and droughts: natural phenomena that occur independently of human agency and are beyond human control. Acts of God are broadly recognised across all legal systems as *force majeure* events, provided they satisfy the threshold of unforeseeability and inevitability.

Acts of war, by contrast, are human-triggered armed conflicts including declared wars, hostilities, civil wars, blockades, sabotage, acts of terrorism, and sanctions imposed in response to armed conflict. Acts of war present more complex questions for *force majeure* analysis because they often involve degrees of foreseeability (particularly in regions of historically high geopolitical risk), because they may be legally declared or undeclared, because they may affect one contracting party's state but not the other, and because the imposition of sanctions on a belligerent state may create collateral legal impossibility for commercial parties in third states.

The global conflicts of the 2020s particularly the Russia-Ukraine war (commencing February 2022), the Red Sea shipping crisis (December 2023-2025), and rising India-Pakistan tensions have sharply illustrated these distinctions. Supply chain disruptions, embargos, port closures, sanctions regimes, freight route alterations, and the destruction of contractually specified physical infrastructure have all triggered *force majeure* claims in courts and arbitral tribunals worldwide.

C. The *Pacta Sunt Servanda* Principle and its Exception

The fundamental principle of contract law *pacta sunt servanda* (agreements must be honoured) stands as the normative bedrock against which *force majeure* operates as a carefully delineated

exception. The principle demands that parties honour their contractual commitments regardless of changed circumstances. *Force majeure* is therefore not an escape from a bad bargain or commercial hardship; it is a narrow exception carved out for truly extraordinary and uncontrollable events that make performance legally impossible, physically impossible, or (under some systems) commercially impracticable to a fundamental degree.

This tension between *pacta sunt servanda* and the claim for relief is directly addressed by the Supreme Court of India in Energy Watchdog v. CERC (2017), where the Court emphatically held that mere price escalation even if dramatic does not constitute a *force majeure* event. Similarly, in Alopi Parshad & Sons Ltd. v. Union of India (AIR 1960 SC 588), the Supreme Court held that changed circumstances, even unexpected ones, do not entitle a party to seek payment at different rates from those contractually stipulated. Commercial hardship is the risk of trade; *force majeure* is a narrower concept than mere difficulty.

III. *FORCE MAJEURE* UNDER THE INDIAN CONTRACT ACT, 1872: CRITICAL ANALYSIS

A. Section 32: Contingent Contracts and Express *Force majeure* Clauses

Section 32 of the Indian Contract Act, 1872 provides the primary statutory basis for express *force majeure* clauses incorporated in contracts. It reads, 'Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.'

In the context of *force majeure*, Section 32 governs contracts that contain explicit or implied provisions making the performance of certain obligations contingent upon the non-occurrence of specified events (e.g., war, natural disaster). When a contract expressly includes a *force majeure* clause listing acts of war or acts of God as qualifying events, that clause operates under Section 32. The contractual language itself determines whether the event in question falls within its scope. The Supreme Court in Energy Watchdog v. CERC (2017) confirmed this framework, holding that where a PPA (Power Purchase Agreement) contained an explicit *force majeure* clause, that clause governed the contractual relationship under Section 32, and Section 56 operated only in the residual space i.e. where no contractual provision addressed the event.

The practical significance of Section 32 for war-related contractual disputes is substantial. A contract executed before the outbreak of hostilities between India and a trading partner, or between nations hosting the parties' manufacturing or supply facilities, may have included a *force majeure* clause that explicitly lists 'war', 'hostilities', 'armed conflict', or 'sanctions' as

triggering events. In such cases, the party seeking relief must demonstrate:

That the event falls within the express definition of *force majeure* in the contract. That the event was unforeseeable at the time of contract formation (or, where foreseeability is not a contractual requirement, that performance has been prevented). That the event has a direct causal connection to the non-performance. That the non-performing party provided the notice required by the contract and has taken reasonable steps to mitigate. Where these conditions are satisfied, the contract is either suspended (during the continuance of the *force majeure* event) or voided (if the event persists beyond a threshold period or makes permanent performance impossible), depending on the language of the clause.

