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Judicial Imperatives on Principle of Frustration in Contractual Relations: Theory and Praxis

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ABSTRACT

Whether the liabilities under the violation of contractual terms and conditions have certain limitational boundaries in terms of issuing the compensation to other parties at cost of default? The doctrine of frustration is product of judicial imperatives through the process of innovative approach to read lines and purpose of contractual relations. Whether the doctrine itself is rejected in modern commercial or contractual relations are largely based on growing tendencies at the international level where these impossibilities to performance by parties are materially substantiated. How to construe the doctrine of impossibility to performance and doctrine of frustration together is also challenging job seen as part of the contractual relations? The entire paradigm of practice of contract is developed based on judicial imperatives and also various narratives as in form of principles and doctrine are evolved through judicious mind considering the particular events. The traditional minds on reading the lines and words like party's autonomy, choices, conflict, etc are not seen in standards parts of the contract so that whether these doctrine are still in relevant and need is justified in this paper.

Keywords: *Frustration, Subject Matters, Performance, Judicial, Autonomy.*

I. INTRODUCTION

The doctrine of frustration is the doctrine which grew from the Coronation Cases. In each of the two principal Coronation Cases,[2] the facts involved a contract between the owner of premises situated along the route of the coronation procession.[3] Whether one's preference is directed toward the term "frustration," "impossibility," or "changed circumstances,[4]" the situation expressed by all these words is basically the same; in all legal traditions it arises "when unforeseen occurrences, subsequent to the date of the contract, render performance either legally or physically impossible, or excessively difficult, impracticable or expensive, or destroy

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[2] *Krell* v. Henry, [1903] 2 K.B. 740 (C.A.); Chandler v. Webster, [1904] 1 K.B. 493 (C.A.).
[3] Anderson, Arthur. "Frustration of Contract-A Rejected Doctrine." *DePaul L. Rev.* 3 (1953): 1.
[4] Eisenberg, Melvin A. "Impossibility, impracticability, and frustration." *Journal of Legal Analysis* 1, no. 1 (2009): 207-261.

the known utility which the stipulated performance had to either party.[5] The problem created in such a situation is, of course, whether deviation from the stipulations of the contract should be allowed, by means of the contract's adjustment, postponement or termination.[6]

> I understand by the frustration of a contract simply that the contract,. validly entered into, cannot, because of an intervening impossibility, be carried out. . This supposes that neither of the parties is in fault, and therefore afrustration is something extrinsic to -the parties or to their volition, that renders the performance of the contract impossible.

This problem can be better viewed as a conflict between the principle of private autonomy, well expressed in the medieval maxim *pacta sunt servanda*,[7] and the modern need of attributing a social function to private contracts, thereby considering extra-contractual elements, such as good faith, reasonableness and practicality.'[8] On the other hand, the problem of frustration is not new, having known a considerable historic development.[9] It became especially acute by the turn of the century due to serious political disturbances (World Wars), great economic upheavals (inflation, strikes, devaluations) and an amazing increase in the number and the subject of internal and international trade transactions.[10] In order to fully understand the doctrine of frustration of contract, it is first necessary to examine the historical development of the doctrine in the various legal systems.[11]

Three fundamental concepts underlie the principles that should govern unexpected circumstances cases. (1) A contract consists not only of the writing in which it is partly embodied, but also includes, among other things, certain kinds of tacit assumptions. (2) These assumptions may be either event-centered or magnitude-centered. (3) The problems presented by unexpected-circumstances cases should be viewed in significant part through a remedial lens.[12] As stated by James White and Robert Summers (2006, §3–10), “The doctrines of impossibility [and] commercial impracticability . . . comprise unclimbed peaks of contract

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[5] Rapsomanikis, Michael G. "Frustration of contract in international trade law and comparative law." *Duq. L. Rev.* 18 (1979): 551.

[6] Smit, Frustration of Contract A Comparative Attempt at Consolidation, 58 COLUM. L. REV. 287, 287 (1958) [hereinafter cited as Smit].

[7] Elofson, John. "The Dilemma of Changed Circumstances in Contract Law: An Economic Analysis of the Foreseeability and Superior Risk Bearer Tests." *Colum. JL & Soc. Probs.* 30 (1996): 1.

[8] Aldmour, Abdullah M. "The Role of Good Faith in the Pre-Contractual Responsibility in International Contracts: A Comparative Study between Common Law and Civil Law." *Available at SSRN 2751072* (2014).

