REASSESSING SCOPE OF CONTRACTUAL IMPOSSIBILITY UNDER DOCTRINE OF FRUSTRATION: IN MODERN COMMERCIAL CONTRACTS

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ABSTRACT

The Article introduces its approach towards the applicability, implications and significance of the Frustration of Contract defined U/s 56 of Indian Contract Act, 872. It proposes the involuntary extinction of the obligation and the liability imposed upon it because of the occurrence of a supervening event which makes the performance of the contract unlawful and sometimes, impossible. This article provides you a way out where the parties involved, faces equitable outcomes in response of the supervening events happened. The article purportedly fills the gap of supervening events by using the principle (frustration) herein construed with justice, equity and fairness. Moreover, the article also talks about its applicability according to the modern commercial contracts. Then it throws some light upon the types of impossibility of contract including initial impossibility, supervening impossibility and subsequent impossibility.

The paper also mark an attempt to state various judicial precedents which defines the extent of validity of the doctrine, nature of liabilities and obligations upon the parties.

Keywords: Frustration, Force Majure, Supervening Events, Impossibility.

Introduction

The term Contract as defined under Indian Contract Act ,1872 states, when two or more parties by their free will enter into an agreement for the accomplishment of some purpose. In furtherance to be specific, Section 56 i.e. Doctrine of Frustration" of Indian Contract Act specifically states that where the supervening events takes place without any interference by the parties directly or indirectly, involved in the contract, it renders performance impossible or radically different what was originally contemplated before. In various precedents and instances the ordinary Learned and Hon'ble Courts used the term "impossibility of performance" and "frustration of contract" interchangeably as to explain the applicability of such doctrine. The question that further arises while dealing with the applicability of the doctrine is "the degree and the gravity of the supervening events that defines the probability of impossibility of performance. To determine the frustration of the contract the courts has developed different variables one of which named was the Multifactorial approach. The concept emerged as the part of the Roman law and was also inserted in the Roman Contract laws. These events are deemed to be unforeseen and beyond the control of parties. According to the Black Law's dictionary Doctrine of frustration is "*the doctrine that if a party's principal purpose is substantially frustrated by unanticipated changed circumstances that party's duties are discharged and the contract is considered terminated".*[1] In this contemporary commercial landscape, there is a growing need to reassess the applicability of the concept of frustration in modern commercial contracts, to examine whether the current judicial approach adequately balances sanctity of contract with fairness in the face of extraordinary change, and to explore the boundaries between frustration, hardship, and mere commercial inconvenience.

Historical Representation of Frustration of Contract

While throwing some light upon the historical background of this doctrine it is observed that the concept of frustration of contract does not exist, if once the performance is guaranteed and promised it becomes an obligation. Perhaps the performance becomes mandatory at all costs even when the circumstances are too worse. For a long period of time the English courts were reluctant to excuse non-performance and therefore held the debtor liable even in case of impossibility due to supervening events. It is when the Roman and England laws came into existence it leads to the evolution of its exceptions. The exception includes that if the essential

[1] Annanya Sukla Satpathy.pdf

subject matter of the obligation is destroyed, without any intervention or fault of the debtor, he got rid of the liability to perform the desired obligation due to impossibility. The regulation of this concept is introduced by coining a Latin term "*lex non-cogit ad impossibilia"* which certainly means **No one can compel anybody to do something which is impossible.** It is necessary to certify that as the time passes on, the jurists in England substantiates through precedents that it becomes unjust and impractical to make the debtor accountable for performance of obligations in cases of true impossibility performance due to the occurrence of supervening events. Furthermore, the jurists emphasized upon the **Principles of Natural Justice** i.e. that *prima facie helps* to discharge the debtor from the suppressive liability. This marks the beginning to make slow shift from "absolute obligation" to "impossibility of performance due to supervening events" in the paradigm of modern concept in commercial contracts.

The Courts in pre independence era in the landmark case of **Joseph Constantine Steamship Co. v. Imperial Smelting Corporation Ltd**[2] held "In ascertaining the meaning of the contract and its application to the actual occurrences, the court has to decide, not what the parties actually intended but what as reasonable men should have intended. The court personifies for this purpose the reasonable man".

