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GOLD CLAUSE

AUTHORED BY - SUNIDHI PANDEY

GOLD CLAUSE

Throughout history, especially from the later Middle Ages onward with the emergence of a monetary system, creditors have consistently been wary of monetary fluctuations and sought to safeguard their interests through various contractual measures. The most significant among these protective measures was the insistence on payment in gold by incorporating a “Gold Clause” in contracts, recognized as the most reliable hedge against the potentially capricious actions of government monetary authorities.¹ A gold clause is a provision within a contract that requires consideration to be paid in gold or another particular type of currency upon request. The creditor can insist on payment either in gold or another type of currency equivalent to gold.² Example of a typical gold clause in a contract in the US and UK respectively are as follows:

1. *“the payment of "One Thousand Dollars (\$1,000) in gold coin of the United States of America of or equal to the standard of weight and fineness existing on the date of the loan.”*
2. *annual rent of £1,900 "in gold sterling or Bank of England notes to the equivalent value in gold sterling.”*

A gold clause may prove valuable to the creditor in long term contracts. Creditor concerns in respect to inflation, war, changes in government, and any other uncertainty about the future value of currency would be common reasons for adopting such clause within a contract.³ These clauses are included in contracts to counteract the effects of the ‘nominalistic principle’, which dictates that a debt payable in the future must be settled with the nominal amount at the time of payment, regardless of currency fluctuations between the contract date and payment date.⁴ For instance, in a contract between an Indian company and a Russian company dated May 4, 1965, where the contract values at Rs. 60,000, according to the nominalistic principle, the

¹ Unger, J. “Gold Clauses in Domestic Transactions.” *The Modern Law Review* 20, no. 3 (1957), 269–70. <https://www.jstor.org/stable/109061>.

² Schmitthoff, M. “The Gold Clause in International Loans.” *Journal of Comparative Legislation and International Law* 18, no. 4 (1936), 266–76. <http://www.jstor.org/stable/754164>.

³ O. K.-F. “Gold Clauses. Private International Law.” *The Modern Law Review* 1, no. 2 (1937), 158–63. <http://www.jstor.org/stable/1090305>.

⁴ Pearelal & Sons (E.P.) (P) Ltd. v. Mashpriborintorg and anr., ILR 1979 DELHI 217.

Indian company would pay this amount in rupees, regardless of any changes in the rupee's value. Consequently, if the rupee depreciates, the Russian party loses value, and if it appreciates, the Indian party loses. To mitigate this risk, creditors incorporate various clauses, often referred to as "gold clauses," in contracts. These clauses, whose validity, meaning, and effect are determined by the contract's governing law, aim to safeguard the parties' interests by ensuring that the payment or goods' price reflects the agreed-upon value, unaffected by currency fluctuations.⁵ The importance of the clause to secure the creditor against the depreciation of currency was first witnessed in the United States after the Civil war.

Gold clauses were also an important feature of the international loans which made the repayment of the loan dependent on the value of gold. Loans disbursed internationally entailed more risk as debtor being resident in another country was subjected to different economic and political conditions, and such long-term loan carries the risk of depreciation of currency.⁶ Such clauses presented significant legal challenges in international contracting throughout the inter-war period. Distrust in the stability of currency has resulted in the incorporation of such clauses in international contracts, and in certain nations like the United States of America, this clause has been frequently utilized even in domestic contracts.⁷

While gold clauses are now uncommon, contemporary contracts may incorporate mechanisms to achieve comparable objectives. For instance, the U.S. government issues Treasury Inflation-Protected Securities (TIPS), wherein the loan principal increases in line with inflation and decreases with deflation. These securities serve as a safeguard against inflation.⁸

TYPES OF GOLD CLAUSE

Generally, there are three types of Gold Clause:⁹

1. Gold Clause Proper (Gold Commodity Clause)

Under this clause, the creditor has the right to ask for a specific amount of gold, usually

⁵ Payne, Philip M. "THE GOLD CLAUSE IN CORPORATE MORTGAGES: DEVALUATION AND DUE PROCESS OF LAW." *American Bar Association Journal* 20, no. 6 (1934), 370–80. <http://www.jstor.org/stable/25710423>.