[9] Berkowitz, Leonard. "Frustration-aggression hypothesis: examination and reformulation." *Psychological bulletin* 106, no. 1 (1989): 59.

[10] Roehl, Thomas. "A transactions cost approach to international trading structures: the case of the Japanese general trading companies." *Hitotsubashi Journal of Economics* (1983): 119-135.

[11] Mattei, Ugo. "Three patterns of law: taxonomy and change in the world’s legal systems." *The American journal of comparative law* 45, no. 1 (1997): 5-44.

[12] Eisenberg, Melvin A. "Impossibility, impracticability, and frustration." *Journal of Legal Analysis* 1, no. 1 (2009): 207-261.

doctrine. Clearly, all of the famous early and mid-twentieth century mountaineers, Corbin, Williston, Farnsworth and many lesser persons have made assaults on this topic but none has succeeded in conquering the very summit." All contracts are based on numerous assumptions. Sometimes an assumption that underlies a contract is made explicit in the contract. If a contract is explicitly based on an assumption that turns out to have been incorrect, normally the effect of the assumption would be treated under the category of interpretation.[13] The concept of a tacit assumption has been explicated as follows by Lon Fuller (Fuller & Eisenberg 2005, 732–733):

> Words like "intention," "assumption," "expectation" and "understanding" all seem to imply a conscious state involving an awareness of alternatives and a deliberate choice among them. It is, however, plain that there is a psychological state that can be described as a "tacit assumption," which does not involve a consciousness of alternatives. The absent-minded professor stepping from his office into the hall as he reads a book "assumes" that the floor of the hall will be there to receive him. His conduct is conditioned and directed by this assumption, even though the possibility that the floor has been removed does not "occur" to him, that is, is not present in his conscious mental processes.

A contract is a legal agreement created by an exchange of promises between two parties to do or not to do something and it is also known as contract as collaboration.[14] A contract, it is said, consists of an offer, an acceptance, and consideration. Here, we seemingly have all three, plus a breach. We think, however, the matter is not this simple. Unquestionably, the promises given in this case were intended by the promisors to be kept.... The question before us, however, is not whether keeping a confidential promise is ethically required but whether it is legally enforceable; whether, in other words, the law should superimpose a legal obligation on a moral and ethical obligation. The two obligations are not always coextensive.[15] The question of promises is easy to consider but most difficult to operationalize. The contract formation is more than merely agreeing or not agreeing on few terms and clauses among and between parties. The compelling norms from formative stage to execution stage in the contractual relation is based on good faith doctrine which always goes undefined and largely based on the nature of dispute and parties involved. The element of good faith are subjective in nature but is seen most common part in every parts of the contracts. The expression to do or not to do something is not merely a word of sentence in contract jurisprudence rather it has wider and compressive

[13] Schwartz, Alan, and Robert E. Scott. "Contract interpretation redux." *Yale LJ* 119 (2009): 926.
[14] Markovits, Daniel. "Contract and collaboration." *Yale LJ* 113 (2003): 1417.
[15] Barnett, Randy E. "Some problems with contract as promise." *Cornell L. Rev.* 77 (1991): 1022.

meaning attached to nature and subject matters of contract. The doctrine of pacta sunt servanda is always one of compelling norms in entire history of contract law from immoral to modern period on different discourse. Furthermore, these promises are arises as a result of an agreement or promise purporting to create and define rights and obligations between the parties. The nature of obligation are also considered as integral part of contractual relation but whether the obligation are properly communicated or not is subject matters of dispute and also care of word as basic of contract in forming the contractual document.[16] It is said that more vague word selection, higher liabilities or obligation in the contractual relations so that the proper formation of terms and conditions is very necessary. The parties must read each other prospective obligation between before agreeing or disagreeing on particular matters of contractual relations.[17] The expression of contract as an agreement made between at least two parties which the law will enforce is called a contract. The legal requirement is very essential to prove the possibilities of enforcement or none-enforcement in contractual relations. The tenfold test are generally seen as subject of enforcement as subject of contractual agreement.[18]