B. Section 56: The Doctrine of Frustration and Supervening Impossibility

Section 56 of the Indian Contract Act, 1872 is the cornerstone statutory provision for *force majeure* analysis where either the contract contains no *force majeure* clause or the contract's clause does not cover the event in question. Section 56 provides: 'An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.'

Section 56 embeds within it the doctrine of frustration a common law concept of English origin that has been given independent statutory recognition in Indian law. The sine qua non for invoking Section 56 are: (i) the existence of a valid contract; (ii) the occurrence of a supervening event after formation; (iii) the event being beyond the control of the promisor; (iv) the event rendering performance impossible or unlawful; and (v) the event not being self-induced. Critically, the word 'impossible' in Section 56 has been given a practical rather than literal interpretation by Indian courts. In Satyabrata Ghose v. Mugneeram Bangur & Co. (AIR 1954 SC 44) the most authoritative pronouncement on Section 56 the Supreme Court held that frustration occurs not only when performance is physically impossible, but also when the 'very foundation of the contract is uprooted' by a supervening event so fundamental as to strike at the root of the adventure. The Court held that Section 56 is a complete code on frustration under Indian law and that English common law doctrines of frustration, while persuasive, are not binding in India.

The Satyabrata Ghose case arose directly from wartime conditions: during World War II, the Government of India requisitioned a large tract of land in Calcutta for military purposes under the Defence of India Rules. The developer-respondent argued that the contract for sale of plots was frustrated by this government requisition. The Supreme Court, however, held that the

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temporary requisition did not fundamentally destroy the basis of the contract, as the contract did not stipulate a time limit, both parties were aware of the wartime conditions at the time of contracting, and the land was only temporarily taken. The contract was therefore not frustrated but the principle it established remains vital: the impossibility must be radical and fundamental, not merely inconvenient or delayed.

For war-related *force majeure* claims in contemporary contracts, this principle is of great practical significance. Indian courts will ask: has the war so fundamentally altered the basis of the contract that it no longer represents the bargain the parties struck? Mere supply chain disruption, price escalation, or routing difficulties will not suffice. The war must make performance impossible in the sense that no commercially reasonable means of performance remains available or unlawful (as when sanctions prohibit performance with a designated party or state).

C. Section 65: Restitution Upon Void Contracts

When a contract becomes void under Section 56 due to supervening impossibility whether from war or natural disaster the consequences are governed by Section 65 of the Indian Contract Act. Section 65 provides 'When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.' This provision is of critical importance for the question of compensation. Once a contract is frustrated and declared void under Section 56, Section 65 obliges the party who has received any advantage such as advance payments, goods delivered, services rendered, or materials supplied to restore that advantage or make compensation. This is not damages for breach; rather, it is a restitutionary obligation arising from the principle of unjust enrichment. The frustrated contract releases both parties from further obligations but does not permit either party to retain benefits received without compensation.

In the context of a war, if Party A has paid Party B in advance for goods to be shipped through a war zone, and the war renders delivery impossible, the contract is void under Section 56. Party B is then obliged under Section 65 to return the advance payment, since it received an advantage (the payment) that it can no longer fulfil the obligation for. However, if Party B has already partially performed (e.g., procured and packaged the goods, transported them partway), the courts will apportion the compensation equitably.

D. Sections 73-75: Compensation, Breach, and Remedies

Sections 73 to 75 of the Indian Contract Act govern compensation for breach of contract. While

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these provisions primarily apply to breach situations where one party fails to perform for reasons not amounting to *force majeure* they retain relevance in war and disaster contexts in at least two ways.

