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Understanding the Doctrine of Frustration under the Indian Contract Act 1872: Principles, Applications and Case Law

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*This article explores the Doctrine of Frustration within the framework of the Indian Contract Act 1872 and its implications on contract law. It begins by defining a contract and outlining its essential elements as per the Indian Contract Act, including validity, competency, consideration, and free consent. The article then delves into the Doctrine of Frustration, explaining how unforeseen events that render a contract impossible or illegal can lead to its automatic termination. Key grounds for applying this doctrine, such as destruction of the subject matter and change of circumstances, are discussed, along with the distinction between frustration and breach of contract. The evolution of the doctrine is traced from its origins in English law to its current application under Indian jurisprudence. Case analyses, including *Taylor v Caldwell* and *Satyabrata Ghose v Mugneeram Bangur*, are provided to illustrate practical applications and limitations of the doctrine. The article concludes by emphasising the relevance of the Doctrine of Frustration in modern contract law.*

Keywords: *doctrine of frustration, Indian contract act, contract law, section 56, contract termination.*

INTRODUCTION

Indian Contract Act 1872 defines a contract as an agreement enforceable by law.¹ Simply, the contract can be understood as an agreement put into writing by two parties that contains certain obligations and which are to be performed by said parties; when this agreement becomes enforceable by law, it can be termed as a contract.

An agreement includes offer and acceptance, which can be described as an *offer*: there must exist an offer from either party for an agreement to take place, which has to be validly communicated to the other party.; *acceptance*: there must exist a valid acceptance which should be duly communicated by the other party (to whom the offer was intended) for a contract to exist. However, just plain acceptance is not essential. There should be '*consensus ad-idem*' i.e., a meeting of the minds; the parties to the contract must agree to the terms in the *same sense*.

What makes an agreement a contract can be seen under the Indian Contract Act 1872, which provides us with the essentials of a valid contract. The essential features are as follows:

Validity: Section 10 states that the contract must not be expressly declared void and the consideration and objective of the contract shall be lawful.² For Example, suppose Party A and Party B enter into a contract to engage in an illegal gambling activity, where Party A agrees to pay Party B a sum of money if Party B wins a bet on an underground betting ring. The nature of this contract involves illegal activities, such as betting on unlicensed gambling operations, which are expressly prohibited by law. In this case, the contract is explicitly declared void under the Indian Contract Act 1872 because the consideration and objective of the contract (illegal gambling) are unlawful. Since the contract involves an illegal activity, it is unenforceable, and neither party can seek legal remedy for any breach of this contract. The contract fails to meet the lawful requirement under Section 10 and is, therefore, invalid by law.

By focusing on the legality of both the consideration and the contract's objective, Section 10 ensures that contracts aligned with legal and public policy standards are recognised and enforceable, while those involving illegal activities are deemed void.

¹ Indian Contract Act 1872, s (2)(h)

² Indian Contract Act 1872, s (10)

Competency: The parties must be legally competent to contract. Every person who is a major, of sound mind, and not disqualified by law to which they are subject is competent to contract.³

Consideration: A valid contract cannot be constituted without consideration. Consideration can be defined as the set of promises or acts that are given by both parties.⁴ Consider a contract where Party X agrees to sell a rare antique vase to Party Y for \$10,000. In this case:

Party X's Consideration: The promise to transfer ownership of the antique vase.

Party Y's Consideration: The promise to pay \$10,000.

Here, the vase and the \$10,000 are the 'Consideration' that each party provides. The vase has monetary value, and the payment of \$10,000 is also of value. This mutual exchange constitutes consideration, making the contract enforceable under legal standards. The agreement is valid because both parties have provided something of value, satisfying the requirement of consideration in contract law.

Free Consent: Agreements are contracts only if they are made by free consent. To constitute free consent, there must be zero existence of coercion, threat, fraud, misrepresentation, etc.⁵

DOCTRINE OF FRUSTRATION OF CONTRACT

Frustration, in simple terms, means defeat. It deals with scenarios wherein the purpose and objective of the contract fail due to events that were not known to the parties at the time of entering into the contract. If this happens, the contract is declared invalid, and the parties to it no longer have to perform their contractual obligations and it causes an immediate end to the contract.⁶

The Doctrine of Frustration has been incorporated into the Indian Contract Act under Section 56.⁷ It provides a way for omitting the obligations defined under the contract when the performance becomes impossible due to an unforeseen event. There exist factors that render the

³ Indian Contract Act 1872, s (11)

⁴ Indian Contract Act 1872, s (10)