The exclusive presence of legal relationship in contract gives a right to one party and casts corresponding duty on another party in case of non-performance, breach or any other duties as such as violation of terms and conditions of the contract. The explicit and implicit violations are also taken into consideration for measuring the liabilities and corresponding legal obligation to the parties.[19] S.W. Anson defines it as "A legally binding agreement between two or more persons by which rights are acquired by one or more to acts or forbearances (abstaining from doing something) on the part of the other or others." Furthermore, Fredric Pollock says, "Every agreement or promise enforceable at law is a contract." These definitions are explaining the inherent character of contract in law and its governing philosophy. Similarly, the Nepalese *Muluki Civil Code*, 2074 has defined under Section 504(1) as, "A contract is any agreement between two or more persons to do or not to do something, which can be enforceable by law." The Supreme Court of Nepal[20] has defined the term contract as "an agreement of two or more parties with the terms." From this, it appears clear that a contract is a valid/ legal agreement concluded between two or more competent persons upon a consideration to do or to abstain from doing (not to do)

[16] Cohen, Morris R. "The basis of contract." *Harv. L. Rev.* 46 (1932): 553.
[17] Fried, Charles. *Contract as promise: A theory of contractual obligation*. Oxford University Press, USA, 2015.
[18] Hillman, Robert A. "An Analysis of the Cessation of Contractual Relations." *Cornell L. Rev.* 68 (1982): 617.
[19] *Ibid.*
[20] In Bijaya Kuamr Basnyat vs Mayour Keshav Sthapit, Kathmandu, Metropolitan et.al., NKP 2059 BS, 37.

some act, which not only creates rights but also defines obligations between them. In case of breach of the contract the law gives remedy to party who is aggrieved. A contract is, therefore, a fusion of (a) an agreement and (b) its enforceability.[21] The notion of contract is largely seen as product of common legal traditions and its rich tradition are also in English speaking nations. There are various necessity to consider whether the possibilities to enforce the contractual terms and conditions as part of obligation by the parties.

The essential factors of a valid contract is that an agreement must be capable of being performed. The issues of capability and none capability lie on various considerable factors so that its element need to be carefully drafted as integral part of the contractual relations. If the contract is concluded with this point of view and the parties are also ready to fulfill their promises, but later on it becomes subsequently '***impossible to perform'*** the work under the contract, this is called subsequent or supervening impossibility. This is also known as post contractual impossibility. The reason for such impossibility must not lie with parties rather generally extraneous factors are taken into consideration.[22] The initial enforceability of contract are also based on the nature of subject matters, resources and also legal relationship and intention of the parties.[23] In contractual relation, the term intention of the parties to fulfill obligation need to be well communicated in absence of any wrongfulness understanding. If the contractual terms become impossible to perform, then the issues of frustration comes into picture and the issues of interpretation also plays role.[24] In such cases, the contract are discharged and also parties are discharged from liabilities and are not liable under contract. This is called the frustration.[25]

The doctrine of Frustration is based on the Latin maxim *'Lex noncogitad impossibilia.'* It means the law does not compel the impossible.[26] But this maxim require much consideration for moving the issues of frustration in contractual relations. The law not compel impossible is not immaterial consideration in the contractual events rather require the meaningful reflection in the court of law.[27] In the words of G.H. Treitel, *"Under the doctrine of frustration a contract may be discharged if after its formation events*

[21] Knapp, Charles L. "Enforcing the Contract to Bargain." *NYUL rev.* 44 (1969): 673.
[22] Benoliel, Uri. "The Impossibility Doctrine in commercial contracts: An empirical analysis." *Brook. L. Rev.* 85 (2019): 393.
[23] Schwartz, Alan, and Robert E. Scott. "Contract theory and the limits of contract law." *Yale LJ* 113 (2003): 541.
[24] Katz, Avery Wiener. "The economics of form and substance in contract interpretation." *Colum. L. Rev.* 104 (2004): 496.
[25] Eisenberg, Melvin A. "Impossibility, impracticability, and frustration." *Journal of Legal Analysis* 1, no. 1 (2009): 207-261.
[26] Corbin, Arthur L. "Conditions in the Law of Contract." *Yale LJ* 28 (1918): 739.
[27] Henderson, Stanley D. "Promises Grounded in the Past: The Idea of Unjust Enrichment and the Law of Contracts." *Va. L. Rev.* 57 (1971): 1115.

occur making its performance impossible or illegal, and in certain analogous situations." The nature of formative and execution stage may differ in contracts so the unwillingness need not to be there for imposing the liabilities or not performing the contractual relation rather any other circumstances need to be reason for such impossibilities.[28] Similarly, S.W. Anson observed *that a change of circumstance renders the contract legally or physically impossible of performance... such a situation is provided for by the doctrine.* The Indian Contract Act, 1872 has given space to this doctrine under Section 56. According to this, *"A contract to do or not to do an act which after formation of the contract becomes impossible or by reason of some event, becomes void, when the act becomes impossible or unlawful."*[29] Furthermore, *The Muluki Civil Code, 2074* of Nepal has also adopted this doctrine as fundamental change[30] in circumstances. Section 531 (1) of the Code states, *"When it becomes impossible to execute a contract due to fundamental change in the circumstances prevailing at the time of contract, the parties need not perform the work under the contract."*[31]