⁶ Magliocca, Gerard N. "The Gold Clause Cases and Constitutional Necessity" *Florida Law Review* 64, no. 5 (2012). <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1026&context=flr>

⁷ Wortley, B.A. "The Gold Clause." *British Yearbook of International Law* 17 (1936) 112.

⁸ Sharma, Patrick & D'Amico, Zachary. "The Gold Clause Cases and Their Implications for Today." *Harvard Law School* (2015). https://scholar.harvard.edu/files/briefingpapers/files/54_-_sharma_damico_-_gold_clause_cases_and_their_implications_for_today.pdf

⁹ Supra note 2 at 266.

measured by weight. This means that the debtor must pay back the debt in gold, regardless of its value in currency.

2. Gold Coin Clause

This clause allows the bondholder to demand payment specifically in gold coins from a particular country. However, if a legal tender act allows other forms of payment, the bondholder must accept them. Essentially, it ensures payment in a particular type of gold coin.

3. Gold Value clause

This clause specifies that the payment or repayment must be made in currency equivalent to a certain value of gold at the time of payment. Rather than requiring payment in actual gold, a gold value clause ties the payment to the value of gold but allows for payment in currency. This means that while the amount of gold may remain fixed, the amount of currency required to fulfill the obligation may fluctuate based on changes in the value of gold relative to the currency. The gold value clause is the only type of the gold clause which safeguards the bondholder against a subsequent depreciation of the debt. There is, in all cases of the gold clause, a strong presumption in favour of the value clause, rebuttable only under special circumstances.¹⁰

The difference between the gold value clause and the gold coin clause is that the latter refers to quid of the payment while the former fixes the quantum. The gold value clause enjoins the duty to pay to the creditor so much money in the currency in which the obligation is expressed, as will, at the time of payment, buy the same amount of gold which at the time of the making of the contract could have bought with the sum promised. In *Feist v. Societe Intercommunale d'Electricite*, the House of Lords held that, if the private law of the contract was English, a gold clause was, in cases of doubt be interpreted as a gold value clause.¹¹

A gold clause proper specifically mandating the delivery of a quantity of gold as a commodity may lose its effectiveness if a government intervenes in the free market for gold. Similarly, a gold coin clause may lose its relevance if a government replaces gold coins with paper notes. However, a clause interpreted as a gold value clause is more likely to achieve its intended purpose in practice compared to the other two types of gold clauses. This is because it simply

¹⁰ Supra note 2.

¹¹ [1934] A.C. 161.

aims to determine the amount of currency owed to the creditor by referencing the market price of a specific quantity of gold.¹²

It must be noted that, while these distinctions are clear in theory, they can be challenging to apply in practice due to differences in wording and ambiguity. Ultimately, determining which type of clause is being used depends on understanding the intentions of the parties involved and the surrounding circumstances.¹³

GOLD CLAUSE IN THE UNITED STATES AFTER THE CIVIL WAR AND BEFORE 1930

After the end of the Civil War in the United States (1861-1865), almost all the long-term financial contracts in the U.S. such as mortgage deeds, leases and bonds, essentially included a 'Gold Clause'.¹⁴ Legal Tender Act of 1862 which made paper currency a legal tender caused inflationary effects in the country during post-war period. Such clauses were inserted to protect the creditors from the wrath of inflation and debasement in the value of currency caused due to the civil war in the country. This clause enabled the creditors to demand payment in gold coin or equivalent amount based on the weight and fineness of gold coin at the time the contract was signed. Prior to the 1930s, Courts in the U.S. had time and again upheld the enforceability of the gold clause in the contract.¹⁵

