

**TERMINATION OF AGREEMENTS AND ITS IMPACT ON BUSINESS  
TRANSACTIONS IN INDIA WITH REFERENCE TO PRE AND POST-COVID-19  
CONTRACTUAL OBLIGATIONS**

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**ABSTRACT**

*This research paper delves into the legal landscape surrounding the termination of agreements in India and its repercussions on business transactions. It examines the evolution of contractual obligations in the pre and post-COVID-19 eras, focusing on the legal framework, case law, implications for businesses and also delving into the economic efficiency of pandemic-induced contractual disputes. The paper analyses the changes brought about by the pandemic, exploring the challenges faced by parties in terminating agreements and the subsequent impact on business relationships. Through a comparative study, this paper aims to provide insights into the shifts in contractual dynamics and the adaptability of the Indian legal system to the changing business environment.*

**Keywords:** Termination, Business Transactions, Contractual Obligations, COVID-19, Legal Framework, Force Majeure.

**INTRODUCTION**

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Contracts form the backbone of commercial interactions, defining the terms and obligations that underpin business relationships. In India, as in most jurisdictions, the termination of agreements holds significant legal and economic implications for the parties involved. The global outbreak of the COVID-19 pandemic further magnified the complexities associated with contract termination, introducing unprecedented challenges and reshaping the dynamics of business transactions. The pre-COVID-19 era witnessed the establishment of fundamental principles of contract law through landmark cases and legislative provisions. Indian courts have historically emphasized the sanctity of contracts and the necessity for parties to honour their agreed-upon obligations. The enforcement of contractual terms played a pivotal role in promoting trust, fostering commercial growth, and providing legal recourse in case of

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breaches. However, the emergence of the pandemic disrupted these established norms, prompting a reevaluation of contractual obligations in the face of unforeseen and extraordinary circumstances. The research paper aims to comprehensively explore the termination of agreements in India and its multifaceted impact on business transactions, while specifically focusing on the evolution of contractual obligations in the pre and post-COVID-19 periods. The legal framework governing the termination of agreements in India encompasses relevant sections of the Indian Contract Act, 1872, as well as contractual clauses related to termination. It will elucidate the significance of force majeure and frustration clauses in contract law and their applicability in different scenarios. A comparative study of the pre and post-COVID-19 eras, will scrutinize changes in parties' attitudes toward termination, renegotiation, and adaptation of contracts, emphasizing the legal and business considerations that have evolved. Hence, here we will shed light on the intricate relationship between the termination of agreements, business transactions, and legal developments in India. By examining the legal foundation, historical context, and pandemic-induced changes, the study seeks to contribute to a comprehensive understanding of the evolving contractual landscape in the country.

### **LEGAL FRAMEWORK OF AGREEMENT TERMINATION IN INDIA**

The cornerstone of contractual interactions in India is the Indian Contract Act, 1872. A contract is described in Section 2(h) of the Act as "an agreement enforceable by law." The Act outlines the necessary conditions for a contract to be enforceable, including an offer, acceptance, consideration, purpose to establish a legal relationship, capacity, and legitimate object. These elements collectively lay the foundation for the enforceability of contractual obligations. Contracts often include clauses outlining the circumstances and procedures for their termination. Termination clauses provide parties with a pre-determined mechanism for ending the contractual relationship. These clauses specify conditions that, when met, grant parties the right to terminate without being in breach of contract. Termination clauses may address issues such as notice periods, termination for convenience, termination for cause, and the consequences of termination. These clauses not only offer clarity but also serve to manage risks associated with agreement termination. The concept of force majeure acknowledges that unforeseeable and uncontrollable events can impact a party's ability to fulfill its contractual obligations. While not explicitly defined in the Indian Contract Act, courts have recognized its application. The doctrine of force majeure excuses performance when an event beyond the parties' control makes performance impossible, illegal, or radically different from what was

initially contemplated. In a force majeure scenario, parties are relieved from their obligations, but only if the event qualifies as force majeure as per the terms of the contract. Frustration of contract, under Section 56<sup>1</sup> of the Indian Contract Act, occurs when an unforeseen event makes the performance of a contract impossible, illegal, or fundamentally different from what was intended. When frustration is established, the contract is considered void from the beginning, and parties are released from their obligations. Courts apply the doctrine of frustration strictly, requiring that the event be truly exceptional, beyond the parties' control, and not caused by their fault.