First, where a party attempts to rely on a *force majeure* clause that the court finds inapplicable (e.g., because the event was foreseeable, or because the party itself contributed to the impossibility), the non-performing party is treated as having breached the contract. In such cases, Section 73 entitles the innocent party to compensation for all losses that naturally arise from the breach in the usual course of things, plus any special damages that the parties knew at the time of contracting to be likely. The Section 74 rule on liquidated damages and penalty clauses, and Section 75's entitlement to compensation when a contract is rescinded by the aggrieved party, also come into play where *force majeure* is unsuccessfully pleaded.

Second, the mitigation principle embedded in Section 73 the innocent party must take all reasonable steps to mitigate its loss applies equally in *force majeure* contexts. Even where a valid *force majeure* event is established, Indian courts may consider whether the affected party took reasonable steps to find alternative means of performance, thereby limiting its own and the counterparty's exposure.

E. Provisions That Are NOT Excused by *Force majeure* Under Indian Law

A fundamental misconception in practice is that the existence of a *force majeure* event automatically excuses all contractual obligations. Under Indian law, this is not the case. Several categories of contractual obligations and claims survive a *force majeure* event:

Obligations already performed: Performance already rendered before the *force majeure* event is not reversed. Payment obligations that fell due before the event occurred remain enforceable.

Obligations clearly outside the causal scope: A *force majeure* event excuses performance only to the extent causally connected to it. Obligations unaffected by the event continue to apply. Indemnity and insurance provisions: Standard commercial contracts typically exclude indemnity clauses and insurance procurement obligations from *force majeure* relief. Courts in India have upheld this exclusion. Confidentiality and non-disclosure obligations: These typically survive *force majeure* events as they do not require physical performance.

Dispute resolution clauses: Arbitration agreements and jurisdiction clauses are not suspended by *force majeure* disputes arising from a *force majeure* event may still be referred to arbitration or litigation as contractually specified.

Liquidated damages clauses: Where the contract explicitly makes liquidated damages payable

even in *force majeure* events, such clauses are generally enforceable (subject to Section 74's reasonableness standard).

Obligations to give notice: Most commercial contracts require the affected party to issue a *force majeure* notice within a specified time period. Failure to issue such notice may disentitle the party from claiming *force majeure* relief. Protection cannot be claimed ex post facto.

Risk of loss provisions: Where the contract allocates the risk of specific events (including war or natural disaster) to one party, that risk allocation stands even if those events constitute *force majeure* under the general law.

IV. INTERNATIONAL MERCANTILE LAW: *FORCE MAJEURE* IN GLOBAL CONTRACTS

A. CISG Article 79: Impediment Beyond Control

The United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted in 1980 and now ratified by 97 countries (though notably not yet by India), provides the primary treaty framework for *force majeure* in international sales of goods. Article 79(1) of the CISG provides that a party is exempt from liability for non-performance if it proves: (a) that the failure was due to an impediment beyond its control; (b) that the impediment could not reasonably have been taken into account at the time of conclusion of the contract; and (c) that the party could not have avoided or overcome the impediment or its consequences.

Several features of CISG Article 79 are notable in comparison with Indian law. First, the CISG uses the term 'impediment' rather than 'impossibility', which suggests a somewhat lower threshold an impediment is something that makes performance unreasonably burdensome, not necessarily absolutely impossible. This is a crucial difference from the strict Indian position. Second, Article 79(2) extends *force majeure* relief to non-performance caused by a third-party supplier's failure, where the third party's failure also qualifies as an impediment under Article 79(1). This provision is highly relevant to global supply chains disrupted by war: if Party A fails to deliver goods because its sole-source supplier in a war zone cannot produce them, Article 79(2) may excuse Party A's non-performance.

Third, the CISG provides that *force majeure* only excuses the party from liability in damages it does not automatically void the contract. The contract may still be terminated under CISG Article 49 (buyer) or Article 64 (seller) if the non-performance constitutes a fundamental breach. This is a significant divergence from Section 56 of the Indian Contract Act, where a frustrated contract becomes void by operation of law. Under the CISG, party autonomy and the contractual *force majeure* clause govern first, with the treaty provisions filling gaps.