⁵ Indian Contract Act 1872, s (14)

⁶ Indian Contract Act 1872, s (56)

⁷ *Ibid*

performance of a contract impossible. Therefore, the frustration of the contract can be applied in the following situations⁸:

- **Subject Matter is Destroyed:** The contract becomes void if the specific item or object necessary for performance is destroyed.
- **Death or Incapacity of a Party:** The contract may be voided if a party essential to fulfilling the contract dies or becomes incapable of performing their obligations.
- **Outbreak of War:** The contract may be considered frustrated if war disrupts or makes the performance impossible.
- **Government Policy or Legislation:** The contract becomes void if new laws or regulations make its performance illegal or unlawful.
- **Change in Circumstances:** The contract may be rendered void if unforeseen changes in circumstances make its performance impossible or fundamentally altered.

EVOLUTION OF DOCTRINE OF FRUSTRATION

The genesis of the Doctrine of Frustration can be sourced back to England. It was believed by the House of Lords that the parties to a contract must always fulfil the obligations laid down by the contract and if they fail to do so, the party at fault must be held liable. This practice eventually attracted a lot of criticism, stating that it is unfair to hold people liable on grounds which were not foreseeable by them in the first place.

Eventually, to amend and avoid the drawbacks and deficiencies of the theory of absolute liability, the frustration doctrine was introduced. This change was mainly brought by the judgement presented in *Taylor v Caldwell*⁹, which was delivered by Mr. Justice Blackburn. In this case, the performance of the contract became physically impossible because the subject matter vanished. This case and judgement opened the door for the modern doctrine of contract avoidance by frustration.¹⁰

⁸ MP Ram Mohan et al., 'The Doctrine of Frustration under Section 56 of the Indian Contract Act' (2020) 4 Indian Law Review 85

⁹ *Taylor v Caldwell* [1863] 122 ER 309

¹⁰ *Ibid*

SECTION 56 OF THE INDIAN CONTRACT ACT 1872

Although the specific term ‘frustration of contract’ cannot be seen anywhere in the Indian Contract Act 1872, the doctrine has been incorporated in section 56 of the Indian Contract Act, 1872. Section 56 also delves into the definition of ‘impossibility of contract’.¹¹

It states that a contract to do an act which, after the contract is made, becomes impossible, or, because of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible.¹²

It also mentions the doctrine of impossibility of performance or supervening impossibility, which states that a contract becomes void if it is impossible to perform the act or if it is rendered unlawful by an event that was not anticipated and was not within the contemplation of the parties when they executed the contract. As an illustration, if an unexpected and abrupt law is passed that forbids construction in a certain location because of environmental concerns, then the contract to build a bridge over a river is nullified and worthless.

GROUND FOR APPLYING FRUSTRATION

The doctrine of frustration of contract can be applied to a wide variety of cases. Situations that have already been established are described further-

Destruction of Subject Matter: Madras High Court, in the V L Narasu case, held that the doctrine of frustration of contract was applicable wherein the actual and specific subject matter of the contract ceased to exist. The case included a contract whose terms mentioned to screen a film in the cinema hall that was rendered impossible because the walls of the cinema hall collapsed and killed three people due to heavy rain. This led to the cancellation of the license of the hall until the building was reconstructed to the satisfaction of the chief engineer.¹³

Change of Circumstances: Punjab and Haryana High Court explained that ‘where circumstances arise which make the performance of the contract impossible in the manner which was decided, the contract becomes void’.¹⁴ If there is an entirely unanticipated change of

¹¹ Indian Contract Act 1872, s (56)

¹² *Ibid*

¹³ *VL Narasu v PSV Iyer* (1952) SCC OnLine Mad 190

¹⁴ *Parmeshwar Das Mehra & Sons v Firm Ram Chand Om Parkash* (1951) SCC OnLine Punj 63

circumstance through no fault of either party, it is to be determined whether this change has affected performance or not. If it has, no party shall be held liable and the court cannot enforce the terms of the contract.