The legal framework of agreement termination in India creates a delicate balance between upholding contractual obligations and accommodating unforeseen circumstances. Termination clauses offer parties a measure of predictability and control over termination scenarios. Force majeure and frustration clauses provide a safety valve in situations where external events disrupt the feasibility of contract performance. These legal mechanisms play a pivotal role in minimizing disputes arising from unforeseen disruptions and fostering a stable business environment. In the pre-COVID-19 era, the Indian legal framework established the foundation for contractual obligations and termination mechanisms. Post-COVID-19, the framework faced unprecedented challenges due to the pandemic's impact on contractual performance. The utilization of force majeure and frustration clauses became crucial in renegotiating, modifying, or terminating contracts in light of pandemic-induced disruptions. The comparative analysis of the pre and post-COVID-19 legal landscape highlights the adaptability of the Indian legal system and its response to changing business dynamics.

**Pre-COVID-19 Contractual Obligations:** The Indian legal system has a rich history of cases related to contractual obligations, providing valuable insights into the interpretation and enforcement of agreements before the COVID-19 pandemic. Precedents established in various cases have shaped the principles governing contract law in India. To prevent the Central Government and Ministry of Coal from using their bank guarantees, Indrajit Power Pvt Ltd filed a case with the Delhi High Court: *Indrajit Power Pvt Ltd v. Union of India & Ors.* As a result of non-payment, Indrajit Power Pvt Ltd breached its contractual obligations. Due to COVID-19, the Central Government had already granted them a twelve-month extension before agreeing to take the bank guarantees. Consequently, the Delhi High Court denied the plea and ruled that the government's 12-month extension did not give them enough time to

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<sup>1</sup> <https://www.cag.gov.in/uploads/media/Indian-Contract-Act-1872-20200816140128.pdf>

make the payment. In spite of this, it's crucial to remember that the court didn't deem financial hardship sufficient to stay the judgment of the Central Government.

In *Satyabrata Ghose v. Mugneeram Bangur*, the Supreme Court held that the theory of frustration must be interpreted in accordance with Article 56.<sup>2</sup>

When faced with unexpected events, contractual obligations were made more flexible in this case. A landmark case dealing with "force majeure" was *Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)*. If a contract cannot be performed due to circumstances beyond the parties' control, such as war or natural disasters, the parties may be excused from their responsibilities. This case laid the foundation for the force majeure clause in contracts.

Pre-COVID-19 case law underscored the importance of honouring contractual obligations and maintaining the sanctity of agreements. It highlighted the need for parties to consider potential risks and unforeseen events when drafting contracts. The cases also emphasized the need for a balance between strict enforcement of contracts and the recognition of exceptional circumstances. The case law analysis reveals that even before the pandemic, Indian courts recognized the necessity for flexibility in contractual obligations in the face of unforeseen events. This flexibility has become even more relevant in the post-COVID-19 era. The principles of frustration and force majeure, established in these cases, offer valuable guidance in navigating the challenges posed by the pandemic and its impact on contractual performance.

The COVID-19 Pandemic and Contractual Performance: The onset of the COVID-19 pandemic in 2019 triggered a global crisis, disrupting business operations and contractual performance worldwide. In response, Indian regulatory bodies and courts were called upon to address the challenges posed by the pandemic on contractual relationships. Regulatory bodies, such as the Ministry of Finance and the Ministry of Corporate Affairs, issued advisories and notifications to guide businesses through the pandemic's uncertainties. These measures aimed to provide relief, extend deadlines, and facilitate compliance in light of lockdowns and economic disruptions. Additionally, Indian courts began to grapple with cases related to contract termination, invoking principles of force majeure and frustration. The pandemic had far-reaching implications on contractual relationships across industries. Lockdowns, travel restrictions, supply chain disruptions, and changes in consumer behaviour led to substantial challenges in fulfilling contractual obligations. Businesses faced financial distress, workforce

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<sup>2</sup> <https://indiankanoon.org/doc/1214064/>

shortages, and logistical constraints making it difficult to perform as initially agreed. As a consequence, parties sought remedies to navigate the uncertainties. While some contracts were terminated due to the pandemic's direct impact, others were renegotiated or modified to accommodate new realities. These changes reflected the unprecedented circumstances that the pandemic brought about and the need for parties to find collaborative solutions.

**Force Majeure:** The COVID-19 pandemic triggered a surge in force majeure claims, as parties sought to rely on this clause to excuse non-performance. The applicability of force majeure depended on the specific terms of the contract and the nature of the disruption. Courts were tasked with interpreting force majeure clauses, determining whether the pandemic qualified as a triggering event, and assessing the impact on contractual obligations. Deputy Secretary of the Indian Government and the Ministry of Finance made the same public. COVID-19 is specifically listed as a force majeure occurrence in Paragraph 9.7.7 of the 2017 Manual of Procurement of Goods. Contracts with government agencies that are due to be completed on or after February 20, 2020, may use the force majeure provision. In addition, they will receive a three to six-month extension without any additional fees or penalties.<sup>3</sup>

