UNVEILING THE COMPLEXITY OF CONTRACTUAL FRUSTRATION: NAVIGATING UNEXPECTED HURDLES

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ABSTRACT

The frustration of contract is a legal doctrine that arises when unforeseen circumstances render the performance of a contractual obligation impossible or radically different from what was originally intended. This research analysis examines the concept of frustration with contracts in India as well as other Legal Systems. The study aims to shed light on the theoretical underpinnings, practical implications, and potential measures associated with the frustration of contract.

INTRODUCTION

Contracts are the cornerstone of business relationships, providing clarity, predictability, and mutual obligations. When parties enter into agreements, they do so with the expectation of fulfilling their contractual duties and reaping the promised benefits. However, there are occasions when unforeseen events arise, rendering contract performance impossible or drastically altering its intended purpose. This phenomenon, known as the frustration of contract, presents unique challenges and raises intriguing questions for legal practitioners and involved parties.

The frustration of a contract occurs when an unexpected event, beyond the control of the contracting parties, fundamentally changes their obligations, rendering fulfilment impossible. It upsets the delicate equilibrium established within the contract, often leaving parties grappling with uncertainty, financial losses, and legal complexities. Understanding the concept of frustration and its implications is crucial for navigating the intricate landscape of contractual relationships. This article aims to delve into the complexities of contractual frustration, grounds for Contract Frustration, tests and criteria for Contract Frustration, effects and consequences of Contract Frustration, the difference between Contractual Frustration vs. Breach of Contract, case studies on Contract Frustration, the Role of Good Faith in Contract Frustration, International Perspectives on Contract Frustration, Practical Tips for Dealing

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with Contract Frustration, Future Trends and Developments in Contract Frustration. By shedding light on this concept, the article seeks to empower individuals, businesses, and legal professionals with the knowledge necessary to confront and mitigate challenges arising from unforeseen events.

To comprehend contractual frustration, it is vital to recognize its legal underpinnings. Many legal systems acknowledge frustration as a doctrine or principle that relieves parties from their contractual obligations in exceptional circumstances. This doctrine acknowledges that unforeseen events, such as natural disasters, governmental actions, or unforeseeable changes in circumstances, can render contract performance impossible or significantly different from what was initially envisaged. The consequences of frustration can be far-reaching. Parties may find themselves unable to fulfill their contractual obligations due to circumstances beyond their control. This can result in financial losses, strained business relationships, and uncertainty about the future. Moreover, frustration raises challenging questions about risk allocation, fairness, and the role of law in addressing unforeseen contingencies.

UNDERSTANDING CONTRACTS[1]

The Indian Contract Act (Act IX of 1872) was implemented on September 1, 1872[2]. When Sir Fitz James Stephen introduced the Indian Contract Bill, he acknowledged that it was not intended to be a comprehensive legal framework in its respective field[3]. However, the resulting Act can be considered a compilation of English law principles[4]. Similar to other codes derived from established doctrines, it assumes a certain familiarity with the underlying principles and thought processes embodied in that doctrine[5]. Nevertheless, it cannot be regarded as exclusively representing English common law. Therefore, the form in which various doctrines are being applied is entirely different from what has been entailed in the English Common Law.

[1] M.C. Setalvad, The Common Law in India, 1-2 (1970)
[2]Indian Contract Act, 1872, s 1
[3]Special Committee on the Sale of Goods Bill, n.d. , Report of the Special Committee on the Sale of Goods Bill, para 8
[4]Pollock and Mulla, Indian Contract and Specific Relief Acts (8th ed., n.d.)
[5] ibid

Contract

The domain of contract law is limited to the enforcement of civil obligations that are voluntarily created. It does not encompass the entirety of civil obligations. Various civil obligations, such as those imposed by law or arising from the acceptance of a trust, may be subject to legal action under tort law, trust law, or specific statutes, but they fall outside the realm of contract law.

The term "contract" is defined in Section 2(h) of the Indian Contract Act, 1872, as follows: "An agreement enforceable by law is a contract." Thus for the formation of a contract, there must be –

(1) an agreement, and

(2) the agreement should be enforceable by law. [6]

Agreement

"Agreement" is defined in Section 2(e) as "every promise and every set of promises forming the consideration for each other". And a promise is defined as an accepted proposal. Section 2(b) says: "A proposal, when accepted, becomes a promise." This is another way of saying that an agreement is an accepted proposal. The process of definitions comes down to this: A contract is an agreement; an agreement is a promise and a promise is an accepted proposal. Thus every agreement, in its ultimate analysis, is the result of a proposal from one side and its acceptance by the other.

When the agreement becomes a contract

An agreement is regarded as a contract when it is enforceable by law." In other words, an agreement that the law will enforce is a contract. The conditions of enforceability are stated in Section 10. According to this section, an agreement is a contract when it is made for some consideration, between parties who are competent, with their free consent and for a lawful object. Not all agreements fall within the scope of contract law. Many agreements do not meet the necessary criteria to be considered contracts. Furthermore, certain agreements may technically fulfil the requirements of a contract, including elements like proposal, acceptance,

[6]Avtar Singh, Contract & Specific Relief (12th ed., Reprinted 2019)

and consideration, but they are not enforced due to a lack of reasonableness in doing so. These agreements are excluded based on the legal principle that the parties did not intend for legal consequences to arise from their agreement.

General Principles of contract law[7]

The general principles of contract encompass fundamental concepts that govern the formation, interpretation, and enforceability of contracts. While there are numerous principles involved, here are some key ones:

Agreement: A contract requires a mutual agreement between two or more parties. It involves an offer by one party and its acceptance by the other, creating a meeting of minds.

Intention to Create Legal Relations: For a contract to be valid, the parties must have the intention to enter into a legally binding agreement. Social or domestic agreements usually lack this intention.