The turning point in the era came when the foreign precedent came into picture where the Hon'ble court of England held in the case of **Taylor v. Caldwell**[3] , where the Hon'ble Court established the foundational doctrine of **frustration** by qualifying the traditional rule of "absolute obligation", ruling that parties are excused from performance when the essential subject matter required for the performance is destroyed. In this case the Surrey Gardens Music Hall by accidental fire renders performance impossible. While delivering the judgment **Blackburn J.** observed that where the contracts of such a nature that the performance depends on the continued existence of a particular person or thing, the law recognizes an **implied condition** that the destruction of that essential person or thing without any intervention or fault of either party discharges the obligation. This pivotal shift, drawing on Roman law principles regarding obligations for a specific thing facilitated the modern evolutionary transition from a strict adherence to literal performance toward a more dynamic framework where contracts can be terminated if supervening events make the resulting obligation **radically different** from

[2] [1941] 2 All ER 165
[3] Taylor v. Caldwell, 122 E.R. 309.

what was originally contemplated. Later the Hon'ble Court's decisions extended this reasoning to death or incapacity of a key performer, supervening changes in law, and wartime restrictions on trade, gradually crystallizing a doctrine that a contract is "frustrated" when an unforeseen, uncontrollable event makes performance impossible or transforms it into something radically different from what the parties originally contemplated.

Furthermore, progressing with the case of **Krell v. Henry (1903)**[4] where the Hon'ble Court discussed and reiterated the ratio hold in the **Taylor v. Caldwell (supra).** The Hon'ble Court expanded the ambit of frustration of Contract by holding that the contract is discharged even when it resulted in "cessation and non-existence of different state of things, going to the root of the contract". While going into the depth of the facts of the case it was observed that the flats were booked for two days by the Defendant for seeing the **Coronation Procession of Kind Edward II** which was later cancelled which signifies that the essential purpose for which the Contract was made cease to exist. Therefore, the Hon'ble Court proceeded by stating that mere foundation of the contract was the suitability of the peculiar Flat for viewing the procession for which both the lessor and lessee bargain with each other. Furthermore the Hon'ble court held that the Principle is applicable not only on the physical destruction of the subject matter but also on the specific purpose for which the parties have entered into by which the defendant is discharged from the further performance for making the unpaid balance of rent.

Now, moving onto further discussions regarding the history of frustration of contract in context of Indian landmark judgment titled "**Satyabrata Ghose v. Mugneeram Bangur & Co. (1953)**[5]**"**. The Supreme Court of India here in this case clarified the applicability of the doctrine by providing **observations** regarding the scope of the **doctrine of frustration** under **Section 56** of the Indian Contract Act. The Hon'ble Court held that Section 56 of Indian Contract Act 1872 is meant to be a positive rule which is **exhaustive** in nature that's why there is no need to rely upon English law except for its persuasive and advisory jurisdiction. Purportedly, the Hon'ble court clarified that the word **"impossible"** in Section 56 is not limited to physical or literal impossibility. An act is considered impossible if an untoward event or change in circumstances **"totally upset the very foundation"** upon which the parties rested their bargain, rendering the performance impracticable or useless from the perspective of the

[4] [1903] 2 K.B. 740
[5] 1954 SCR 310

contract's original object.

Further, The Hon'ble Supreme Court made a significant observation in respect of the **Agreement To Sell.** It meaningfully held that while English law typically excludes contracts of sale of land from **Doctrine of Frustration** because the buyer becomes an equitable owner which cannot apparently apply in India. According to Section 54 of the Transfer of Property Act, an **Agreement to Sell** does not primarily create interest in favour of parties. Thus, it can be inferred that, the Doctrine of Frustration is fully applicable in India to land sale agreements likely as other contractual obligations.

While pronouncing the judgment, in "**Satyabrata Ghose v. Mugneeram Bangur & Co. (1953)[6]"** the Hon'ble Supreme Court held that the contract in question was not frustrated and therefore subsists. The Hon'ble Court further held that, since the agreement was made in 1940 amidst war time wherefore the parties must have contemplated about the risk requisition of lands Additionally the agreement is done without fixation of duration and timings for the completion of roads and drains. The military requisition of the land was therefore treated as a temporary impediment that did not defeat the commercial adventure or destroy the basis of the contract, and hence did not render performance impossible u/s of Indian Contract Act 1872.

This is how the topic of Frustration of Contract evolved and brought forward in Independent India as slightly different from the English law in terms of Transfer of Property.