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B. UNIDROIT Principles: Article 7.1.7 and the Hardship Doctrine

The UNIDROIT Principles of International Commercial Contracts (PICC), now in their 2016 edition, provide a comprehensive framework for international commercial contracts that applies either by choice of the parties or as supplementary law. Article 7.1.7 of the PICC closely mirroring CISG Article 79 provides that non-performance is excused if the party proves that the non-performance was due to an impediment beyond its control and that the party could not reasonably have been expected to take the impediment into account at the time of contracting or to avoid or overcome it.

A key feature of the UNIDROIT framework not present in the CISG is the doctrine of hardship, addressed in Articles 6.2.1 to 6.2.3. Hardship occurs where an event fundamentally alters the equilibrium of the contract either because the cost of performance has increased or the value of the performance received has diminished in a way that was unforeseeable at the time of contracting, is beyond the disadvantaged party's control, and the risk was not assumed by the disadvantaged party. Crucially, hardship does not make performance impossible it makes it unduly burdensome.

In the context of war, hardship is often the more appropriate legal framework than *force majeure* when performance remains technically possible but has become commercially devastating. For example, a manufacturer required to reroute its entire supply chain around a war zone at enormous cost may not be able to claim impossibility under Section 56 or CISG Article 79, but may invoke hardship under the UNIDROIT Principles to seek renegotiation or judicial/arbitral modification of the contract. This is a significant gap in the Indian Contract Act, which provides no equivalent hardship doctrine. Indian law offers relief only at the threshold of impossibility, not at the threshold of fundamental commercial imbalance.

C. ICC Model *Force majeure* Clause (2020)

The International Chamber of Commerce's 2020 *Force majeure* Clause provides the most widely used commercial template for drafting *force majeure* provisions in cross-border contracts. The ICC Clause defines *force majeure* as an impediment: (i) beyond the party's reasonable control; (ii) that the party could not reasonably have been expected to provide against at the time of conclusion; (iii) that it could not reasonably have avoided or overcome the event or its consequences.

The ICC Clause also provides a non-exhaustive list of events presumed to satisfy the first condition (beyond reasonable control), which includes war, declared or not, hostilities, invasion, acts of foreign enemies, general military mobilisation, civil war, riot, rebellion, terrorism, acts

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of government or public authority, and natural catastrophes. This list is highly instructive for drafting *force majeure* clauses in Indian contracts, as it provides specific language for covering the broad spectrum of events India-based contracting parties may encounter in today's globalised and conflict-prone trading environment.

Particularly significant is the ICC Clause's notification requirement: the affected party must give prompt written notice of the *force majeure* event, its expected duration, and the contractual obligations affected. Failure to give timely notice may result in liability for any additional loss caused by the delay in notification. This mirrors the notification requirement recognised by Indian courts, which have held that *force majeure* protection cannot be claimed retrospectively.

D. Cross-Jurisdictional Approaches: A Comparative Snapshot

A comparative survey of national approaches to *force majeure* in the context of armed conflict reveals significant variation:

England (Common Law): Under English law, *force majeure* has no independent legal existence outside of contract; it must be expressly included in the contract. In its absence, the doctrine of frustration (from Taylor v. Caldwell (1863) and the Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd. (1943) line) may apply, but the threshold is high. English courts apply a strict contractual interpretation of *force majeure* clauses.

France (Civil Law): France has express provisions in the Civil Code (Article 1218) for *force majeure*, requiring that the event be unforeseeable, irresistible, and external. France does not recognise strikes as *force majeure*. The French approach is arguably more protective of contractual performance.

China: China has express statutory *force majeure* provisions in the Civil Code and has widely accepted government-imposed lockdowns, war-related disruptions, and regulatory changes as *force majeure* events. Chinese state bodies issue *force majeure* certificates, adding a layer of administrative recognition to commercial claims.