Offer and Acceptance: An offer is a proposal made by one party to another, expressing a willingness to be bound by specific terms. Acceptance is the agreement by the other party to the terms of the offer.

Consideration: Consideration refers to something of value exchanged between the parties as part of the contract. It can be in the form of money, goods, services, or a promise to do or refrain from doing something. Consideration ensures that both parties have provided something of value and adds enforceability to the contract.

Legal Capacity: To form a valid contract, the parties involved must have the legal capacity to enter into a contract. This generally requires that they are of legal age and have the mental capacity to understand the nature and consequences of the contract.

Consent: The consent of the parties must be genuine and not obtained through fraud, misrepresentation, duress, undue influence, or mistake. The consent should be freely given, without any form of coercion.

[7] ibid

Legality: Contracts must have a lawful purpose and cannot involve illegal activities or go against public policy. Contracts that are illegal or contrary to public policy are considered void and unenforceable.

Writing and Formalities: While some contracts can be oral, certain types of contracts, such as:

- those involving the sale of real estate or
- agreements that must be in writing as per legal requirements or
- those which may need to be in writing and fulfil specific formalities to be enforceable.

CONTRACT FRUSTRATION: DEFINITION AND CONCEPT OVERVIEW

The concept of frustration is merely a specific instance of a contract being terminated due to the impossibility of performance that arises after the contract was initially formed.[8] Supreme Court in Satyabrata Ghose v. Mugneeram& Co.[9] observed that while the juridical foundation of the doctrine of frustration has been the subject of various theories proposed by Judges and jurists in England, the underlying concept of the doctrine revolves around the impossibility of performing the contract. In fact, impossibility and frustration are frequently used interchangeably. According to this view, altered circumstances render the contract impossible to fulfil, thereby releasing the parties from their obligation to continue performing, as they did not undertake to fulfil an impossible task.

In cases where there is a clear and evident physical impossibility or a legal impossibility that is apparent from the promise itself, a contract cannot exist. According to section 56(1) of the act, “an agreement to do an act impossible in itself is void”.

S. 56. Agreement to do an impossible act. —An agreement to do an act impossible in itself is void.

Contract to do act afterward becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

[8]Ramdas v. Amerchand& Co., (1916) 43 1.A. 164 at 170-71
[9] A.I.R.1954 S.C. 44 at 46-47

Compensation for loss through non-performance of an act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Under English law, when impossibility, whether physical or legal, is present at the time of contract formation and is apparent on the face of the agreement, it renders the consideration unreal. The impossibility must be so evident and absurd, based on the prevailing knowledge of the time that it can be presumed the parties did not genuinely intend to form a contract. For instance, a promise to pay money in exchange for discovering treasure through magic or supplying the promisor with a live-flying dinosaur would be deemed void due to the unreality of the consideration. An old English case, Harvey v. Gibbons, provides an example of a legal impossibility where a Bailee promised to release a debt owed to his master in return for £40. The court ruled that the bailee could not sue because the consideration provided by him was "illegal," indicating a legal impossibility since the servant could not release a debt owed to his master. On the other hand, in Indian law, it is unlikely that a dispute would arise regarding the proposition stated in paragraph (1) of section 56, as it is a self-evident principle. Therefore, the position remains the same in both common law and under the Indian Contract Act. If there is an unknown impossibility of performance existing at the time of the agreement, it would generally result in the agreement being void. This situation is sometimes referred to as "pre-contractual frustration." Section 20 provides:

20. Agreement void where both parties are under mistake as to matter of fact.—Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

The illustrations given thereunder are cases where there was an impossibility existing at the time of the agreement and this fact was known to the parties. But it is clear from the decision of the Privy Council in Sheikh Brothers Ltd. v. Ochsner[10] that the principle need not necessarily be restricted to cases of destruction of the subject matter only. The Privy Council held that agreement void because both parties were under the same mistaken belief regarding a crucial fact that was essential to the agreement. In such situations, the event causing

[10] (1957) A.C. 136

frustration already exists, rendering performance impossible. The only difference is that the parties become aware of this event at a later stage.

GROUNDS FOR CONTRACT FRUSTRATION

Frustration often arises due to delays that are not the fault of either party, where the fulfilment of the contract, in the intended and practical manner, is excessively postponed to the extent that accomplishing the original objectives of both parties becomes impossible. Both parties must have been aware of these objectives when entering into the contract, and the contract was made with the purpose of achieving them.

A common example of frustration occurs when performance becomes impossible due to an Act of Parliament, a government order under statutory provisions, or an "act of state" by the same or a foreign country, such as a declaration of war.

It should be noted that the doctrine of frustration is subject to an important limitation that the frustrating circumstances must have arisen without the fault of either party. The defence of frustration can be defeated if a fault is proven, although the burden of proof lies with the party making such allegations. The doctrine of frustration generally applies to all types of contracts, including contracts of employment, charter parties (including time charters), contracts for the carriage of goods by sea, and contracts for the sale of goods and chattels. In the case of a contract for personal service that can only be performed by the promisor themselves, it will be considered frustrating if the promisor becomes physically incapable of fulfilling the contract for no fault of their own. When personal considerations form the basis of the contract, as in the cases of principal and agent or master and servant, the death of either party terminates the relationship, and the contract is discharged.

Frustration does not occur if only one of the possible ways to perform a contract has become illegal or impossible[11]. In a severable contract, where the obligations can be separated into distinct parts, it is possible for one part to be frustrated while another part remains enforceable.

[11]Twentsche case, (1944) 114 L.J. P.C. 25 ; Moore and Baker v. Morecomb , in the Court of Common Pleas, (1601) Cro. Eliz. 86

TIME OF FRUSTRATION

The precise moment when a contract is discharged due to frustration is typically evident based on the circumstances of each case. However, in situations where it is unclear, such as cases involving indefinite delays, the general rule is that the time of frustration is determined by considering when the parties become aware of the cause that led to the frustration.