Non-occurrence of Contemplated Events: Sometimes, the performance of obligations of a contract is dependent on the completion of certain anticipated events. However, due to the non-occurrence of such events, the contract renders to be declared frustrated. To put it simply, in some cases, there are possibilities for a contract performance to be completed perfectly, although this does depend on the happening of an event that later does not fulfil the contract's main objective.¹⁵

Death or Incapacity of the Party: This situation is quite self-explanatory in that a contract can be put to an end when the terms of the said contract require the personal performance of a person who is too ill or has passed away. A party can be excused from performance if it depends on the existence of a given person and that person has passed away. A situation like this is a valid ground to legally declare the frustration of the contract.¹⁶

Government, Administration or Legislation Intervention: The Supreme Court held that 'administrative intervention has so directly operated upon the fulfilment of the contract for a specific work as to transform the contemplated conditions.'¹⁷ It might be best to explain this scenario with an example. A vendor who first signed a contract to sell a property is unable to do so since, in the end, the law decided that he was not the property's owner and, thus, was legally not able to execute the sale deed. From common sense, it can be concluded that the vendor shall not be made liable for breach of contract and the contract shall be declared frustrated.

Intervention of War: There have been many cases in contractual law wherein war can significantly hamper the ability of the contract-bound parties to perform their obligations, resulting in the contract being essentially impossible to fulfil. This is also a valid ground on which frustration of the contract can be declared and parties can be relieved from further

¹⁵ Mohan (n 8)

¹⁶ *Ibid*

¹⁷ *Naihati Jute Mills Ltd. v Khyaliram Jagannath* (1967) SCC OnLine SC 10

performance. However, the rules governing the contract may vary due to the conflict and jurisdiction, which may or may not be influenced by the terms of the contract.¹⁸

GROUND ON WHICH FRUSTRATION IS NOT APPLICABLE

There have been instances where contracts did not meet the conditions necessary for frustration despite certain circumstances aligning with the criteria for frustration. These conditions include:

1. Difficulty in Performance: Frustration may not always be present, even when external variables have changed and made it harder to carry out a contract. For instance, if bad weather stops building work for a few days, the contract is not necessarily frustrating because it can still be finished by adding more labour or working longer hours to fulfil the deadline. The important point is that the contract is still do-able but more challenging.¹⁹

2. Failure by Third Parties: Contracts frequently involve auxiliary parties in addition to the primary contracting parties, such as raw material suppliers. If these third parties' failure prevents the main contracting parties from fulfilling their obligations, the contract may not be deemed frustrated.

EFFECTS OF FRUSTRATION OF CONTRACT

When a contract stands frustrated, the following effects follow:²⁰

Automatic Termination of the Contract: The Indian Contract Act holds that the occurrence of a disappointing event results in the contract's automatic cancellation, which is similar to common law standards i.e., legal principles derived from judicial decisions and precedents, guiding the interpretation and application of laws. Without the necessity for any formal action to terminate the contract, the parties are released from further performance and the contract is recognised as null and void.

¹⁸ Mohan (n 8)

¹⁹ *Ibid*

²⁰ Astitva Kumar, 'Doctrine of Frustration under the Indian Contract Act, 1872' (*Enterslice*, 11 August 2023) <<https://enterslice.com/learning/doctrine-of-frustration-under-the-indian-contract-act-1872/>> accessed 13 August 2024

Discharge from further Obligations: Both parties are released from their ongoing contractual duties following the contract's frustration. Thus, they are no longer obligated to carry out their respective obligations as outlined in the contract.

Accrued Rights and Obligations: Accrued rights and responsibilities are unaffected by the law of frustration since they already existed before the aggravating event. Any legal rights or obligations that were required to be fulfilled before the frustrating incident or that have already been fulfilled are not affected. For example, if Party A had delivered some goods to Party B and Party B had already paid for them, these completed transactions are not impacted by the subsequent impossibility of fulfilling the remaining contract. Party B still holds the right to the goods received and cannot seek a refund for them.

FORCE MAJEURE AND FRUSTRATION OF CONTRACT

Force Majeure or 'Act of God' can be described as an unforeseeable external event that makes the performance of the contract impossible²¹. This event does not fall under the ambit of the parties and can neither be controlled nor foreseen by the parties. However, to avail of the benefits of force majeure, there shall exist a clause that mentions the same.²²

BREACH OF CONTRACT AND FRUSTRATION OF CONTRACT

POINT OF DIFFERENCE	BREACH OF CONTRACT	FRUSTRATION OF CONTRACT
CAUSE	A breach occurs when one party of the contract fails to adhere to the terms of the contract.	Frustration of a contract occurs when an unforeseeable event or change in circumstances makes it impossible for the parties to fulfil the obligations.