It is said that if the parties to a contract are ready and willing to perform their respective promises but the work under it becomes subsequently impossible to perform or becomes unlawful either legally or physically for any reason, i.e. destruction of subject matter, permanent incapacity etc. but not commercially, the contract becomes void and it goes discharged.[32] Only by the middle of the 19th century, this doctrine developed in the history of contract law. Before it, for a long time the doctrine of absolute performance gave no room to the parties to be free from contractual obligation except in case of personal qualification related contract by reason of impossibility arisen from the circumstance of future.[33] With the pace of time the concept on granting freedom to the party from contractual obligation began to emerge. And for the first time the high court of England recognized this doctrine in the case of *Taylor* V. *Caldwell* in 1863[34]. But to effect the doctrine of frustration, it must be impossible to perform the contract

[28] Goetz, Charles J., and Robert E. Scott. "The mitigation principle: toward a general theory of contractual obligation." *Virginia Law Review* (1983): 967-1024.
[29] Patra, Atul Chandra. "Historical Background of the Indian Contract Act, 1872." *Journal of the Indian Law Institute* 4, no. 3 (1962): 373-400.
[30] Dalton, Clare. "An Essay in the Deconstraction of Contract Doctrine." In *The Sociology of Law*, pp. 425-438. Routledge, 2017….
[31] *Muluki Civil Code, 2074.*
[32] Shea, A. M. "Discharge from performance of contracts by failure of condition." *Mod. L. Rev.* 42 (1979): 623.
[33] Page, William Herbert. "Development of the Doctrine of Impossibility of Performance." *Mich. L. Rev.* 18 (1919): 589.
[34] Birmingham, Robert L. "Why Is There Taylor v. Caldwell-Thre Propositions about Impracticability." *USFL Rev.* 23 (1988): 379.

without default (i.e., negligence, carelessness and the like) of either party to the contract. The nature of frustration of the contracts are based on the issues and circumstances compelling the cause. The reason must lie with the circumstances not with the intention of the parties. The modern contract law contain the conditions for not enforcement of the obligation as integral part of the contracts. The principle of *force majure* is well developed and many more jurisprudence is also established on it.

II. APPLICATIONS OF DOCTRINE OF FRUSTRATION

The English law has developed rich traditions for none enforcement of contractual obligations and free from liabilities and duties.[35] The traditions are largely developed based on the contribution of judicial institutions on specific cases as in form of principles and values in the contractual law.[36] The role played by the judiciary is significant on expounding the horizon of contract law around the world. The element of frustration are both a legislative expression in laws relating to contract as well as given by judicial precedent. The law has also recognized the conditionalities whereby the parties are free from respective obligation of the contractual terms and conditions.[37] If frustration is caused from the cases beyond the control of the parties to the contract, the parties are discharged from further performance of the obligation under the contract.[38] Hence, the contract is discharged by frustration no matter whether such conditions are mentioned in the contract or not. *The Muluki Civil Code, 2074* has also recognized this doctrine. So, cases where the doctrine of frustration applies are discussed below:

(A) Destruction of subject Matter

When, without any fault of either of the parties, the subject matter of the contract essential for performing it is destroyed, the contract is discharged[39]. So, if the subject matter of the contract is destroyed or damaged or ceases to exist or cannot be obtained, the contract goes terminated by supervening impossibility. In this case, the party bound to perform the contract gets rid of liability. Example: C lets a music hall to T for a series of concerts for some days. The hall is accidentally burnt down before the date of the first concert. It was held that the contract was discharged. [Taylor V. Caldwell (1863) 122 E. R.299]

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[35] Benson, Bruce L. "The spontaneous evolution of commercial law." *Southern economic journal* (1989): 644-661.
[36] Raz, Joseph. "Legal principles and the limits of law." *Yale. LJ* 81 (1971): 823.
[37] Supardi, Azizan. *Performance bond: conditional or unconditional*. LAP LAMBERT Academic Publishing, 2011.
[38] Kull, Andrew. "Mistake, frustration, and the windfall principle of contract remedies." *Hastings LJ* 43 (1991): 1.
[39] Section 531 (2) (c) of *Muluki Civil Code, 2074.*

(B)Death or permanent incapacity

The death or permanent incapacity of the party to the contract ends to the contract[40]. Therefore, if the performance of a contract depends upon the personal efficiency, skill or qualification or talents of a person, the contract goes terminated as soon as the person dies or loses his sense permanently or becomes physically or mentally unable to perform his promise. Example: A agrees to dance at a theatre on a specified day. A falls seriously ill and is unable to dance on that specified day. The contract gets terminated.