Impossibility of performance

In Taylor v Caldwell[12], Blackburn J laid down that the above "rule is only applicable when the contract is positive and absolute, and not subject to any condition either express or implied".In this case, the defendants had agreed to let the plaintiffs use their music hall between certain dates to hold a concert there. But before that first day on which a concert was to be given, the hall was destroyed by fire without the fault of either party. The plaintiffs sued the defendants for their loss. It was held that the contract cancelled was not absolute, as its performance depended upon the continued existence of the hall. It was, therefore, "subject to an implied condition that the parties shall be excused in case, before a breach, performance becomes impossible from the perishing of thing without default of the contractor".[13]

Concept not confined to physical impossibility

In Taylor v Caldwell, the contract became physically impossible to perform due to the disappearance of the subject matter. However, this principle is not limited to physical impossibilities. It also applies when the performance of the contract is physically possible, but the intended purpose or object of the contract fails to materialize. This concept is illustrated in well-known cases related to the coronation, such as Krell v Henry. In this particular case, the defendant agreed to rent a flat from the plaintiff on June 26 and 27, specifically to have a view of the coronation procession scheduled for those days. The defendant paid a portion of the rent in advance. However, since the procession was due to the King's illness, the defendant refused to pay the remaining balance. The court held that the true objective of the contract, recognized by both parties, was to witness the coronation procession. Therefore, the happening of the procession was the fundamental basis of the

[12] (1863) 3 B&S 826
[13]Avtar Singh, Contract & Specific Relief (12th ed., Reprinted 2019)

contract. As the object of the contract was frustrated by the non-occurrence of the coronation, the plaintiff was not entitled to recover the balance of the rent.

Thus, the doctrine of frustration applies in two situations: first, when performance is physically impossible, and second, when the intended purpose or object of the contract fails. The Supreme Court of India has held that Section 56 of the Indian Contract Act, which deals with frustration, applies to both types of situations. B.K. Mukherjee J of the Supreme Court, in the case of SatyabrataGhose v MugneeramBangur& Co, explained that the term "impossible" in the section does not solely refer to physical or literal impossibility. It can also encompass cases where performance becomes impracticable and useless in terms of the intended object and purpose of the contract. If an unforeseen event or change of circumstances completely undermines the very foundation upon which the parties based their agreement, the doctrine of frustration comes into play.

Non-occurrence of contemplated event

In certain situations, the performance of a contract can still be physically possible, but the value of that performance is destroyed due to the non-occurrence of an event that both parties had contemplated as the reason for entering into the contract. The case of Krell v Henry[14] provides an apt illustration of this principle. In that case, a contract was made to hire a room for the purpose of viewing a proposed coronation procession. However, when the procession was postponed, the contract was held to be frustrated. In order for this outcome to occur, it is necessary for the happening of the event to be the foundation of the contract.

This principle is further exemplified by the case of Herne Bay Steam Boat Co v Hutton[15], which also arose from the postponement of the coronation. In that case, the defendant chartered a steamboat for the specific purpose of taking paying passengers to view a naval review and enjoy a day's cruise around the fleet. However, when the naval review was cancelled, the defendant had no use for the ship. Nevertheless, the defendant was held liable to pay the outstanding balance of the hire, minus the profit that the plaintiff had already earned from the ordinary use of the ship. Vaughan Williams LJ stated that there was nothing that distinguished this contract from a situation where someone hires a carriage to go to a horse race but the race is postponed due to unforeseen circumstances like the spread of an

[14] (1903) 2 KB 740 (CA)
[15] (1903) 2 KB 683 (CA)

infectious disease. In such a case, the person would not be relieved of their obligation to fulfil the contract. Hence, it was sufficient to say that the happening of the naval review was not the foundation of the contract. Therefore, the key principle is that if the value or purpose of a contract is destroyed due to the non-occurrence of an event that both parties had envisaged as the basis for the contract, frustration may be invoked, even if the performance of the contract remains physically possible.

Death or incapacity of a party

A party to a contract is relieved from performance if the contract depends on the existence of a specific person, and that person either dies or becomes too ill to fulfil their obligations. This principle was established in the case of Robinson v Davison[16]. In that case, there was a contract between the plaintiff and the defendant's wife, who was a renowned pianist, to perform at a concert. However, on the day of the concert, she informed the plaintiff that she was too ill to attend. As a result, the concert had to be postponed, causing the plaintiff to incur financial losses. The court held that the defendant's wife was not only excused from performing but was also prohibited from performing if she was unfit to do so. The contract was clearly conditional upon her being well enough to fulfil her obligations. The court reasoned that the entire contract was based on the assumption of the promisor's continued existence and the conditions that existed at the time of the agreement. Since the foundation of the contract was lacking due to the promisor's total incapacity to perform, the contract itself failed.

In another case, a person entered into a ten-year service agreement as a manager and agreed not to undertake any professional engagements without the employer's consent. However, before the expiration of the ten-year term, the person was called up for military service. After the war, the person took on professional engagements without the employer's consent, leading to a lawsuit for breach of contract. The court held that the contract of service had frustrated when the person's services were requisitioned for military purposes. Consequently, the person was released from the contractual covenants.

[16] (1861-73) All ER Rep 699

War

The intervention of war or warlike conditions in contract performance has often raised complex legal questions. One such instance was the closure of the Suez Canal following the Anglo-French war with Egypt, which disrupted the execution of numerous contracts. In the case of Tsakiorglou& Co Ltd v Noblee&Thorl GMBH[17], the question arose as to whether the contract had been frustrated due to the closing of the Suez route. The appellants had agreed to sell groundnuts to the respondents, with shipment intended to be via the Suez Canal. However, when the Canal was closed, the appellants refused to ship the goods via the Cape of Good Hope, arguing that it was an implied term of the contract to use the Suez route. The court held that such a term could not be implied, and the appellants were obligated to ship the goods by a reasonable and practical route, even if it meant incurring greater expenses. The contract was not fundamentally or radically different, and thus, the frustration of the contract did not occur.