²¹ Adarsh Saxena, 'Force Majeure in times of Covid 19' (*Cyril Amarchand Mangaldas Blog*, 30 April 2020) <<https://corporate.cyrilamarchandblogs.com/2020/04/force-majeure-in-the-times-of-covid-19/>> accessed 20 August 2024

²² Mohan (n 8)

<p>RESPONSIBILITY</p>	<p>In breach, the responsibility always lies with one party. Out of the two, one party will always be rendered to be at fault and will be liable for damages.</p>	<p>Frustration has no concept of responsibility or fault. The contract simply renders it impossible because of absolutely no fault of either party.</p>
<p>LEGAL CONSEQUENCES</p>	<p>Under breach, the innocent party has the right to be compensated against the loss that it has incurred which includes specific performance, rescinding the contract or availing damages.</p>	<p>There exists no claim for damages under the doctrine of frustration of contract. The contract is immediately and automatically terminated and the parties are relieved from their obligations.</p>
<p>PARTY'S INTENT</p>	<p>Generally, in cases of breach of contract, there exists a clear intention of the breaching party to not complete their contractual obligations.</p>	<p>In frustration there is no intent by either party to avoid their contractual requirements, it just ceases to exist because of an unforeseeable external event.</p>

CASE ANALYSIS

The cases will help us better understand the Doctrine of Frustration and its evolution through international and national jurisprudence.

1. Taylor v Caldwell

Facts: Plaintiff and Defendant entered into a contract where Defendant agreed to allow Plaintiff to use The Surrey Gardens and Music Hall on specific dates. However, after the contract was signed but before the first event, the concert hall was destroyed by fire. Importantly, the destruction of the hall was not the fault of either party, and it was so severe that hosting the concerts became impossible.²³

Issue: The central question is whether Plaintiff can seek compensation from Defendant for the losses incurred as a result of the destruction of the concert hall, given that the loss was beyond the control of both parties.

Judgment: No, the Defendant is not responsible for the Plaintiff's losses. The failure of the Defendant to carry out the terms of the contract was not a breach because they were released from their obligation to do so. If a contract is absolute, both parties are required to fulfil their obligations under it, even if unavoidable circumstances prevent them from doing so. However, only absolute contracts are covered by this law.²⁴ A contract is considered absolute if it specifies obligations that must be performed regardless of unforeseen events. If it includes conditions or contingencies, it is not absolute.

In this instance, the contract was subject to an implied term i.e, it meant that if there was no venue in the first place, the contract couldn't have been executed and thus performed, which released both parties from obligations if the concert venue was destroyed without the Defendant's fault, making performance impossible. This implicit requirement was applicable since both parties regarded the hall's presence as a key component of the agreement.

Therefore, the destruction of the hall, which was not the fault of either party, released both Plaintiffs from their obligation to use the gardens and pay money and the Defendant from their promise to provide the hall for use.

2. Satyabrata Ghose v Mugneeram Bangur

Facts: In this case, the defendant company had initiated a housing colony development scheme. The plaintiff had provided a plot with an agreement for an advance payment, and the company had committed to constructing the necessary infrastructure like roads and drains, to make the

²³ *Taylor v Caldwell* [1863] 122 ER 309

²⁴ *Ibid*

land suitable for residential purposes. The contract stipulated that the remaining payment would be made upon project completion. However, during the Second World War, a significant portion of the land was requisitioned by the State for wartime purposes.²⁵

Issue: The key issue revolved around whether the company could revoke the contract, citing supervening impossibility due to the land requisition.

Judgment: The court ruled in favour of the plaintiff, rejecting the company's claim of supervening impossibility. It clarified that 'impossibility' under Section 56 of the Indian Contract Act doesn't necessarily pertain to literal or physical impossibility but encompasses changes in circumstances that render the fundamental basis of the contract impossible. The requisition order was found to lack a specific timeline for the project's completion, and as wartime restrictions were natural, the resulting delays didn't strike at the core objective of the contract. Therefore, the company was obligated to honour the contract despite the requisition order.²⁶

3. R. Narayanan v Government of Tamil Nadu

Facts: The petitioner, in this case, was a bidder and licensee of a shop obtained from the respondent. He had paid the license fee one year in advance as per the contract. However, due to the outbreak of COVID-19, the petitioner faced financial losses, making it impossible for him to renew the license, as stipulated in the contract. Consequently, the petitioner filed a petition seeking a waiver of the license fee for the lockdown period and partially for the subsequent period.²⁷

Issue: The primary issue before the court was whether the lockdown imposed due to the COVID-19 outbreak could be considered a force majeure event, justifying the waiver of the license fee.

