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THE DOCTRINE OF FRUSTRATION AND FORCE MAJEURE: A TALE OF CONTRACTUAL IMPOSSIBILITY IN A TURBULENT WORLD

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ABSTRACT

It was March 2020, and the world stood still. A global pandemic, declared by the World Health Organization, shuttered businesses, grounded flights, and upended contracts that once seemed ironclad. In boardrooms and courtrooms, two ancient legal doctrines, "frustration and force majeure" emerged from obscurity to address the chaos. This paper explores the Doctrine of frustration, a common law principle that terminates contracts when unforeseen subsequent events render performance impossible or radically different, and its intricate relationship with force majeure, a contractual mechanism designed to allocate risk for supervening events. Through a comparative analysis of English and Indian legal framework, the paper examines how these doctrines interact, particularly in the context of modern crises like COVID-19. It critiques judicial interpretations, highlights key case law, and proposes reforms to enhance contractual certainty. By weaving historical origins, contemporary applications, and theoretical underpinnings, this study illuminates the delicate balance between contractual sanctity and equitable relief in an unpredictable world.

Keywords: Doctrine of Frustration, Force Majeure, Contract Law, Supervening Impossibility, COVID-19, Risk Allocation, Common Law, Indian Contract Act.

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Introduction

In contract law, few ideas are as fascinating and tricky as the Doctrine of frustration and its close relative, force majeure. The former, a common law rule, automatically discharges a contract when an unforeseen subsequent event renders performance impossible or fundamentally alters its purpose. The latter, a creature of contract, allows parties to suspend or excuse performance based on predefined supervening events. Both doctrines serve as exceptions to the maxium *Pacta Sunt Servanda* (agreements must be kept), yet their interplay remains a source of doctrinal and practical confusion. The COVID-19 pandemic, with its unprecedented disruptions, cast these doctrines into the spotlight, raising critical questions about their scope, application, and relationship.

This paper aims to provide a comprehensive review of the Doctrine of frustration and its linkage with force majeure, drawing on English common law and Indian statutory provisions under the Indian Contract Act, 1872. It examines the historical evolution of these doctrines, their judicial interpretation through landmark cases, and their practical implications in modern commercial contracts. The paper also evaluates recent judicial trends, particularly in the context of COVID-19, and proposes reforms to align these doctrines with contemporary needs. By synthesizing legal theory, case law, and scholarly commentary, this study contributes to the humanities discourse on justice, fairness, and the limits of contractual obligation.

Historical Origins

From Roman Law to Modern Jurisprudence the roots of frustration and force majeure trace back to Roman law, where the principle of *Pacta Sunt Servanda* clashed with *Rebus Sic Stantibus* (things standing thus). The latter allowed contractual discharge when fundamental circumstances changed, setting the foundation for contemporary doctrines of contractual excuse. In English common law, the Doctrine of frustration emerged in the 19th century to mitigate the harshness of absolute liability under *Paradine v. Jane (1647),* which held parties liable for performance regardless of external events[1],The case of *Taylor v. Caldwell (1863)* marked a turning point, establishing that a contract could be discharged if an unforeseen event, such as the destruction of a music hall, rendered performance impossible without fault of either party[2] . This principle evolved through case *Krell v. Henry (1903),* where the cancellation of a

[1] Paradine v. Jane, (1647) 82 Eng. Rep. 897 (K.B.)
[2] Taylor v. Caldwell, (1863) 3 B. & S. 826 (Q.B.).

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coronation procession frustrated the purpose of a contract to rent a viewing room, introducing the concept of "frustration of purpose."[3]. Force majeure, by contrast, has civil law origins, notably in the French Code Civil, where it excuses performance due to irresistible external events. In common law jurisdictions, force majeure operates only through express contractual clauses, lacking a standalone legal status[4]. The interplay between these doctrines became pronounced in the 20th century, as commercial contracts increasingly incorporated force majeure clauses to overcome the narrow scope of frustration.