Scope of the Concept of Frustration in Modern Commercial Contracts

With respect to the ambit of Doctrine of Frustration applicable in India, it is fundamentally explained **U/s 56 of the Indian Contract Act, 1872**[7], which establishes that the obligations under the contract is not solely based upon the intention parties. It marks the importance of Latin Maxim **"lex non cogit ad impossibilia,"** which results in the automatic involuntary extinction of a contract when a supervening event makes the agreed act impossible or unlawful. This doctrine applies to the **"frustration of the adventure"** or the practical and commercial purpose of the agreement, meaning a contract is discharged if a fundamental change in circumstances totally upsets the foundation upon which the parties rested their bargain.

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[6] 1954 SCR 310
[7] https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00035_187209_152326899642

In modern commercial contracts, the term **"impossible"** under Section 56 is interpreted broadly and is not confined to physical or literal impossibility. The gravity of the term “impossibility” can also be interpreted by way of analysing whether the execution of the obligations satisfies and fulfils the purpose and objective. The doctrine covers various specific grounds such as the physical destruction of the subject matter, as illustrated in **Taylor v. Caldwell (supra)** where a music hall hire was frustrated after the hall was destroyed by fire, or the non-occurrence of a contemplated event that formed the basis of the contract, such as the cancellation of the coronation procession in **Krell case (supra)**

Furthermore, the scope of Frustration of contract also arises in case of **subsequent illegality** arising from government intervention or changes in law.

In cases where the subsequent or supervening impossibility arises due to the **Death or Personal Incapacity** to execute the contract, results in discharging the obligations and the accountability of the parties to perform according to the conditions of the contract. With reference to the foreign jurisdictions, **Robinson v. Davison (1871)**, is the landmark case where the Hon’ble Foreign Court expanded the application of frustration to cases involving **personal incapacity**. The facts involved a contract where a pianist was engaged to perform at a musical concert but was prevented because she suffered serios illness that leads to subsequent impossibility to perform the contract. The Hon’ble Court relied upon the doctrine of Frustration of contract, as the supervening event taken place that was beyond the control of the person who is referred to as the performer. The Hon’ble Court observed here that, in contracts for personal services, there is an **implied condition** that the party shall be in a fit state of health to perform the service and reached to a conclusion that a supervening illness serves as a valid excuse for non-performance as it destroys the foundation upon which the personal contract was based.

Despite its broad reach, the scope of frustration is strictly limited to prevent it from becoming a device to escape **"commercial impossibility"** or bad bargains. Mere difficulty, an abnormal rise in prices, or the fact that a contract has become unprofitable or burdensome does not discharge a party from its obligations, An apex example is the landmark judgment of SC titled **Energy Watchdog v. Central Electricity Regulatory Commission**[8], where the Supreme Court held that a hike in the price of imported coal did not frustrate a power supply contract because the performance was not rendered fundamentally impossible and alternative methods

[8] (2017) 14 SCC 80

existed. Additionally, the doctrine does not cover self-induced frustration, where the impossibility results from a party's own fault or negligence, nor does it apply to executed contracts where the primary obligations have already been performed, as the theory only pertains to unfulfilled or executory duties.

Application and Limitation of Doctrine in Modern Commercial Contracts

In view of the Modern commercial approach the applicability is observed in the Landmark judgment of **Satyabrata Ghose case (Supra).** The Hon'ble Supreme Court limits to physical or literal impossibility but extends to cases where an untoward event or change in circumstances totally upsets the very foundation upon which the parties rested their bargain. It is crucial to say that the importance of Doctrine of Frustration in modern commercial contracts is viable. At times of the supervening events when performance either becomes impracticable or useless from the perspective of the contract's object the debtor is discharged from the performance.

It is pertinent to mention the reliance upon the judgment of hon'ble Supreme Court where the Hon'ble Court in **Delhi Development Authority v. Kenneth Builders & Developers Ltd[9]. (2016)**, the Hon'ble Supreme Court looks into the facts of a developer who paid Rs. 450.01 crores for a residential project land auction but was prevented from building because the land was subsequently identified as having morphological features of the protected **"Ridge" area**, leading to a regulatory refusal of the "consent to establish". The Hon'ble Apex Court **observed** that under **Section 56 of the Indian Contract Act**, "impossibility" is not restricted to literal physical barriers but encompasses situations where a contract becomes "impracticable and useless" from the perspective of its object, noting that the unforeseen legal prohibition on construction struck at the very root of the agreement. While the DDA argued the developer was responsible for clearances under "as is where is" terms, the Court observed that the DDA failed in its primary obligation to provide a clear passage for the commencement of construction, an intervening circumstance that fundamentally frustrated the contract's foundation. In its finality The Hon'ble Supreme court while pronouncing the judgment held the contract frustrated and dismissed the appeal filed by the Appellant, and directed the refund of the entire deposit with 6% interest per annum for the stipulated duration of time as mentioned in the judgment.