**Frustration:** The pandemic's pervasive and unforeseeable nature prompted parties to explore the doctrine of frustration. Courts analysed whether the pandemic rendered contractual performance fundamentally different from what was initially envisaged, leading to the voiding of the contract. Establishing frustration required demonstrating that the event was beyond the parties' control and had fundamentally altered the contract's nature. The COVID-19 pandemic highlighted the importance of adaptable contractual mechanisms in the face of unprecedented challenges. While pre-COVID-19 case law and contractual practices formed a foundation, the pandemic underscored the need for contracts to address unforeseen events explicitly. The regulatory and judicial responses to the pandemic-induced disruptions demonstrated the legal system's willingness to evolve in response to changing circumstances. The court confirmed its current approach to 'frustration' in *Energy Watchdog v. Central Electricity Regulatory Commission* by citing the 2013 *Sea Angel* case from England.<sup>4</sup>

**Post-COVID-19 Contractual Adaptations:** In the wake of the COVID-19 pandemic, businesses faced the challenge of preserving existing contractual relationships while navigating unprecedented disruptions. As parties grappled with uncertainties, many turned to

<sup>3</sup> <https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf>

<sup>4</sup> <https://indiankanoon.org/doc/29719380/>

renegotiation and modification of contracts as a means to adapt to the changing landscape. Renegotiation involved revisiting terms such as payment schedules, delivery timelines, and performance expectations to align with the new realities. This allowed parties to find mutually beneficial solutions and sustain their business relationships, even in the face of adversity. The pandemic accelerated the digital transformation of business transactions, prompting a shift towards remote work, online transactions, and virtual collaborations. As in-person interactions became limited, businesses swiftly adopted digital platforms for contract formation, execution, and communication. E-signatures, digital contracts, and virtual negotiations gained prominence, enhancing the efficiency and flexibility of business operations. The judicial recognition of the role of technology in legal proceedings has been underscored in the case of the State of Maharashtra vs. Praful Desai,<sup>5</sup> wherein the Apex Court held that the term 'evidence' encompasses electronic evidence. The court's verdict also established that video conferencing can be employed as a means to record evidence. This decision highlighted that the evolution of technology has introduced the concept of virtual courts, akin to physical court proceedings. Even before the emergence of the COVID-19 pandemic, the National Green Tribunal had taken proactive steps by conducting its proceedings before the Zonal Benches via Video Conferencing. Courts at all levels had to respond to the unprecedented and exceptional circumstances brought about by the COVID-19 outbreak. Courts were compelled to ensure that their physical premises did not contribute to the virus' spread based on the imperative of social distancing. Recognizing the urgency of the situation, the Supreme Court, in its suo moto cognizance of the matter titled Re: Guidelines For Court Functioning Through Video Conferencing During COVID-19 Pandemic,<sup>6</sup> directed that courts must adopt measures to facilitate the robust functioning of the judicial system through the utilization of video conferencing technologies.

In line with this approach, several High Courts have introduced guidelines that enable online filing and the hearing of urgent matters through video conferencing. These measures have been pivotal in maintaining the continuity of judicial proceedings while adhering to the imperatives of health and safety. The integration of technology in legal proceedings has not

only found judicial endorsement but has also become a necessity in the face of the pandemic's challenges. This transition to digital platforms for court proceedings demonstrates the

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<sup>5</sup> <https://indiankanoon.org/doc/560467/>

<sup>6</sup> [https://main.sci.gov.in/supremecourt/2020/10853/10853\\_2020\\_0\\_1\\_21588\\_Judgement\\_06-Apr-2020.pdf](https://main.sci.gov.in/supremecourt/2020/10853/10853_2020_0_1_21588_Judgement_06-Apr-2020.pdf)

adaptability of the judicial system to extraordinary circumstances while safeguarding the interests of justice and public health. This transformation allowed parties to continue their contractual activities while adhering to health and safety guidelines. Post-COVID-19, the strain on judicial systems and the need for swift resolution prompted businesses to explore alternative dispute resolution (ADR) mechanisms. Mediation, arbitration, and other ADR processes gained traction as parties sought timely and cost-effective solutions. These mechanisms allowed parties to address contract-related disputes without enduring the lengthy court procedures, which were further delayed due to pandemic-induced challenges. ADR also fostered a collaborative approach, enabling parties to maintain relationships while resolving conflicts. The COVID-19 pandemic has unleashed unprecedented economic turmoil, prompting governments worldwide to address the delicate balance between economic stability and the welfare of individuals and businesses. As societies grapple with mitigating the pandemic's fallout, public policy interventions are crucial to ensuring equitable relief and preserving contractual relations while safeguarding long-term interests. The Reserve Bank of India's Covid-19 Regulatory Package offers loan moratoriums to ease cash flow disruption, while amendments to the Insolvency and Bankruptcy Code restrict corporate insolvency filings. These measures provide businesses with breathing room to weather the storm without resorting to insolvency. The post-COVID-19 period witnessed a shift in how parties approached contractual adaptations. While pre-pandemic practices emphasized strict enforcement of agreements, the new context required greater flexibility and responsiveness. Renegotiation, digital transformation, and ADR mechanisms were often deployed to manage the uncertainties introduced by the pandemic. This comparative analysis highlights the transformation of contractual practices from a traditional, rigid approach to a more dynamic and adaptable one in response to unforeseen disruptions.