It is important to note that if the intervention in war is due to the negligence of a party, the doctrine of frustration cannot be relied upon. Additionally, if there are multiple ways of performing a contract and war only obstructs one of them, the party is still obligated to perform using the available alternative, even if it is inconvenient or costly. This was established in the case of Twentsche Overseas Trading Co Ltd v Uganda Sugar Factory Ltd[18], where the supply of steel rails from Germany was affected by World War II. The court held that the contract did not specify obtaining rails solely from Germany, and there were other sources of supply that the supplier could have utilized.

In various cases, courts have recognized that if the further performance of a contract becomes impossible due to war or government intervention, the affected party may be relieved of their obligations. For example, in A.F. Ferguson & Co v Lalit Mohan Ghose[19], a life insurance contract with a German insurer became impossible to continue when the company's business was closed by the Indian government during the war. The insured party was allowed by the Patna High Court to recover the money paid under the policy. Similarly, in BasantiBastralaya v River Steam India Navigation Co Ltd[20], a contract of carriage by river was involved which

[17] (1961) 2 WLR 633
[18] AIR 1945 PC 144
[19]AIR 1954 Pat 596
[20]AIR 1987 Cal 271

was intercepted by the enemy during hostilities between India and Pakistan, the court recognized the carrier's plea of impossibility.

Overall, the impact of war or warlike conditions on a contract depends on the specific circumstances, the terms of the contract, and whether the intervention fundamentally alters the performance obligations.

Government, administrative or legislative intervention

Contracts can be dissolved when legislative or administrative intervention directly affects the fulfilment of the contract for a specific work, thereby transforming the anticipated conditions of performance. For example, if a vendor of land cannot execute a sale deed because they cease to be the owner by operation of law, the contract may become impossible to perform[21]. Similarly, contracts that involve monopolies or activities prohibited by law may become void upon the enforcement of new legislation or the constitution. In Metropolitan Water Board v Dick Kerr & Co Ltd[22], the House of Lords considered a contract between a contractor and a Water Board for the construction of a reservoir. However, due to a notice issued under the Defence of the Realm Acts, the contractors were required to cease work. The House of Lords held that the interruption caused by the prohibition transformed the contract into a different one when resumed, effectively ceasing its operation.

It is important to note that temporary interventions that do not uproot the foundation of the contract do not have a dissolving effect. In SatyabrataGhose v MugneeramBangur& Co[23], the Supreme Court examined a case where a company planned to develop the land into a housing colony but a portion of the land was requisitioned by the state for military purposes during World War II. The court held that the contract was not frustrated because the requisition orders were of a temporary nature and did not completely upset the basis of the bargain.

The effect of administrative intervention must be interpreted in light of the contract's terms. If the terms indicate that the parties have undertaken an absolute obligation regardless of administrative changes, they cannot claim to be discharged. In Naihati Jute Mills Ltd v KhyaliramJagannath[24], the Supreme Court considered a case involving the purchase of raw

[21]Shiam Sunder v Durga, AIR 1966 All 185
[22] 1918 AC 119 (HL)
[23] AIR 1954 SC 44
[24] AIR 1968 SC 522

jute from East Pakistan (now Bangladesh). The buyer failed to obtain an import license due to changes in government policy. The court held the buyer liable, emphasizing that the contract explicitly acknowledged the difficulty of obtaining the license, and the buyer had assumed the risk of non-compliance.

When intervention makes performance unlawful, the courts have no choice but to terminate the contract. In Boothalinga Agencies v V.T.C. PoriaswamiNadar[25], the defendant had a license to import chicory but the sale of imported goods was subsequently banned. The contract was held to be void because the specific goods described in the contract could not be supplied due to the ban.

In summary, legislative or administrative intervention can dissolve a contract if it directly affects the fulfillment of the contract for a specific work or renders performance unlawful. Its impact on the contract depends on the nature and duration of the intervention, as well as the provisions and obligations specified in the contract itself.

A radical change in circumstances

A contract may be frustrated when unforeseen circumstances arise that make it impossible, extremely difficult, or hazardous to perform the contract in the intended manner and at the specified time. This principle was explained by Kapur J of the Punjab High Court in the case of Pameshwari Das Mehra v Ram Chand Om Prakash[26]. If there is a significant change of circumstances that was not anticipated, and this change affects the performance of the contract to such an extent that it becomes virtually impossible or extremely difficult, the courts will not enforce the contract if the change was not caused by either party's fault. In the case mentioned, Party A had contracted to supply certain types and quantities of American-piece goods to Party B. The goods arrived with some delay, and Party B refused to accept them, claiming that they did not match the contract's specifications. Party A requested Party B to refer the dispute to the nominated arbitrator in Karachi. However, the partition occurred, making it impossible for non-Muslims to travel to Karachi.

The court held that the contract was not frustrated in this situation because the performance of the arbitration agreement would only have been impossible if it was necessary for the

[25] AIR 1969 SC 110
[26] . AIR 1952 Punj 34, 38

parties to go to Karachi and take witnesses there. As going to Karachi was not essential, the change of circumstances did not have a significant effect on the contract.

On the other hand, in a different case[27], a ship was chartered to load cargo, but an explosion occurred in the auxiliary boiler the day before it was supposed to proceed to its berth. This made it impossible for the ship to undertake the voyage at the scheduled time. In this case, the House of Lords determined that frustration had indeed occurred.

However, the court does not grant general liberty to absolve a party from performing their contractual obligations simply because, due to an unforeseen event, the performance becomes burdensome. Parties to an executory contract often encounter unexpected events during its execution, such as abnormal price fluctuations, currency depreciation, or unforeseen obstacles. Yet, these events, in themselves, do not affect the contractual agreement.