The Doctrine of Frustration

Scope and Limitations: The Doctrine of frustration applies when a supervening subsequent event, beyond the control of either party, renders performance impossible, illegal, or radically different from what was contemplated[5]. English courts have identified three categories of frustration: (1) impossibility of performance, (2) illegality of performance, and (3) frustration of object[6]. The threshold is high, requiring a "break in identity" between the contract's original purpose and its performance under new circumstances.[7]. In *Davis Contractors Ltd. v. Fareham Urban District Council (1956)*, the House of Lords clarified that frustration does not apply to mere inconvenience or increased expense, emphasizing its narrow scope[8]. Similarly, in *Canary Wharf (BP4) T1 Ltd. v. European Medicines Agency (2019),* the court rejected a frustration claim despite Brexit's adverse impact on a lease, as the tenant's ability to deal with the property remained intact[9].In India, frustration is codified under Section 56 of the Indian Contract Act, 1872, which declares contracts void if performance becomes impossible or unlawful due to unforeseen events[10]. The Hon'ble Supreme Court in *Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)* held that impossibility under Section 56 includes situations where a supervening event destroys the contract's foundation, but not mere commercial hardship[11].

The Doctrine's limitations are evident in its all-or-nothing remedy, automatic termination

[3] Krell v. Henry, [1903] 2 K.B. 740 (C.A.).
[4] Alexander Hickey QC, Frustration and Force Majeure: A Paper in Light of COVID-19, 4 Pump Court (Mar. 31, 2020), https://www.4pumpcourt.com
[5] Guenter H. Treitel, Frustration and Force Majeure 1 (2d ed. 2004)
[6] Frustration: Navigating the Bramble Bush, PMC, https://pmc.ncbi.nlm.nih.gov.
[7] Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80.
[8] Davis Contractors Ltd. v. Fareham Urban District Council, [1956] A.C. 696 (H.L.).
[9] Canary Wharf (BP4) T1 Ltd. v. European Medicines Agency, [2019] EWHC 335 (Ch)
[10] Indian Contract Act, 1872, § 56 (India)
[11] Satyabrata Ghose v. Mugneeram Bangur & Co., (1954) SCR 310 .

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without flexibility for partial relief or renegotiation[12]. This blunt approach contrasts with force majeure clauses, which offer tailored remedies like suspension or extension of time[13].

Force Majeure

A Contractual Counterpart Force majeure clauses, unlike frustration, are contractual provisions that specify events (e.g., wars, pandemics, strikes) excusing or suspending performance[14]. They vary widely, from specific lists to catch-all phrases like "events beyond reasonable control." In English law, force majeure has no default application absent an express clause, distinguishing it from civil law jurisdictions[15].The Hon'ble Supreme Court in *Energy Watchdog v. Central Electricity Regulatory Commission (2017)* clarified that force majeure is governed by Section 32 (contingent contracts) when contractual, and Section 56 when arising outside the contract[16]. The court emphasized that force majeure clauses must be strictly construed, requiring the event to wholly or partly prevent performance[17]. Force majeure clauses offer two key advantages over frustration: (1) they displace frustration by allocating risk contractually, and (2) they provide flexible remedies, such as time extensions or cost recovery, rather than termination. However, courts have sometimes blurred the lines, applying frustration principles to interpret force majeure clauses, undermining freedom of contract[18].

The COVID-19 Context

A Testing Ground the COVID-19 pandemic, declared a global health emergency on March 11, 2020, tested the boundaries of both doctrines[19]. Lockdowns, supply chain disruptions, and government regulations rendered countless contracts impracticable, prompting a surge in frustration and force majeure claims. In Victoria's Secret Stores, *LLC v. Herald Square Owner LLC (2021),* a New York court rejected a frustration claim, noting that the lease's force majeure clause explicitly allocated risks of government shutdowns, precluding common law relief[20].