In the landmark case of *Bronson v. Rodes*,¹⁶ the Supreme Court of the U.S. considered the gold clause for the first time. In 1865, Rodes tendered United States notes (greenbacks) amounting to \$1507, equivalent to 670 gold dollars in market value, to Bronson as payment for a mortgage note promising to “pay \$1400 in gold and silver coin, lawful money of the United States, with interest also in coin, until such repayment at the rate of seven per cent” made in 1851. Bronson rejected the tender, prompting Rodes to deposit the notes in a bank under Bronson's name and file a lawsuit seeking relief from the mortgage lien and the delivery of a satisfaction piece. The Court of Appeals of New York deemed the tender by Rodes valid under the Legal Tender Act, but this decision was overturned by the Supreme Court. The Court considered the issue whether

¹² Supra note 7.

¹³ Thornburg, James F. “The Gold Clause Decisions” *Indiana Law Journal* 10, no.8 (1935). <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=4887&context=ilj>.

¹⁴ Frederick Macaulay, “*Some Theoretical Problems Suggested by the Movements of Interest Rates, Bond Yields, and Stock Prices in the United States since 1856*” (New York: National Bureau of Economic Research, 1938).

¹⁵ *Bronson v. Rodes* [7 Wall. 229 (U. S. 1868)]; *Trebilcock v. Wilson* [12 Wall. 687 (U.S. 1871)].

¹⁶ 7 Wall. 229 (U. S. 1868).

Bronson was legally obligated to accept United States notes, which were paper currency, from Rodes as full payment for a contract that originally specified payment in gold and silver coins, as per the lawful money of the United States. The Court affirmed the validity of the gold clause and held that Rodes' tender did not discharge the obligation. This conclusion was based on the intent of the parties involved. It was ascertained that a contract to pay a certain number of dollars in gold or silver coins is nothing else than an agreement to deliver a certain weight of standard gold. It was held that express contracts to pay coined dollars can only be satisfied by the payment of coined dollars. The rulings made by the US Court regarding the gold clause have garnered significant interest. The case has been repeatedly followed by the US Supreme Court in number of cases.¹⁷

DEPARTURE FROM THE GOLD STANDARD IN 1930s.

In the 1930s, questions arose regarding the validity of gold clauses due to the federal government's choice to remove the U.S. dollar from the gold standard. While implementing the gold standard ensured stability in currency, it greatly limited the federal government's control over monetary policies.¹⁸ The weaknesses of the gold standard became apparent during the banking crises of the late 1920s and early 1930s. During this period, widespread hoarding of gold by the public led to substantial deflationary pressures on the economy, exacerbating the existing economic downturn. Additionally, the requirement for gold-dollar convertibility meant that the federal government faced challenges in effectively increasing the money supply to address economic contraction.¹⁹ Therefore, in 1933, President Franklin Roosevelt of the US came up with a Resolution to abandon the gold standard. With backing from Congress, the President implemented a set of banking and currency reforms that essentially brought monetary gold under government control. These measures included the Emergency Banking Act, which empowered the President to halt international gold transactions, Executive Order 6102 mandating the surrender of privately owned monetary gold in exchange for currency, and the Gold Clause Resolution which invalidated all gold clauses within the country. The following year, through the Gold Reserve Act, the government assumed ownership of the Federal

¹⁷ Butler v. Horwitz, 7 Wall. 258 (U. S. 1868); Dewing v. Sears, 12 Wall. 379 (U. S. 1870); Trebilcock v. Wilson, 12 Wall. 687 (U. S. 1871); The Vaughan and Telegraph, 14 Wall. 258 (U. S. 1871); The Emily Souder, 17 Wall. 666 (U. S. 1873); Thompson v. Butler, 95 U. S. 694 (1877); Gregory v. Morris, 96 U. S. 619 (1877); Thompson v. Riggs, 5 Wall. 663 (U. S. 1866); Maryland v. Railroad Co., 22 Wall. 105 (U. S. 1874); Woodruff v. Mississippi, 162 U. S. 291 (1896).