(C) Change of law

After formation of the contract if it becomes impossible or unlawful to perform the contract due to subsequent change in law of the country or due to order issued by the Government, the contract gets terminated. From the provision of the Nepalese Muluki Civil Code, 2074 it is clear that the work under the contract need not be performed since the date of change of law or as soon as the performance of the contract becomes unlawful[41]. Example: A makes contract with B on 10th May for supply of certain imported goods in the month of October of the same year. In July by an Act of Parliament, the import of such goods is banned. The contract is discharged here due to change of law.

(D) Change of circumstances

By reading the provision of the Nepalese Muluki Civil Code[42], it is clear that, when the circumstances existed at the time of contract entirely change due to any or more events before or at the time of performance, the contract becomes impossible to perform. In such case, the contract goes terminated. The change of circumstances includes outbreak of war or happening of natural calamities, such as taking place of floods, landslides, fire, earthquakes, volcanic, eruption etc. Therefore, the contract gets terminated as soon as either the war breaks out between two countries or any sort of natural calamities, which are beyond the control of human beings, happen before the fulfillment of the contract. Examples: A, a trader of China, agrees to deliver some goods to B of Nepal on a specified day. But before the goods are dispatched on that specified day, war breaks out between China and Nepal. Here, the contract is dissolved when war breaks out.

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[40] Section 531 (2) (d) of *Muluki Civil Code, 2074.*
[41] Section 531 (2) (a) of *Muluki Civil Code, 2074.*
[42] Section 531 (2) (b) of *Muluki Civil Code, 2074.*

(E)Failure of existence of state of things

If the contract is made on the basis of the continued existence of a certain state of things, the contract stands discharged as soon as such state fails to exist or occur. So, when a state of thing which forms the basis of the contract, loses its existence the contract is discharged. Example: A hires a flat from B for 2 days (June 26 th and 27th). The flat is taken so as to oversee the proposed coronation process of King Edward VII. On account of King's sickness, the procession is cancelled. It is held that A is excused from paying rent for the flat because the procession which forms the basis of the contract fails to occur.[43]

III. Effects of benefit received on the basis of contract

When it subsequently becomes impossible to perform the contract after its formation, the contract becomes void. According to the provisions of the Nepalese Muluki Civil Code, 2074[44] when the contract becomes void on the ground of frustration, the benefits received there under has the following effects:

i. **Amount to be refunded:** If one party to a contract receives any amount from the other party before frustration occurs, the former has to refund the amount to the latter.

ii. **Determination of work or amount and recovery of expenses:** If before frustration to the contract one party has done any work or paid any amount, such work or amount should be calculated persuant to calculation and payable the amount to be paid to each other should be determined, and the other party is entitled to recover reasonable expenses either.

IV. None-application of doctrine of frustration does not apply

A very minor impossibility arosen before or in course or at the time of performance does not affect the contract. In such case, either of the parties to the contract cannot get rid of performance of his obligation under the contract. Therefore, except in absolute impossibility in some cases, a contract does not get terminated or no party is discharged from further performance of the obligation on the ground of impossibility. This case is also termed as exception to the doctrine of frustration. *The Muluki Civil Code, 2074* has also recognized some of these exceptions. So, the cases in which this doctrine does not

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[43]Krell V. Henry (1903) 2 K.B. 740

[44] Section 531 (5) (a) & (c) of *Muluki Civil Code, 2074.*

apply are as follows:

a. Difficulty of performance

The contract is not discharged simply on the ground that it becomes more difficult to perform the contract than that agreed. This doctrine does not attract if there was alternate or if the party had intended or attempted to perform the contract. In such case, neither party to the contract can claim discharge of the performance. So, no party can be free from the contract by the reason of more difficulty in the performance of the contract[45]. Example: A of Hetauda agrees to deliver 50 qt. of rice to B of Banepa in the month of August. A heavy rainfall takes place in the month. Because of this, the highway from Mugling to Naubise remained blocked for the whole month of the same and A failed to deliver the rice. Although this highway was closed, A could have tried to dispatch rice via Tribhuvan Rajpath- the alternative route from Hetauda to Naubise. So, here, A will not be discharged from the contractual obligation.

b. Commercial impossibility

A contract is not discharged merely on the ground of commercial impossibility. No party to the contract can be discharged from performing his obligation by claiming to have less profit or loss than expected at the time of contract.[46] So, such party is bound to perform the contract at any cost whether there may be very low profit or loss by reason of increase of wages, or prices of raw materials and the like.