[9] (2016) 13 SCC 561

The parties shall be excused, as Lord Loreburn says:

"*If substantially the whole contract becomes impossible of performance or in other words impracticable by some cause for which neither was responsible".*

A critical evidentiary and jurisprudential distinction in modern Indian law exists between **Section 32 and Section 56** regarding how contracts are discharged. As observed in **National Agricultural Cooperative Marketing Federation of India (NAFED) v. Alimenta S.A. (2020)[10]**, if a contract contains an express or implied term—such as a force majeure or prohibition clause which provides for the contract's discharge upon a certain contingency, the case is governed by Section 32 as a "contingent contract". The Hon'ble court in ***NAFED Case*** **(Supra)** emphasized that when the parties are able to brainstorm the futuristic effects and risk associated with the performance of those obligations in future, such as government export restrictions, the dissolution occurs under the terms of the contract itself and falls outside the purview of Section 56 of Indian Contract Act. It was also reiterated in the ruling of the judgement passed by the Hon'ble Court in case titled **Naihati Jute Mills Ltd. v. Khyaliram Jagannath[11],** which held that where the court finds the contract itself contains a term for discharge upon certain circumstances, Section 32 applies to the exclusion of the general rule of frustration. The insertion of that particular clause where the debtor get discharged from the performance of the duties help the debtor to bargain in cases of future contingencies.

The scope of frustration in commercial dealings is strictly limited to prevent it from becoming a tool for parties to escape **bad or unprofitable bargains**. Modern Indian courts consistently hold that "commercial impossibility," such as an abnormal rise in prices or a contract becoming more burdensome, does not constitute frustration In **Alopi Parshad and Sons Ltd v. Union of India[12]**, the Hon'ble court again reiterated by placing reliance on the judgment of **Satyabrata Ghose v. Mugneeram Bangur & Co. (supra)** that the parties does not get rid of their liabilities in the event merely because the contract has become onerous due to an unanticipated turn of events. Furthermore, the doctrine cannot be invoked in cases of where the impossibility of performance of contract occurs due to the action, omission, choice or negligence of the debtor either directly or indirectly. The decision of the Hon'ble court is mostly and prominently dependent upon the facts and circumstances of the case as observed in the case of **Boothalinga**

[10] (2020) 19 SCC 260
[11] 1967 SCC OnLine SC 10
[12] 1960 SCC OnLine SC 13

Agencies v. V.T.C. Poriaswami Nadar[13] where Section 56 cannot apply when the occurrence of the event causing frustration, results from the promisor's own default.

The significance of Doctrine of Frustration in Indian law stems from its character as a rule of positive law that mediates between the sanctity of contractual obligations and the demands of fairness when the "foundation of the contract" has been destroyed. In ***NAFED Case (supra),*** the Hon'ble Court recognised that upholding an arbitral award which effectively penalises a party for obeying a lawful governmental prohibition would offend the fundamental policy of Indian law and the basic notions of justice. Likewise, where performance is impeded by supervening illegality, as in ***NAFED*** **(refusal of export permission).,** the Hon'ble courts must assess whether the supervening event has so radically altered the nature of the obligation that insisting on literal compliance with the contractual terms would be unjust. By construing the contract against its factual and regulatory backdrop, Indian courts preserve the doctrine of frustration as a narrowly confined but crucial safeguard against the enforcement of obligations that have become truly impossible or unlawful.

Conclusion

The Doctrine of Frustration serves as a crucial legal safeguard that balances the strict requirement of fulfilling promises with the fundamental principles of fairness and natural justice. In India, this is an exhaustive rule of law which automatically terminates a contract if an unexpected, external event makes performance impossible or transforms it into something completely different from what was originally planned. This concept of "impossibility" is not just about physical barriers but also applies when the very core purpose of the agreement is destroyed, making the contract's performance useless in a practical or commercial sense. However, this fundamental law is careful to ensure this doctrine is not used in absolute manner to get out of a bad business deal or a contract that has simply become more expensive or difficult to complete. By distinguishing between truly unexpected disasters and risks that the parties could have planned for within their agreement, the doctrine protects the integrity of commercial dealings while ensuring that no person is unfairly forced to perform a task that has become truly impossible or illegal.

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[13] 1968 SCC OnLine SC 135