¹⁸ Silber, L. William. "Why Did FDR's Bank Holiday Succeed?" *FEDERAL RESERVE BANK OF NEW YORK ECONOMIC POLICY REVIEW* 19 (2009).

¹⁹ Supta note 8.

Reserve's gold reserves and reduced the value of the dollar.²⁰

THE GOLD CLAUSE CASES

The Joint Resolution of 1933 sparked controversy and holders of the instruments containing gold clauses filed various lawsuits to receive payments. Four suits out of all eventually heard and decided by the Supreme Court of the US wherein the Court upheld the constitutionality of the 1933 Resolution. These four cases came to be famously known as “Gold Clause Cases” which were argued together before the Court. The cases are discussed below:

1. *Norman v. Baltimore and Ohio Railroad Company (1935)*²¹

Mr. Norman C. had a thirty-year gold bond issued by the railroad in 1930. The bond stated that both the principal and interest payments must be “*made in gold coins of the United States of America of or equal to the standard of weight and fineness existing on february 1, 1930*”. When it came time for the February 1, 1934 interest payment, Mr. Norman requested to receive either the payment in gold or its equivalent value in legal tender, which would be 69 percent more than the nominal amount stated on the bond. Norman initially lost his case in the New York state courts and then appealed to the Supreme Court, which agreed to hear his appeal.

2. *United States v. Bankers Trust Co.*²²

The St. Louis, Iron Mountain & Southern Railway Company issued a thirty-year gold bond that was supposed to mature on May 1, 1933. The bond promised to pay the holder “*One Thousand Dollars gold coin of the United States of the present standard of weight and fineness*” upon maturity. However, the company went bankrupt in March 1933. Bankers Trust, acting as the trustee for the bondholders in the bankruptcy, requested that the company's obligations to the bondholders include the increased nominal amounts as required by the gold clause. However, the Reconstruction Finance Corporation, along with the federal government, argued against the validity of the gold clause. The District Court ruled in favor of the government. The Supreme Court agreed to hear an appeal regarding this case on November 5, 1934.

²⁰ Elwell, K. Craig “Brief History of the Gold Standard in the United States” *CONGRESSIONAL RESEARCH SERVICE* (2011).

²¹ 294 U.S. 240 (1935).

²² *Id.*

3. *Perry v. United States*²³

The plaintiff claimed in their lawsuit that when the bond was issued and purchased, it was understood that "a dollar in gold" equated to 25.8 grains of gold, with a purity of .9 fine. They asserted that upon the bond's redemption call on April 15, 1934, and subsequent presentation for payment on May 24, 1934, they demanded its redemption in "10,000 gold dollars," each containing the specified amount of gold. However, the defendant refused to comply with this demand and instead offered redemption only in "10,000 dollars in legal tender currency." The defendant's refusal was based on the Joint Resolution of the Congress dated June 5, 1933.

4. *Nortz v. United States*²⁴

In 1928, the United States government issued a set of Gold Certificates. These certificates were denominated in dollars, and they stated that the Treasury of the United States held the face value in gold coins as required by relevant Acts of Congress, which would be given to the holder upon request. The plaintiff, as the owner of gold certificates issued by the Treasury of the United States with a nominal amount of \$106,300, filed a lawsuit. It was alleged that the defendant, through these gold certificates had certified that \$106,300 in gold coin had been deposited in the Treasury of the United States, which would be paid to the claimant upon demand. The plaintiff asserted that at the time of issuing these certificates, and up to January 17, 1934, a dollar in gold equated to 25.8 grains of gold. On January 17, 1934, the plaintiff duly presented the certificates and demanded their redemption by payment in gold coin as specified. He argued that on that date, and for some time before and after, an ounce of gold was valued at least \$33.43, thereby entitling them to receive 5,104.22 ounces of gold valued at \$170,634.07 in redemption. However, the defendant refused this demand.