Judgment: A force majeure clause and the doctrine of frustration were clearly distinguished by the Madras High Court in its decision. According to the court, frustration happens when an agreement's terms can no longer be fulfilled because of circumstances outside the parties'

²⁵ *Satyabrata Ghose v Mugneeram Bangur & Co* (1953) 2 SCC 437

²⁶ *Ibid*

²⁷ *R Narayanan v Govt of TN* (2021) SCC OnLine Mad 5644

control, rendering the contract null and void. On the other side, a party is exempted from fulfilling its commitments in the event of force majeure, but the agreement still stands. The party must give notification to the other party as soon as feasible to rely on the force majeure clause.²⁸

In this case, the court found that the COVID-19 outbreak-related shutdown period constituted a force majeure occurrence. Consequently, the court held that the petitioner should be granted a waiver of the license fee for the specified lockdown period, as it was a circumstance beyond the control of the parties.

4. Industrial Finacial Corporation v THLETDC & Anr

Facts: In this case, the court addressed the application of the doctrine of frustration, as per Section 56 of the Contract Act, in a specific context. The case involved a contract of guarantee where the guarantee is invoked when the principal debtor fails to pay the full amount owed. The question at hand was whether the doctrine of frustration could be applied to this contract of guarantee.²⁹

Issue: The central issue was whether the doctrine of frustration, as outlined in Section 56 of the Contract Act, could be invoked in the context of a contract of guarantee when the principal debtor failed to meet their payment obligations.

Judgment: The court concluded that the doctrine of frustration, as envisioned in Section 56 of the Contract Act, had no relevance or applicability in the circumstances of this case. The contract of guarantee operated independently of the Nationalisation Act or any other external factors. It was a standalone contractual obligation between the surety and the creditor, triggered when the principal debtor failed to pay the full amount due.³⁰ Therefore, the court held that attempting to rely on Section 141 of the Contract ³¹Act by the surety was entirely misplaced as it states that when a surety accepts their duty, they are entitled to share in any security the creditor has against the principal debtor. This holds true regardless of the surety's awareness of the security. The guarantor is relieved from liability to the extent of the security's value if the creditor

²⁸ *Ibid*

²⁹ *Industrial Finance Corpn of India Ltd v Cannanore Spg and Wvg Mills Ltd* (2002) 5 SCC 54

³⁰ *Ibid*

³¹ Indian Contract Act 1872, s (141)

misplaces or transfers this security without the surety's consent. The doctrine of frustration could not be invoked in this scenario, given the provisions of Section 141.

5. Energy Watchdog v Central Regulatory Energy Commission

Facts: In this case, public notices were published by Gujarat Urja Vikas Nigam Limited (GUVNL) and Haryana Utilities to request bids for power supply contracts. Adani Enterprises was chosen as the preferred supplier by both parties, and agreements were subsequently signed. However, Adani Enterprises decided to submit a petition to the Central Regulatory Electricity Commission in response to a large increase in the price of coal exports from Indonesia. They requested a release from their contractual commitments and based their request on the doctrine of frustration. Adani Enterprises filed a Supreme Court appeal after the Commission rejected their request.³²

Issue: The primary issue in this case was whether the doctrine of frustration could be applied. Specifically, the question was whether the price hike in Indonesian coal exports rendered the contract incapable of performance, justifying relief from contractual obligations.

Judgment: The Supreme Court held that the doctrine of frustration did not apply in this instance. The contract might still be fulfilled despite the rising cost of coal. The court emphasised that there were other ways to carry out the obligations outlined in the agreement. The doctrine of frustration was therefore deemed inapplicable, and Adani Enterprises was not released from its contractual obligations as a result of the increase in the price of Indonesian coal shipments.³³

CONCLUSION

In summary, the Doctrine of Frustration, as articulated in Section 56 of the Indian Contract Act of 1872, provides a vital mechanism for addressing contracts rendered impossible to perform due to unforeseen events. Key elements of a valid contract include offer and acceptance, legality, competency, consideration, and free consent. The Doctrine of Frustration becomes applicable when an unforeseen event, such as the destruction of the subject matter, a change in circumstances, or legal interventions, makes performance impossible or illegal. Cases like *Taylor v Caldwell* and *Satyabrata Ghose v Mugneeram Bangur* highlight how this doctrine relieves

³² *Energy Watchdog v CERC* [2017] 14 SCC 80

³³ *Ibid*

parties from contractual obligations without fault. The distinction between frustration and breach lies in responsibility and the nature of the impediment. Our analysis underscores that while frustration nullifies contracts due to unforeseeable events, force majeure clauses and performance difficulties do not necessarily trigger the same relief.