Example: A, a furniture manufacturer, agrees to supply some furniture to B at an agreed rate. Later on, there appears a drastic increase on the rate of the timber and rates of wages since, it is no longer profitable to supply furniture at the agreed rate, A does not supply. The non-supply does not discharge the contract.

c. Default by a third party 531 (3c)]

The contract is not discharged where the contract could not be performed because of the default caused by a third party[47]. Therefore, the promisor who depends upon a third person in respect of performance of contract is not discharged from performing his obligation on the ground that such a third person commits mistake or becomes unfit to work. Example: A, a wholeseller, enters into a contract with B for the sale of certain goods to be produced by C, a manufacturer of those goods. C does not manufacture

[45] Section 531 (3) (a) of *Muluki Civil Code, 2074.*
[46] Section 531 (3) (b) of *Muluki Civil Code, 2074.*
[47] Section 531 (3) (c) of *Muluki Civil Code, 2074.*

those goods. Here, A is not discharged from the liability. He is liable to B for damages.

d. Strikes and Lockouts

Strikes and Lockouts do not discharge the contract. So, where impossibility of the contract arises due to events such as strikes, lockouts and civil disturbances, the contract is not discharged unless otherwise agreed by the parties to the contract.[48] Example: A agreed to supply to B certain goods to be imported from Algeria. The goods could not be imported due to riots and civil disturbances in that country. It was held that there was no excuse for non-performance of the contract. [Jacobs v. Credit Lyonnis, (1814) 12 Q.B.D. 589]

e. Additional tax, revenue etc.

A contract is not discharged on the ground of additional tax or fee or revenue. So if it becomes necessary to pay additional taxes, fees or other revenue to the Government, the contract is not deemed to be impossible and such event does not discharge the contract from performance.[49] Example: A agrees to supply a Maruti car to B for NPR 4,00,000. But before the fixed time for supply, custom duty for import of the car is increased. Here, A cannot be free from supplying the car on the ground of increase of custom duty.

f. Failure of one of the objects

If a contract is made for several objects, the contract is not discharged on the ground of failure of one of them.[50] Therefore, a contract made with more than one object does not get terminated due to failure of one object. Example: A agreed to let a boat to B (a) to view the naval review at the coronation and (b) to sail round the fleet. Due to the King's illness the naval review was cancelled, but the fleet was assembled. The boat, therefore, could be used to sail round the fleet. It was held that the contract was not terminated.[51]

V. CONCLUSION

Contract is both amalgamation of theory and practice and is largely developed by court and also to extent by academic contribution. The human relations are everywhere in contractual obligation hence it is said that humans are born free but lives everywhere in chain and this expression is omnipresent of contractual reality. The way contract

[48] Section 531 (3) (d) of *Muluki Civil Code, 2074.*
[49] Section 531 (3) (e) of *Muluki Civil Code, 2074.*
[50] Section 531 (3) (f) of *Muluki Civil Code, 2074.*
[51] Herne Bay Steamboat Co. v. Hutton, (1903) 2 K. B.683.

were developed, principles are defined and uses in most of human relations are similarly seen in law and legal issues. The human relations despite some time with wellness becomes difficult to discharge agreed obligation and frustration comes into picture. The issues of frustration and its presence in contractual relations are considered as integral part and many more jurisprudence are laid down in it by both English and none English speaking countries.

Nepal has followed mix character of legal system since very long so the content of frustration are also seen in code as well as in judicial pronouncement. The cases of frustration are well define and entertained by judiciary considering all legal and theoretical requirements of the issues. The impossibility to perform are seen as growing norms due to various factors and basically the nature of relationship, we are building around. The material reasons need to be taken into consideration while dealing with the issues of subject matters of frustration in contractual relations. Hence, proper balance is needed to see theory and praxis of the doctrine of frustrations.

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