DECISION

On February 18, 1935, all the above discussed four cases were decided by the Supreme Court, all ruled in favor of the government's stance by 5–4 majority. Chief Justice Hughes and Justices Brandeis, Cardozo, Roberts, and Stone decided in favour of the government and private debtors whereas Justices Butler, McReynolds, Sutherland, and Van Devanter gave opinions for the creditors. Chief Justice Hughes authored the opinion for each case, affirming the government's authority to regulate money as a plenary power.

²³ 294 U.S. 330 (1935).

²⁴ 294 U.S. 317 (1935).

The Court in *Norman and Bankers Trust* cases asserted that the gold clauses involved were not agreements for payment in gold coin as a commodity, but rather agreements for payment in currency. The bonds were individually designated for the payment of one thousand dollars. It was held that the clause was meant to establish a clear standard or gauge of value, thereby safeguarding against currency devaluation and ensuring that the obligation would not be discharged with a payment of lesser value than specified. Therefore, these clauses were subject to Congress' authority under Article I to establish and regulate the country's monetary system. Since Congress has the power to nullify provisions in existing contracts that impede its constitutional authority, the Court deemed the private gold clauses in these contracts as invalid.²⁵

Among all cases, only in the *Perry* case did the Court address the constitutionality of the 1933 Resolution. It determined that while Congress had acted unconstitutionally in annulling the government's prior commitments, it was within its rights to restrict transactions involving gold. Consequently, the Court held that the bondholder had no legal basis for complaint because, by receiving lawful currency, instead of gold coins, they had not suffered any financial loss.²⁶ Justice McReynolds authored the dissenting opinion, arguing that gold clauses represented binding contracts and that the government's policies would undermine trust in its ability to uphold contracts, both public and private.

In *Norts*, the gold certificates in question were similar to Liberty Bonds in that they were government-issued debt instruments that could be exchanged for gold from the Treasury upon the holder's request. However, unlike Liberty Bonds, which specified repayment in a fixed amount of gold, these certificates allowed for repayment in "currency."²⁷ The legal analysis in this case deviated slightly from that in the *Perry* case. Chief Justice Hughes explained that the central issue revolved around whether the plaintiff, who had exchanged his certificates for dollars at a rate determined when the certificates were issued, should instead be entitled to a dollar value based on the rate at the time of redemption. The Court determined that awarding the plaintiff this difference would amount to unjust enrichment rather than adherence to the terms of the contract. As a result, the Court rejected the plaintiff's challenge.²⁸ It was determined that the gold certificates should not be interpreted as receipts for gold stored in a

²⁵ *Id.*

²⁶ *Supra* note 23 at 357.

²⁷ *Supra* note 24 at 318.

²⁸ *Id.* at 328-29.

warehouse. Instead, they were considered to be agreements for a specific amount of dollars, not gold bullion.

GOLD CLAUSE IN UNITED KINGDOM

In United Kingdom, the gold clause was not as common in contracts as it was in the United States.²⁹ The Courts of UK interpreted gold clauses in a contract mostly as gold value clause in catena of judgements, however the judges deviated if intention of the parties and the surrounding circumstances revealed otherwise.³⁰ In the landmark English gold clause case of *Feist v. Societe Intercommunale Beige d'Electricite*,³¹ the dispute centered around the interpretation of a gold clause in a bond contract. The bond stipulated payment of "*the sum of 100 pound in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1, 1928.*" The company argued that it could fulfill its obligation by tendering whatever legal tender was available at the due date of payment and contended that the clause only entitled the bondholder to receive the nominal amounts specified in the bonds and interest coupons. Conversely, the bondholder contended that the gold clause was intended to safeguard against sterling depreciation in terms of gold, fixing the amount of debt to be discharged. The House of Lords ruled that the company was obligated to pay the bondholder in sterling, equivalent to the value in gold as specified in the bond. They found that the gold clause was included in anticipation of England moving off the gold standard, and neither party had expected actual payment in gold coins. When the bonds were issued in 1928, interpreting the clause in terms of 'gold value' was the only interpretation that would have given practical effect to its wording. Gold coins had largely disappeared from circulation by 1928. Therefore, if the parties had specified gold coins in 1928, they would have been contracting for something that was already unattainable. Given this context, it strongly supported the interpretation that the clause was intended as a provision for the value of gold. The House of Lords also held that even if a bond specifies that a certain quantity of gold is deposited and can be demanded by the bondholder, there is a significant presumption against the debtor committing to deliver gold as a commodity.