[12] Jacob Lokash, The Interpretation of Force Majeure Clauses in an Increasingly Frustrating World: The Need for Reform, CBA Construction and Infrastructure Law Section (2022).
[13] Guenter H. Treitel, Frustration and Force Majeure 1 (2d ed. 2004)
[14] Force Majeure Clauses and the Doctrine of Frustration: Flattening the Liability Curve, Cox & Palmer (Mar. 25, 2020), https://coxandpalmerlaw.com.
[15] Force Majeure and Hardship Clauses and Frustration in English Law Contracts Amid COVID-19, Norton Rose Fulbright (Mar. 23, 2020), https://www.nortonrosefulbright.com.
[16] Energy Watchdog, (2017) 14 SCC 80.
[17] Dhanrajamal Gobindram v. Shamji Kalidas & Co., AIR 1961 SC 1285
[18] Force Majeure Clauses and the Doctrine of Frustration: Flattening the Liability Curve, Cox & Palmer (Mar. 25, 2020), https://coxandpalmerlaw.com.
[19] Adv. Komal Sawant, Force Majeure and Doctrine of Frustration, Legal Service India, https://www.legalserviceindia.com
[20] Victoria's Secret Stores, LLC v. Herald Square Owner LLC, 70 Misc. 3d 1206(A) (N.Y. Sup. Ct. 2021)

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Conversely, in In *re CEC Entertainment, Inc. (2020),* a U.S. bankruptcy court erroneously held that a force majeure clause superseded frustration, ignoring the doctrine's independent operation[21], The Hon'ble Supreme Court in *Energy Watchdog (2017)* and subsequent cases like *Coastal Andhra Power Ltd. v. Andhra Pradesh Central Power Distribution Co. Ltd. (2019)* clarified that neither doctrine applies to foreseeable events or commercial hardships, such as price escalations[22]. The Indian government's notification of COVID-19 as a disaster under the Disaster Management Act, 2005, bolstered force majeure claims, but courts required proof of impossibility[23]. These cases highlight a critical tension, while force majeure clauses offer contractual certainty, their absence forces reliance on the narrow frustration doctrine, often leaving parties without relief[24].

Critical Analysis and Proposed Reforms

The interplay between frustration and force majeure reveals several challenges. First, the frustration doctrine's narrow scope and automatic termination limit its utility in complex commercial contracts[25]. Second, judicial missteps, such as in In *re CEC Entertainment* mixing up the doctrine, undermining contractual intent[26]. Third, the absence of force majeure clauses in many contracts exposes parties to the doctrine's rigidity, particularly in consumer contracts subject to protective legislation[27].To address these issues, the following reforms are proposed: Legislative Clarification: Codify frustration's interaction with force majeure, as in Section 56 of the Indian Contract Act, 1872, to provide certainty in common law jurisdictions.

Judicial Restraint: Courts should avoid applying frustration principles to interpret force majeure clauses, respecting freedom of contract.

Contractual Best Practices: Encourage comprehensive force majeure clauses that specify remedies and risk allocation, reducing reliance on frustration.

[21] In re CEC Entertainment, Inc., No. 20-33162, 2020 WL 7356380 (Bankr. S.D. Tex. Dec. 14, 2020).
[22] Coastal Andhra Power Ltd. v. Andhra Pradesh Central Power Distribution Co. Ltd., (2019)
[23] Force Majeure and Frustration of Contracts During COVID-19, Legal500 (May 14, 2020), https://www.legal500.com
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[25] A Theory of Frustration and Its Effect, PMC, https://pmc.ncbi.nlm.nih.gov.
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[27] A Theory of Frustration and Its Effect, supra note 29.

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Conclusion

The Doctrine of frustration and force majeure, though distinct, share a common purpose: to provide relief from contractual obligations disrupted by unforeseen events. The COVID-19 pandemic underscored their relevance, exposing both their strengths and limitations. While frustration offers a default remedy, its rigidity contrasts with the flexibility of force majeure clauses, which empower parties to tailor risk allocation. Judicial interpretations, however, must evolve to respect contractual intent and address modern complexities. By learning from historical precedents, international frameworks, and recent crises, lawmakers and practitioners can forge a more equitable and predictable contractual landscape.

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