The Supreme Court, in the case of Alopi Parshad & Sons Ltd v Union of India[28], established this principle. In that case, the plaintiffs acted as agents for the Government of India to purchase Ghee for the army personnel's use. The Second World War intervened during the performance of the contract, causing a total alteration in the prevailing conditions and rendering the pre-war rates irrelevant. The agents demanded rate revision but received no response. Despite this, they continued to supply the Ghee. When the government terminated the contract in 1945, the agents claimed payment based on enhanced rates. However, they were unsuccessful as they were entitled to receive remuneration based on the terms of the original contract.

The law must adapt to economic changes, and marginal price rises may be disregarded. However, when prices escalate to an extent that performance becomes extremely burdensome for the contractor, almost bordering on impossibility, the law may provide relief to the contractor in terms of price revision. The Supreme Court recognized this in the case of Tarapore& Co v Cochin Shipyard Ltd[29]. In this particular case, there is no doubt that the parties agreed that the contractor's investment (for importing equipment and know-how in foreign exchange) would amount to two crores. The tendered rates were based on and correlated with this understanding. When an agreement is predicated upon a specific factual situation that ceases to exist, the agreement becomes irrelevant or superfluous to that extent.

[27] Joseph Constantine Steamship Line Ltd v Imperial Smelting Corpn. Ltd, 1942 AC 154 (HL).
[28] AIR 1960 SC 588
[29] (1984) 2 SCC 680

As the rates payable to the contractor became irrelevant due to circumstances beyond their control, the contractor had the right to claim compensation.

Overall, the principle of frustration applies when unforeseen circumstances make the performance of the contract impossible or significantly difficult, but not when it merely becomes burdensome due to uncontemplated events.

EFFECTS OF FRUSTRATION

The frustration of a contract results in its automatic dissolution, distinct from rescission, which requires grounds of repudiation, breach, or the choice of a party. The dissolution of a contract due to frustration is determined by the actual impact of events on the feasibility of performing the contract, rather than being contingent on the actions or decisions of the parties involved.[30] It should be noted that the contract is not merely voidable at the discretion of either party; it is immediately and automatically terminated. This principle is also clearly stated in our statutory law, as outlined in Section 56, paragraph (2), which states that a contract to perform an act that becomes impossible or unlawful after its formation becomes void when such act becomes impossible or unlawful due to an event that the promisor could not prevent. However, the Supreme Court, in the case of Naihati Jute Mills Co. Ltd. v. Khyaliram[31], held that in cases of frustration, while the performance of the contract comes to an end, the contract itself remains in existence for purposes such as the resolution of disputes arising under or in connection with it. The court stated that the determination of whether the contract became impossible to perform and was discharged under the doctrine of frustration would still need to be decided under the arbitration clause, which applies to such purposes.[32]

Frustration should not be self-induced

According to Lord Wright in the case of Maritime National Fish Ltd v Ocean Trawlers Ltd[33], the fundamental aspect of the principle of frustration is that it should not be caused by the deliberate actions or choices of a party involved in the contract. While there may not be a direct authority specifically addressing this point, Lord Sumner in Bank Line Ltd v Arthur

[30]Denny, Mott & Dickson Ltd v James B. Fraser & Co Ltd, (1944) AC 265
[31]ibid
[32]Union of India v. Kishorilal , (1960) 1 S.C.R. 514
[33] 1935 AC 524 (PC

Capel & Co[34] made a reference to the issue. He stated that the principle of frustration assumes that it occurs without any blame or fault on either side, or self-induced frustration cannot be relied upon.

Frustration operates automatically

Frustration operates automatically and independently of the individuals involved in the contract, including their personal characteristics, interests, and circumstances[35]. The legal consequences of frustration are not contingent upon the parties' intentions, opinions, or even their knowledge of the event.[36] These factors may serve as evidence for the court to determine whether the changed circumstances have fundamentally undermined the purpose and basis of the contract. In Indian law, specifically under Section 56 of the Contract Act, frustration is governed by a statutory rule that does not rely on the parties' intentions but rather establishes a definitive legal framework for its application.

LIMITATIONS ON THE DOCTRINE

There are certain inherent limitations to the application of the doctrine of discharge of a contract by supervening impossibility. Firstly, the statute itself clarifies that the frustrating event must be something that the promisor could not have prevented. In other words, a party cannot rely on self-induced frustration as a basis for discharge. This aspect has also been emphasized by judicial decisions in India. For instance, as early as 1907, the Allahabad High Court stated in the case of Ganga Dei v. Asa Ram and Ors.[37]that Section 56 of the Contract Act specifically refers to situations where the performance of a contract becomes impossible due to reasons other than the default of the promisor. If the promisor himself engaged in an act or omission that rendered it impossible for him to fulfil the agreed-upon action, the contract does not become void under Section 56. This section does not apply to cases where the contract becomes impossible to perform as a result of an act by the promisor himself.

There is another aspect to consider. In cases where the parties have made provisions for a particular contingency, but the actual occurrence of that contingency is more severe and fundamental than anticipated, the question arises: What would be the legal position in such

[34] 1919AC435 (HL)
[35]Loreburn, Davis Contractors Ltd v Fareham Urban Distt Council, (1956) AC 696, 715
[36]ibid
[37] (1907) 4 A.L.J. 778

circumstances? The answer depends on the interpretation of the contractual provision. It is a matter of construction whether the express provision is intended to be a comprehensive and exclusive solution that governs all forms of the contingency, regardless of their severity. If the provision is not intended to have such an all-encompassing character, it will not prevent the discharge of the contractual obligation if, as a result, the contingency frustrates the essential objective of the contract. This is the position in English law, although there is no direct decision in India addressing this aspect.