Lord Russell stated that the gold clause didn't prescribe that how payment should be made but rather determined the extent of the company's obligation. He stated as provided hereinafter:

²⁹ Barry, Herbert. "Gold." *Virginia Law Review* 20, no. 3 (1934): 263–306. <https://doi.org/10.2307/1067132>.

³⁰ See below, *Treseder-Grgin v. Co-operative Insurance Society, Ltd*, [1956] 2 Q.B. 127.

³¹ [1934] A. C. 16.

*"The parties are referring to gold coin of the United Kingdom of a specific standard of weight and fineness not as being the mode in which the company's indebtedness is to be discharged, but as being the means by which the amount of the indebtedness is to be measured and ascertained. I would construe clause 1 not as meaning that 100 pound is to be paid in a certain way, but as meaning that the obligation is to pay a sum which would represent the equivalent of 100 pound if paid in a particular way; in other words, I would construe the clause as though it ran thus : 'pay ... in sterling a sum equal to the value of 100 pound if paid in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on the first day of September, 1928'."*³²

This decision stands in stark contrast to the ruling in *Bronson v. Rodes*. The court differentiated this case from the Bronson case by highlighting that during the Bronson judgment, the payment in gold coin was feasible, and the contract did not include terms like "sterling," which could introduce ambiguity through alternatives. Consequently, there was neither factual impossibility of gold coin payment nor had the legislature explicitly stated a policy requiring all monetary obligations to be fulfilled in legal tender notes, thereby allowing for the possibility of contracting gold coin debts.

Following the *Fiest* case, gold clause was interpreted again as a gold value clause in the case of *International Trustees for the Prote of Bondholders v. The King*.³³ Further, In *Rex v. International Trustees for the Protection of Bondholders*³⁴, the House of Lords overturned the Court of Appeal's decision but affirmed the interpretation of the gold clause as a gold value clause. Lord Russell of Killowen stated as hereunder:

"it would be regrettable if a uniformity in this respect did not prevail and that a different construction should be applied, except in cases where the 'Feist construction' is expressly excluded."

Again, In *British and French Trust Corporation v. The New Brunswick way Company*,³⁵ House of Lords held that unless explicitly specified in the contract, the court may refuse to interpret a gold clause as requiring the delivery of physical gold bullion. In such cases, gold serves as a standard of measurement rather than being treated as a commodity.

³² *Id* at 172.

³³ [1936] 3 All. E.R. 407.

³⁴ [1937] 2 All E.R. 164.

³⁵ [1939] A.C. 1.

According to Dicey and Morris, the purpose of such a gold clause is in cases where English law governs a contract, any mention of payment in gold of a specified weight and quality is presumed to be a gold value clause. This means it defines how the amount of the debt is measured, not how it is discharged. It obliges payment in legal tender of the specified currency, an amount sufficient on the payment day to purchase gold coins equivalent to the nominal debt, rather than a direct obligation to pay in gold coins.³⁶