Germany: Germany has no direct statutory *force majeure* provision but relies on the principle of changed circumstances (Wegfall der Geschaeftsgrundlage) under Section 313 BGB, which more closely resembles the hardship doctrine.

United States: US courts rely primarily on the contractual language, supplemented by the Uniform Commercial Code (UCC) Section 2-615 for commercial impracticability in the sale of goods. The standard focuses on whether the event was a basic assumption of the contract.

India: India relies on Sections 32 and 56 of the Indian Contract Act, with a high threshold of

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impossibility or fundamental basis destruction, as established by Satyabrata Ghose and Energy Watchdog. India lacks a codified hardship doctrine.

V. COMPARATIVE CROSS-REFERENCE: INDIAN CONTRACT ACT VS. INTERNATIONAL MERCANTILE LAW

A. Threshold of Invocation

The most significant divergence between the Indian Contract Act and international instruments lies in the threshold required to invoke *force majeure*. Under Section 56 of the ICA, the standard requires that performance must have become 'impossible' in the practical sense the foundational basis of the contract must be radically destroyed. As the Supreme Court held in Energy Watchdog (2017), commercial impracticability making the contract merely more expensive or burdensome does not suffice. The same ruling confirmed that Section 56 cannot be invoked simply because performance has become commercially inconvenient.

By contrast, CISG Article 79 uses the word 'impediment', which has been interpreted by scholars and arbitral tribunals to encompass events that make performance unreasonably burdensome, not just physically impossible. The UNIDROIT Principles go further still: the hardship doctrine of Articles 6.2.1-6.2.3 provides relief at the level of fundamental commercial imbalance well short of the Indian law threshold. This creates a significant protection gap for Indian parties in international contracts: where a foreign counterparty may invoke hardship relief under the UNIDROIT Principles, an Indian party governed solely by the ICA may find itself without statutory recourse.

B. Contractual *Force majeure* vs. Statutory Impossibility

A key structural difference between the Indian approach and the international approach relates to the relationship between the contractual *force majeure* clause and the statutory impossibility doctrine. Under Indian law, as clarified in Energy Watchdog (2017), if the contract contains an express *force majeure* clause, it governs the relationship under Section 32. Section 56 operates as a gap-filling default rule only where no contractual provision addresses the event. This means that the precise drafting of *force majeure* clauses in India-governed contracts is of critical importance.

Under the CISG, similarly, Article 79 serves a supplementary role if the contract has a *force majeure* clause, it governs; Article 79 fills in where the clause is absent or silent. However, the UNIDROIT Principles' hardship provisions operate as party-available options even where an express *force majeure* clause covers *force majeure*, since hardship addresses a fundamentally

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different scenario (commercial imbalance without impossibility).

C. Consequences: Void vs. Suspended vs. Terminated

Another crucial divergence concerns the legal consequence of invoking *force majeure*. Under Section 56 of the ICA, a frustrated contract becomes void automatically by operation of law. This is a binary outcome: once the threshold of impossibility is crossed, the contract ceases to exist. Section 65 then governs restitution. There is no intermediate regime of suspension under the ICA; suspension can only be achieved through the contractual *force majeure* clause, not through Section 56 itself.

By contrast, the ICC Model Clause and the UNIDROIT Principles provide for temporary suspension of obligations during the *force majeure* event, with termination available only if the event persists beyond a specified period. This graduated approach suspension first, termination later better serves commercial relationships where parties wish to preserve their long-term contracts during a temporary disruption (such as a war that may end within months). Under the CISG, the *force majeure* exemption from damages does not automatically terminate the contract; termination requires a separate step under Articles 49 or 64.

For Indian commercial parties, this means that a well-drafted *force majeure* clause should explicitly provide for a suspension regime since the ICA itself does not offer one. A contract governed by the ICA that includes an express *force majeure* clause providing for suspension during war will be enforced under Section 32. In its absence, the only relief under Section 56 is the binary void which may be a disproportionately severe outcome where the war is temporary and performance could resume.