In the leading case of Jack Marine Insurance Co., Ltd.[38], a ship was chartered with the condition to proceed with all possible despatch, with exceptions for dangers and accidents of navigation, from Liverpool to Newport for loading cargo destined for San Francisco. The ship sailed on January 2 but ran aground in Carnarvon Bay on the 3rd. It was refloated by February 18 but remained under repair in Liverpool until August. On February 15, the charterers repudiated the contract. The court held that the adventure contemplated by the parties was frustrated, despite the express exception for "dangers and accidents of navigation," because the actual accident causing extensive damage was not intended to be covered by that provision, as it was of a more severe nature than anticipated.

In India, the concept of impossibility under the current context does not encompass what is known as a commercial impossibility. The mere fact that performance has become more burdensome or that a party cannot achieve the same level of profit as anticipated does not lead to discharge. Therefore, a contract for the supply of freight cannot be considered frustrated under the provisions of Section 56, clause (2) of the Act solely due to the unavailability of freight except at an excessively high price[39].

CONTRACTUAL FRUSTRATION VS. BREACH OF CONTRACT

Differences

Breach of contract and contractual frustration are two distinct legal concepts that pertain to the failure or termination of a contract. Although both involve a failure to fulfil contractual obligations, they stem from different circumstances and have varying repercussions. This

[38] . L.R. (1874) 10 C.P. 12
[39]KarlsEttlinger v. Chogandas , (1916) 40 Bom. 3

essay will delve into the differences between breach of contract and contractual frustration, providing an in-depth analysis of each concept.

Breach of contract occurs when one party fails to fulfil their obligations under the contract without a valid excuse or justification. It encompasses deliberate or intentional acts or omissions that contravene the terms and conditions outlined in the contract. Breach of contract can manifest in various forms, such as non-payment, failure to deliver goods or services, inability to meet deadlines, or any other shortfall in meeting the requirements stipulated in the agreement. When a breach transpires, the party that did not breach the contract (referred to as the non-breaching party) may be entitled to seek remedies such as damages, specific performance, or even termination of the contract. Conversely, contractual frustration refers to a scenario where unforeseen events occur subsequent to the formation of the contract, rendering it impossible or substantially different to perform. These events typically lie beyond the control of the parties involved and are not attributable to any fault or wrongdoing on their part. Contractual frustration operates to automatically absolve the parties from their obligations under the contract. The underlying principle is that when an unforeseen event renders the contract impossible or fundamentally different, it would be unjust to hold the parties bound by its terms.

The primary distinction between breach of contract and contractual frustration lies in the nature of the non-performance and the subsequent impact on the contract. Breach of contract involves a wilful or intentional act or omission by one party that infringes upon the terms of the contract. In contrast, contractual frustration arises due to unforeseen events that render performance impossible or fundamentally different. In cases of breach, the non-breaching party can pursue remedies to address the harm caused by the breach, such as seeking damages or specific performance. However, in cases of contractual frustration, the contract is automatically discharged, releasing the parties from their obligations. No party can be held liable for non-performance resulting from frustration.

Another significant distinction pertains to the effect on the parties rights and obligations. In cases of breach, the innocent party possesses the choice to either continue with the contract and seek remedies, or terminate the contract and claim damages. The innocent party has the option to affirm or rescind the contract based on the breach. In contrast, when contractual frustration occurs, the contract is terminated automatically, and the parties are relieved of their obligations. The rights and obligations of the parties are extinguished from the moment

frustration arises. Furthermore, it is important to note that the consequences of the breach and contractual frustration may vary. In cases of breach, the non-breaching party may pursue compensation for any losses incurred as a result of the breach. The objective is to restore the innocent party to its former position, had the breach not occurred. Conversely, in cases of contractual frustration, parties are generally not entitled to damages. Each party typically bears their own losses resulting from the frustration, as it is considered an unforeseen and uncontrollable event.

In conclusion, breach of contract and contractual frustration are distinct concepts within contract law. Breach of contract involves the intentional failure to fulfil contractual obligations, whereas contractual frustration arises from unforeseen events that render performance impossible or substantially different. Breach of contract allows for remedies to be sought by the innocent party, while contractual frustration automatically discharges the contract, freeing the parties from their obligations. Understanding the differences between these concepts is crucial in determining the rights and liabilities of the parties involved in a contractual dispute.

Similarities

While breach of contract and contractual frustration are distinct legal concepts, they do share some similarities in relation to the failure or termination of a contract. It is worth exploring these similarities to gain a comprehensive understanding of both concepts.

Impact on Contractual Obligations: Both breach of contract and contractual frustration result in the non-fulfilment of contractual obligations. In both cases, there is a deviation from the agreed-upon terms and conditions of the contract leading to performance failure, as expected.

Legal Consequences: Both breach of contract and contractual frustration can have legal consequences for the parties involved. In the case of a breach, the non-breaching party may seek remedies such as damages or specific performance to address the harm caused by the breach. In cases of contractual frustration, the contract is automatically discharged, releasing the parties from their obligations.

Disruption of Expectations: Both breaches of contract and contractual frustration disrupt the expectations and intentions of the parties at the time of contract formation. They introduce

uncertainty and may lead to financial losses or other detrimental effects for one or both parties.

Need for Remedies or Resolution: In both breach of contract and contractual frustration, there is a need to address the consequences of the non-performance. Whether it is seeking remedies for a breach or resolving the termination of the contract due to frustration, the parties must find a way to deal with the aftermath of the failure to perform.

Potential for Dispute or Legal Proceedings: Both breach of contract and contractual frustration can give rise to disputes and legal proceedings. The aggrieved party may choose to pursue legal action to enforce their rights, seek compensation, or clarify their position in relation to the contract.

COMPARATIVE ANALYSIS WITH CIVIL LAW SYSTEMS

Frustration of Contract in French Law[40]

While the term "frustration" does not exist in the French language, it is indeed an English concept and is specifically associated with English law. Therefore, French lawyers do not have an equivalent term or legal doctrine that directly corresponds to the English doctrine of frustration. Instead, they rely on alternative doctrines that are based on different ideas in order to achieve similar outcomes based on principles of natural justice.