All the cases came up after the the *Feist* followed its interpretation of the gold clause, however, the situation was not so in the case of *Treseder-Grgin v. Co-operative Insurance Society, Ltd.*,³⁷ a dispute arose over a landlord's claim for rent under a lease from 1938, which specified an “annual rent of £1,900 to be paid either in gold sterling or Bank of England notes of equivalent value in gold sterling”. Lord Goddard initially ruled in favor of the landlord, awarding £7,505, reflecting the current price of 1,900 gold sovereigns, following the Feist interpretation. However, the Court of Appeal, in a majority decision, overturned this ruling, determining that the landlord was entitled only to £1,900. In reaching their decision, the majority of the Court of Appeal sought to distinguish the ruling of the House of Lords in the Feist case. Lord Justice Morris emphasized that the interpretation of the clause in the Feist case was influenced by the impracticality of payment in gold coin, which was the only form of payment mentioned. However, in the present case, the clause allowed for alternative payment methods, one of which was practical. Consequently, it could be inferred that the parties were concerned with the mode of payment, suggesting a preference for payment either in gold coin or in another form besides cheques. Lord Justice Morris interpreted “equivalent value” to mean the nominal value, indicating that this interpretation would be the straightforward or literal understanding of the phrase. He suggested that a reader examining the lease without scrutinizing all its terms might reasonably assume that the lessees' obligation was to pay £1,900 in rent, which could be fulfilled either by paying £1,900 in gold or by paying £1,900 in notes.³⁸

GOLD CLAUSES IN OTHER COUNTRIES

The interpretation given to the gold clauses in other legal systems is the same as rendered in the *Fiest* case. The objective behind the inclusion of such clauses is to protect the creditor from the wrath of fluctuations in the currency. Only the “gold value clause” interpretation can cater

³⁶ Dicey and Morris on “*Conflict of Laws*”, Eighth Edition, p. 867, rule 151.

³⁷ [1956] 2 Q.B. 127.

³⁸ Mann, F. A. “The Gold Clause in Domestic Contracts” *Law Quarterly Review* 73, no.2 (1957), 181-193.

to the fulfilment of the objective. The requirement to make payments in gold coins prevents the debtor from benefiting from any depreciation in the currency specified in the obligation. However, from the creditor's perspective, the drawback of the gold coin clause arises when legislation applicable to the debtor renders it illegal or practically impossible for them to obtain the necessary gold coins to fulfill their commitment. In such circumstances, fulfilling the obligation becomes impracticable, and in most legal systems, the debtor is exempted from the obligations of the gold clause.³⁹ Consequently, creditors consistently aim to interpret the gold clause in a manner that ensures them a fixed amount of value, regardless of currency fluctuations, namely, as a gold value clause.

The modern cases concerning the gold clause can be traced back to the rulings of the Permanent Court of International Justice at The Hague on July 12, 1929, particularly in the *Serbian and Brazilian Loans* cases.⁴⁰ The principles established in both cases were identical. The Serbian government had acquired loans before the war, denominated in gold francs. The laws of the debtor state typically govern the essence of such transactions. In this case, French law dictated the currency for payment. However, due to changes in circumstances, payment in gold francs was no longer feasible. As a result, the court determined that:

"if the franc which is legal tender at the place fixed for payment does not possess the value of the gold franc as defined in this judgment, payment must be effected by the remittance of a number of francs, the value of which corresponds to the value of the gold francs".

The key distinction made was between the essence of the debt itself and the currency used for payment. It was emphasised in both cases that the function of the gold value clause is to protect the fundamental value of the debt from being affected by alterations in the currency used for payment.

In a ruling in *Skandia Insurance Company Ltd. v. The Swedish National Debt Office*,⁴¹ the Swedish Royal Court of Appeal noted that the inclusion of the gold clause in the bonds was evidently aimed at providing purchasers with assurance during financially uncertain periods regarding the value of the loan in gold. Essentially, it was intended to grant them a safeguard,

³⁹ Supra Note 3.

⁴⁰ Publications of the P.C.I.J., Series A, Nos. 20 and 21.

⁴¹ Bulletin de l'Institut Juridique International, 1935, vol. xxxiii, p. 142; Also See, Kuhn, Arthur K. "The Gold Clause in International Loans." *The American Journal of International Law* 28, no. 2 (1934): 312–15. <https://doi.org/10.2307/2190929>.

ensuring that in the event of redemption in paper currency, they would receive an amount in paper currency that compensated for any decline in its value relative to gold coin at the time of payment. Therefore, the clause should not be regarded merely as a monetary provision but also as pertaining to the essence of the debt.