D. Notice Requirements and Mitigation Obligations

Across all major frameworks the ICA (as interpreted by courts), the CISG, the UNIDROIT Principles, and the ICC Model Clause parties invoking *force majeure* are required to promptly notify the counterparty and to take all reasonable measures to mitigate. Under Indian judicial precedent, failure to give notice and failure to mitigate may disentitle a party from *force majeure* protection. Under the ICC Model Clause, the notice must be given as soon as the event comes to the attention of the affected party.

In international contracts involving war, the practical difficulty of giving timely notice is acknowledged: ports may be closed, communication infrastructure destroyed, and the affected party may itself be subject to sanctions preventing it from transacting. Tribunals and courts applying international instruments have generally allowed reasonable flexibility in notice requirements during active armed conflicts a flexibility that Indian courts should consider

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importing through judicial interpretation.

VI. When contracts fail: the legal consequences of war and natural disaster

A. Which Contractual Terms Become Unenforceable During War

The outbreak of war or a major natural disaster does not automatically nullify all contractual obligations. A careful analysis of the Indian Contract Act and international law reveals a precise taxonomy of what becomes unenforceable and what continues:

(A) Unenforceable Under Section 56 (Frustration):

Delivery obligations requiring shipment through war zones or closed ports where no alternative route is available.

Construction and infrastructure obligations requiring access to requisitioned or destroyed land.

Service obligations requiring the physical presence of personnel in an active conflict zone.

Supply obligations where the contractually specified factory, source country, or production facility has been destroyed or requisitioned.

Obligations that have been rendered unlawful by war-related sanctions (e.g., dealing with a sanctioned state or entity).

(B) Not Excused Under Indian Law (Despite War):

Payment obligations for performance already received before the *force majeure* event.

Obligations unaffected by the war or disaster (e.g., intellectual property licensing for goods not located in the war zone). Notice and reporting obligations, Confidentiality obligations, Dispute resolution clauses (the right to arbitrate or litigate survives *force majeure*), Pre-existing claims for breach of contract that arose before the *force majeure* event.

B. When Can *Force majeure* Be Invoked and When Is It Barred?

Under the Indian Contract Act and leading judicial precedents, *force majeure* can be invoked when:

The triggering event is covered by the contractual *force majeure* clause or qualifies as supervening impossibility under Section 56. The event occurred after the contract was entered into (it must be supervening events known at formation cannot give rise to *force majeure*). The non-performing party did not cause or contribute to the event. The event directly causes the impossibility of performance (causal nexus is established). The party has issued timely notice

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and has taken reasonable steps to mitigate.

Force majeure is barred when:

The event was foreseeable at the time of contracting parties contracting in known high-risk areas (e.g., maritime contracts in the Red Sea in 2023 when Houthi attacks were already ongoing) may be held to have assumed the risk. The non-performance is caused by the party's own fault, negligence, or failure to insure. The affected party has failed to give timely notice of the *force majeure* event.

The contract expressly excludes *force majeure* relief for the category of events in question. The performance is merely more expensive or commercially inconvenient not impossible. Reasonable alternatives to the specified performance method are available (e.g., rerouting, alternative suppliers).

C. Compensation: When Is It Due and How Is It Calculated?

The question of compensation in *force majeure* scenarios under Indian law operates at two distinct levels:

(i) Restitutionary compensation under Section 65: When a contract is declared void under Section 56, Section 65 mandates the return of benefits received. Any advance payments must be returned; goods or services delivered but unpaid must be compensated at reasonable value. This is not damages for breach there is no breach but a restitutionary obligation to prevent unjust enrichment. The quantum is determined by the benefit received, not by loss suffered.