The doctrine of frustration in English law differs from the concept of rescinding a contract due to certain types of breaches committed by one party. It is also distinct from the doctrine of impossibility of performance, although there may be some confusion between the two. The true purpose of the doctrine of frustration, separate from impossibility, is to address situations where unforeseen circumstances completely disrupt the fundamental basis of a contract, resulting in a contract that would be fundamentally different from what the parties initially intended. In France, the general doctrine of force majeure is applied to cases of impossibility of performance under Articles 1147 and 1148 of the Civil Code. This doctrine applies to various types of contracts, including administrative contracts between the state or public entities and private individuals. Under the doctrine of force majeure in French law, a contract can be rescinded, and no liability is incurred by a party for non-performance if it becomes

[40]Frustration of Contract in French Law, (1946) Vol. 28, No. 3/4 Journal of Comparative Legislation and International Law 11-14

impossible to perform the contract due to an event that could not have been reasonably foreseen at the time of entering into the contract. The impossibility must be absolute, and it must not simply impose additional burdens on a party to constitute force majeure.

Force majeure cases in French law fall into two categories. The first category includes cases of legal impossibility arising from changes in the law, governmental decrees, or statutes (known as fait du prince) that prohibit or prevent a party from fulfilling their obligations under the contract. These cases align with the English doctrine of frustration. The second category involves physical impossibility resulting from the loss of goods (without fault), acts of God, or acts of the enemy (such as requisition or transport stoppages) that completely prevent the execution of the contract. In such cases, when the impossibility arises without fault and could not have been reasonably foreseen by the parties, the doctrine of force majeure applies. The contract is considered null and void, and the parties are released from further obligations and acts performed before the force majeure occurred and are annulled to the extent possible. The doctrine of force majeure in France is distinct from the doctrine of imprévision (unforeseen change of circumstances), just as the French theory of contract interpretation differs from English contract construction rules. The English doctrine of frustration focuses on contracts becoming fundamentally different from the parties' original intentions, while the French doctrine of imprévision aims to interpret the will of the contracting parties. However, the doctrine of imprévision has not been recognized by French civil and commercial courts, including the Court of Cassation, which upholds the principle of contract sanctity and does not intervene unless a case of force majeure exists. While the civil and commercial courts in France remain strict in not accepting the doctrine of imprévision, there have been developments that mitigate the perceived rigidity. For instance, since 1914, contracts in France have included clauses addressing changes in circumstances and means for modifying contracts when necessary. Additionally, arbitration clauses granting arbitrators amiable compositeur powers allow them to consider the change in circumstances in their decision-making process. Furthermore, Parliament has enacted laws providing remedies for parties affected by significant changes in circumstances. The severity of French courts in rejecting the doctrine of imprévision also does not apply universally, as the administrative courts, such as the Conseild'Etat, have accepted it in certain cases involving contracts with public entities and closely tied to public interests. It should be noted that the strictness of French courts and the mentioned rules regarding the doctrine of imprévision apply during a period when the principle of freedom of contracts was upheld. However, if France transitions

to an économiedirigée (directed economy) where contracts significantly impact national interests and public policy, different rules may prevail.

Frustration of Contract in German Law[41]

In German law, the doctrine of frustration of contract, particularly the concept of impossibility, has undergone significant developments. The Civil Code addresses different scenarios of impossibility and its effects on contracts. Initial impossibility refers to situations where no party can perform the contract, rendering it void. However, if performance is only impossible for the debtor, the contract remains in force, and the debtor becomes liable for damages. In cases of supervening impossibility, where performance becomes impossible after the contract is formed, the debtor is automatically discharged unless they are responsible for the impossibility. In such cases, the debtor may be held liable for damages. The Code also distinguishes between ordinary contracts and reciprocal contracts, with reciprocal contracts involving promises by the parties that stand in a relation of reciprocity. Under German law, in ordinary contracts without a reciprocal counter-promise, if performance becomes impossible for one party without their responsibility, that party is discharged from their duty to perform. If consideration has already been given, its value may be recovered to the extent that the recipient is still enriched. When performance becomes partially impossible, the duty to render consideration is proportionally reduced. However, special provisions apply in cases involving the destruction of the object that is the subject of the obligation. It's worth noting that the concept of impossibility in the legal sense is distinct from its logical, technical, or philosophical meanings. A performance may be legally impossible even if it is physically or scientifically possible. The traditional conception of impossibility has been expanded in German law, particularly regarding whether statutory rules of impossibility can be applied when performance is not possible at the promised time and place. The Supreme Court has dealt with cases where debtors promised the delivery of specified goods that were subsequently destroyed, raising the question of whether the performance could be postponed. The passing of risk in goods sold has also been addressed, with the introduction of the rule that the risk passes on delivery. The Supreme Court recognized that in cases of delay in performance, the essence and economic feasibility of the act can become different from the originally agreed-upon performance, leading to a question of impossibility. Some legal

[41]Frustration of Contract in German Law,Journal of Comparative Legislation and International Law , 1946, Vol. 28, No. 3/4 (1946), pp. 15-25

writers have argued for a broader understanding of impossibility, defining it in economic terms. They believe that if a performance is economically difficult to the point where it cannot be reasonably demanded of the debtor, it should be considered impossible. However, opponents of this theory point out weaknesses, such as the vagueness of economic impossibility and the lack of clarity regarding the fate of consideration and the circumstances under which the debtor could refuse to perform. In specific cases, the German courts have preferred a more drastic solution, where contracts of employment and partnership can be terminated freely by either party for "important reasons," regardless of the agreed-upon duration. This provides an alternative to both the doctrine of impossibility and good faith considerations.