The Belgian Civil Court in the case of *A. Peten v. City of Antwerp*,⁴² interpreted the gold clause and concluded that its inclusion was primarily aimed at safeguarding the contracting parties against currency depreciation. It observed that specifying a certain quantity of gold in the clause was intended to prevent the debtor from benefiting from repaying the debt with depreciated currency. The court recognized that by incorporating a gold repayment clause in a loan contract, the parties intended to guarantee that the creditor would receive the equivalent value of the disbursed sum and shield them from exchange rate fluctuations.

The German Court of Appeal in the matter involving the payment of the 7 percent secured gold bonds of the Deutscher Sparkassenund Giroverband emphasized the customary significance of such clauses in international dealings. From this perspective, it was inferred that the clause was designed to safeguard bondholders from the consequences of any potential depreciation of the American currency, even though such depreciation was deemed unlikely at the time the bond was issued.⁴³

In India, there is no evidence of the prevalence of gold clauses in contracts. However, there were cases where disagreements arose between parties to a contract pertaining to the issue of payment as to whether the nominal amount mentioned in the contract or inflation-adjusted amount would be payable. One example of such a case is in 1956, wherein the *Feist* interpretation was adopted in the case of *Mulluk Chand Mollah v. Surendra Nath Majumdar*⁴⁴, to protect the party to the contract against the fluctuation in the currency. This case involves a disagreement regarding the rent outlined in a lease dated May 22, 1883. The lease stipulates both a cash rent of Rs. 15 and a paddy rent of 6 Aris. The clause stated “*I shall pay year by year the above-named fixed jama of Rs. 15/- and 6 Aris of paddy. If I do not deliver paddy in any year, I shall pay its value (Price) Rs. 12/- and I shall cause the paddy to be delivered at your residence at my cost year by year.*” Initially, the trial court ruled in favor of the specified

⁴² *Peten v. Antwerp*, Civil Court of Antwerp, Jan. 5, 1935, Bulletin de l'Institut Juridique Int. 93, 96.

⁴³ Plesch, Arpad. “The Gold Clause. A Collection of International Cases and Opinions. Vol. 2: New Decisions of Various Supreme Courts” (2d ed.) London: Stevens & Sons, Ltd., 1936.

⁴⁴ AIR 1957 Cal 217.

price of paddy as mentioned in the lease, while the lower appellate court favored awarding the current market price of the paddy. The central issue revolves around whether the tenant is obligated to pay the fixed price of Rs. 12 per 6 Aris of paddy or the prevailing market rate. The court determines that the lease reserves a rent that includes a portion payable in paddy, and the landlord has the right to recover the actual market value of the paddy, rather than solely the fixed price of Rs. 12. The court argues that the covenant to pay Rs. 12 does not intend to permanently fix the price but rather to establish the current value of the paddy at the lease's time. Therefore, the landlord is entitled to the market price at the due date, not just the fixed amount of Rs. 12. Reviewing past legal precedents concerning similar leases with combined cash and produce rents, the court concludes that the decision of the lower appellate court to award the market price should be upheld. In essence, the court's ruling affirms that the landlord has the right to claim the current market value of the paddy, rather than being restricted to the fixed price specified in the lease agreement.

CONCLUSION

The incorporation of gold clauses in domestic and international contracts to safeguard the interests of the creditors was prevalent mostly in the United States and European countries until the first half of the 20th century. Such clauses have been interpreted time and again by the courts as 'gold value clauses' wherein the gold was considered a means to measure the value of the obligation rather than a mode of making payment. Nowadays, contracts do not contain clauses by the name of 'gold clause', however, contemporary contracts do make provision for 'protective clauses' to safeguard the interests of the parties against the fluctuation in the currency.