(ii) Damages for breach under Sections 73-75 (where *force majeure* fails): If a party unsuccessfully invokes *force majeure* and the court finds the event was foreseeable, self-induced, or outside the clause's scope, the non-performing party is in breach. Compensation under Section 73 covers: (a) losses arising naturally in the usual course; (b) losses that the parties knew at contracting were likely to result from the breach. Section 74 governs liquidated damages. Section 75 provides that the rescinding party may also seek compensation for any damage it has sustained through the non-fulfilment of the contract.

Importantly, there is no provision under the ICA for the court to adjust or modify a contract during a *force majeure* event only the parties can renegotiate. This is a major lacuna compared to the UNIDROIT hardship doctrine, which permits arbitral or judicial modification of the contract to restore equitable balance. Indian law reform in this direction is strongly recommended.

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D. Partial *Force majeure* and Divisible Contracts

A war or natural disaster may affect only part of a contract's performance for example, destroying only one of several supply routes, or affecting delivery to one of several destinations. Indian courts have dealt with partial impossibility inconsistently, but the better view supported by Section 56 illustration (e) and the principle in Satyabrata Ghose is that where a contract is severable (divisible), the court will void only the frustrated portion and enforce the remainder. Where the contract is entire and indivisible, partial impossibility may frustrate the whole.

Under the CISG and UNIDROIT Principles, partial *force majeure* is expressly recognised: the exemption from liability applies only to the extent of the impediment, not to the entire contract. The non-affected portions remain enforceable. This is a more commercially sensible approach that Indian law should move towards in practice.

VII. Research Methodology

This research article employs a doctrinal and comparative legal methodology. The doctrinal methodology involves a systematic analysis of primary legal sources statutes (the Indian Contract Act, 1872), judicial pronouncements (Indian Supreme Court and High Court decisions), and international treaty texts (CISG, UNIDROIT PICC) to identify, synthesise, and critically evaluate the legal rules governing *force majeure* in the context of war and natural disasters.

The comparative methodology involves a structured cross-reference of Indian law provisions against international mercantile law instruments and selected national legal systems (England, France, China, USA, Germany). The comparison is structured around five analytical parameters: (i) threshold of invocation; (ii) relationship between contractual and statutory *force majeure*; (iii) legal consequences of invocation; (iv) treatment of partial impossibility; and (v) remedial framework.

Secondary sources academic articles, law firm analyses, international arbitration decisions, and governmental policy documents were consulted for interpretive context. All references are verified for authenticity and accessibility. The article adopts an objective, neutral analytical posture, seeking neither to advocate for any particular party's interest nor for any doctrinal position, but rather to map the law as it stands and identify normative gaps requiring reform.

The research question addressed is: Given the eruption of global armed conflicts in the 2020s, are the *force majeure* provisions of the Indian Contract Act, 1872 particularly Sections 32 and 56 adequate to address the commercial consequences of war-related contractual disruption in

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cross-border mercantile law contexts, and how do they compare with international instruments?

VIII. RESEARCH OUTCOMES, POLICY RECOMMENDATIONS AND CONCLUSIONS

A. Key Research Outcomes

This study produces the following key findings:

The Indian Contract Act, 1872, while not defining *force majeure* expressly, provides a functional framework through Sections 32 and 56 that has been refined through 150 years of judicial interpretation. The framework is adequate for binary impossibility scenarios but inadequate for graduated relief (suspension, adaptation) in war-related disruptions.

The threshold of impossibility under Section 56, as interpreted by the Supreme Court, is set at a high level the fundamental basis of the contract must be destroyed. Mere commercial hardship, price escalation, or supply chain difficulty does not qualify. This high threshold may deny relief to Indian parties where their foreign counterparties receive hardship-level relief under the UNIDROIT Principles.

India lacks a codified hardship doctrine, creating a significant protection gap in international contracts. Indian parties negotiating international contracts should explicitly include a hardship renegotiation clause to access the protections available under international instruments.

Section 65 provides the restitutionary mechanism when a contract is voided under Section 56. Parties should be aware that benefits received must be returned including advance payments and that this obligation arises automatically on the voidance of the contract.