The outbreak of World War I presented new challenges to the doctrine of impossibility. The economic fluctuations and rise in prices during the war led the courts to distinguish cases where debtors could be discharged from those where they had to bear the burden of rising prices. Initially, the doctrine of impossibility was used, with some decisions stating that performance was impossible if it would lead to the debtor's economic ruin. However, this test was later abandoned as it favored debtors with unstable businesses. The courts sought alternative solutions and turned to the principle of "good faith" (Section 242 of the Civil Code). This principle allowed debtors to refuse performance while preserving the contract, but it lacked clarity regarding the fate of consideration and the circumstances under which the debtor could refuse to perform. Additionally, the courts introduced specific rules for certain cases, such as freely terminating contracts of employment and partnerships for "important reasons." These developments tested the flexibility of the doctrine of impossibility and led to the exploration of alternative approaches.

The concept of "Geschaeftsgrundlage" in German law, deals with the adjustment or modification of contracts when the underlying basis or assumptions have significantly changed or become invalid. This doctrine is often invoked in cases where unforeseen circumstances or events make the performance of the contract significantly different from what the parties originally intended. It is limited to reciprocal contracts and may include a claim for contribution or reimbursement when one party has made payments based on false or invalid assumptions. The development of the doctrine of "Geschaeftsgrundlage" has seen different tendencies. Initially, the courts relied on broader principles such as "good faith" and the "clausula rebus stantibus" to adjust or terminate contracts if there was a fundamental

change in circumstances. However, the courts later sought to establish criteria for the invocation of the doctrine, emphasizing that an erroneous appreciation of the legal or factual position by one party alone is not sufficient for a lapse of the contract's basis. There must be a truly fundamental economic upheaval for the doctrine to apply. There has also been a trend toward judicial adaptation of contracts to new conditions rather than rescission or termination, taking into account the assumptions, intentions, and interests of the parties.

Practical Tips for Dealing with Contract Frustration

Dealing with contract frustration can be a complex and challenging situation and varies from one situation to another. Here are some practical tips to navigate the process effectively:

Review the contract: Carefully review the terms and conditions of the contract to understand the rights, obligations, and provisions related to contract frustration. Look for any force majeure clauses, termination provisions, or provisions related to the impossibility of performance.

Assess the situation: Evaluate the circumstances that have led to the frustration of the contract. Determine if the frustration is temporary or permanent, and whether it affects the entire contract or only specific obligations.

Communicate with the other party: Open communication is crucial in contract frustration situations. Notify the other party as soon as possible about the frustration and discuss its impact on the contract. Promptly inform them about any obstacles or events preventing performance.

Understand legal obligations: Seek legal advice to understand your legal rights and obligations regarding contract frustration. A legal professional can provide guidance on applicable laws, contractual provisions, and potential remedies.

Mitigate damages: Take reasonable steps to mitigate any damages resulting from the frustration. Document your efforts to minimize losses and keep records of any expenses incurred in the process.

Explore alternatives: Consider alternative solutions to mitigate the impact of contract frustration. This could involve renegotiating the terms, seeking an extension, finding substitute performance, or entering into a new agreement.

Document everything: Keep a comprehensive record of all communications, actions, and efforts related to the contract frustration. This documentation can be valuable in any future legal proceedings or disputes.

Negotiate in good faith: Engage in negotiations with the other party in good faith. Explore potential compromises or alternative arrangements that are mutually beneficial and fair.

Seek dispute resolution: If you are unable to reach a resolution through negotiations, consider alternative dispute resolution methods, such as mediation or arbitration. These processes can provide a less formal and more efficient way to resolve conflicts.

Consult with insurance providers: If you have relevant insurance policies, consult with your insurance provider to determine if the contract frustration situation is covered by any insurance policies you hold. Understanding your insurance coverage can help alleviate financial burdens.

Maintain professionalism: Throughout the process, maintain a professional and respectful demeanour. Adhering to professional standards can help preserve relationships and facilitate smoother negotiations.

Seek legal advice and guidance: Contract law can be intricate, and the specific circumstances of each case can vary. By consulting with a legal professional, you can gain a thorough understanding of your rights and obligations concerning contract frustration. They can analyse the contract terms, applicable laws, and relevant legal precedents to provide you with tailored advice.

Document any variations or amendments: If the parties agree to modify or amend the contract due to frustration, ensure that all changes are documented in writing and signed by both parties to avoid any future disputes or misunderstandings.

CONCLUSION

In conclusion, the frustration of contract is a legal doctrine that addresses unforeseen and exceptional circumstances that render contractual obligations impossible to perform. This research paper has explored the concept of frustration of contract from various perspectives, including its definition, legal framework, and application in different jurisdictions. It has become evident that the frustration of a contract is a vital mechanism that ensures fairness and justice in contractual relationships when parties encounter unexpected events beyond their control. Throughout the paper, we have examined the key elements necessary to establish the frustration of a contract, such as the occurrence of an unforeseen event, the impact of that event on the contractual performance, and the absence of fault or negligence by either party. Moreover, we have analyzed different approaches taken by courts in determining frustration, including the traditional English approach of strict application and the more flexible approach adopted by some civil law jurisdictions. Furthermore, the research has shed light on the consequences of frustration, such as the discharge of future obligations, the allocation of losses, and the possibility of restitution. We have discussed the challenges associated with determining the precise moment of frustration, as well as the potential conflicts with other legal doctrines, such as force majeure. In doing so, we have highlighted the need for clear and comprehensive contractual provisions to address these issues effectively. The doctrine must be applied judiciously to prevent abuse and ensure that the principle of pacta sunt servanda (contracts must be honoured) is upheld.

Lastly, the frustration of contract serves as a necessary legal recourse in cases of unforeseen events that render performance impossible. Its application requires careful consideration of the specific circumstances and the underlying principles of fairness and justice. As commercial relationships become increasingly complex, the doctrine of frustration will continue to evolve and adapt to new challenges, ensuring that parties are not unfairly burdened by events beyond their control and that contractual relationships remain grounded in principles of reasonableness and equity.