Several categories of contractual obligations payment for prior performance, notice obligations, dispute resolution clauses, confidentiality, indemnity, and risk-of-loss provisions are not excused by *force majeure* events under either Indian or international law.

Force majeure clauses in contracts governed by Indian law should expressly: (a) list triggering events including war, hostilities, armed conflict, sanctions, acts of God, and pandemic; (b) provide for a notice and mitigation regime; (c) establish a suspension mechanism with a termination trigger after a specified duration; (d) include a hardship renegotiation provision; and (e) address partial impossibility and divisibility.

India's non-ratification of the CISG means that Indian parties in international trade contracts must rely on domestic law (ICA) unless they choose to incorporate international instruments by contract. Given the global standard that the CISG represents, and the volume of India's international trade, India should strongly consider acceding to the CISG.

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B. Recommendations for Law Reform

Based on the foregoing analysis, the following legislative and policy reforms are recommended:

Codification of the *force majeure* concept: The Indian Contract Act should be amended to expressly define and codify *force majeure*, incorporating the internationally recognised threshold (impediment beyond control, unforeseeable, unavoidable) and its legal consequences (suspension, voiding, restitution).

Introduction of a hardship doctrine: A new provision should be introduced in the Indian Contract Act (analogous to Articles 6.2.1-6.2.3 of the UNIDROIT Principles) to provide relief in hardship situations where war or disaster fundamentally alters the economic equilibrium of the contract without making performance strictly impossible.

CISG accession: India should ratify the CISG to bring Indian parties' international transactions within a globally recognised and consistent legal framework for the sale of goods. India's participation in the CISG would also benefit Indian exporters and importers by providing them predictability in cross-border disputes.

Model *force majeure* clause for Indian commercial contracts: The Law Commission of India should develop and publish a Model *Force majeure* Clause for inclusion in domestic commercial contracts, covering the full spectrum of triggering events relevant to Indian trade including geopolitical risks, climate-related natural disasters, and pandemic events.

Judicial education and arbitral guidance: Given the growing volume of *force majeure* disputes arising from global conflicts, training for the judiciary and arbitral community in international commercial law standards particularly CISG Article 79 and UNIDROIT Principles is recommended to ensure consistent and internationally aligned application of principles.

C. Conclusions

The global conflicts and natural disasters of the 2020s have dramatically elevated *force majeure* from a routine contractual boilerplate to a front-line legal battlefield. The Indian Contract Act, 1872, while providing a foundational framework through its provisions on contingent contracts (Section 32), frustration (Section 56), restitution (Section 65), and compensation (Sections 73-75), reveals critical gaps when benchmarked against international mercantile law standards particularly the CISG, the UNIDROIT Principles, and the ICC Model *Force majeure* Clause.

Most significantly, the Indian framework: (a) lacks a hardship doctrine for situations below the impossibility threshold; (b) operates on a binary void/not-void logic without intermediate suspension; (c) does not expressly provide for partial *force majeure* in divisible contracts; and

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(d) is not harmonised with the internationally dominant CISG framework. These gaps place Indian contracting parties at a disadvantage in international commercial disputes and create legal uncertainty in an era when geopolitical risk is a permanent feature of global trade.

The remedy lies in a combination of statutory reform (codification, hardship doctrine, CISG accession), contractual sophistication (war-resilient *force majeure* clauses with suspension mechanisms, hardship renegotiation, and comprehensive event lists), and judicial evolution (broader interpretation of impossibility in the light of international standards). The Indian legal system, with its rich contractual jurisprudence and robust judiciary, is well positioned to evolve towards a modern, globally competitive *force majeure* framework provided the legislative will and judicial vision are marshalled for the purpose.

In an age where wars can disrupt supply chains overnight and natural disasters can dissolve the basis of decade-long infrastructure contracts, the law of *force majeure* is not an academic curiosity it is a vital commercial risk management tool, and its modernisation is a matter of urgent national and international importance.

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