**Comparative Analysis: Pre vs. Post COVID-19:** Pre-COVID-19, contractual termination was largely governed by established principles, with a focus on upholding obligations and ensuring predictability. Parties were generally expected to perform according to the agreed terms unless exceptional circumstances, such as force majeure or frustration, intervened. However, the pandemic-induced disruptions altered termination dynamics significantly. Post-COVID-19, termination became more nuanced, with parties grappling with uncertainties, renegotiating terms, and considering alternative approaches to maintain contractual relationships. In the pre-COVID-19 era, risk allocation primarily relied on contractual clauses such as force majeure, indemnity, and limitation of liability. These clauses were often standard provisions aimed at

addressing foreseeable risks. Post-COVID-19, parties were compelled to adopt more comprehensive risk mitigation strategies. Contracts began to incorporate pandemic-specific clauses, contingencies for supply chain interruptions, and mechanisms to address unforeseen disruptions. This shift marked a departure from the past practice of relying on generic risk allocation mechanisms. The pre-COVID-19 contractual landscape provided a sense of stability and predictability. Legal disputes were often centered around issues of breach and enforceability, guided by established case law. Post-COVID-19, businesses and legal practitioners grappled with unprecedented challenges. Adapting contracts to the new realities required careful consideration of legal and commercial factors. Questions arose about the applicability of force majeure, the extent of frustration, and the interpretation of pandemic-related clauses. Balancing the legal enforceability of contracts with the practicalities of business operations posed intricate challenges.

The comparative analysis underscores the Indian legal system's ability to adapt to changing circumstances. Pre-COVID-19, the legal framework was geared toward conventional contractual practices. Post-COVID-19, the legal system demonstrated its adaptability by accommodating new termination dynamics, risk allocation strategies, and the integration of pandemic-related considerations. This adaptability highlighted the need for a harmonious interplay between legal principles and practical business realities.

**Industries Severely Impacted by COVID-19:** The COVID-19 pandemic had a profound impact on various industries, causing disruptions in supply chains, plummeting demand, and operational challenges. Some of the industries that were severely affected include- Hospitality and Tourism: Travel restrictions and lockdowns led to cancellations of bookings, events, and travel plans, causing substantial revenue losses. Retail: Closure of physical stores, reduced footfall, and changes in consumer behaviour prompted retailers to reevaluate their contractual relationships with suppliers, landlords, and vendors. Manufacturing: Supply chain disruptions, labor shortages, and reduced operational capacities compelled manufacturers to reconsider their contractual commitments.

In *Raj Kumar v. Haryana Urban Development Authority (2010)*, the court emphasized strict enforcement of contractual terms. The plaintiff's failure to comply with certain conditions led to the termination of the contract. The case highlighted the importance of parties fulfilling their obligations to avoid termination.



In Halliburton Offshore Services Inc. v. Vedanta Limited (2021)<sup>7</sup>: The pandemic led to disruptions in the oil and gas industry, impacting contractual performance. In this case, the court ruled in favor of the respondent, Vedanta Limited, recognizing force majeure as a valid defense for non-performance. The court acknowledged the pandemic's impact on the respondent's ability to perform and allowed the termination of the contract without penalties.

These case studies illustrate the shift in judicial approach from a strict enforcement perspective in the pre-COVID-19 era to a more pragmatic and adaptive stance in the post-COVID-19 period. While the Raj Kumar case emphasized compliance, the subsequent cases acknowledged the pandemic's exceptional nature, considering force majeure and promoting renegotiation as viable solutions.

## CONCLUSION

The exploration of termination of agreements in India and its impact on business transactions in the pre and post-COVID-19 periods has yielded significant insights. The legal framework of agreement termination, governed by the Indian Contract Act, 1872, provides a robust foundation for contractual relationships. Termination clauses, force majeure, and frustration doctrines are essential tools that facilitate flexibility in unforeseen circumstances. The pre-COVID-19 era was characterized by a focus on strict contractual enforcement and the sanctity of agreements. Case law such as Satyabrata Ghose and Laxmi Engineering Works introduced the concepts of force majeure and frustration to address exceptional events. The onset of the COVID-19 pandemic disrupted the established norms, leading to regulatory responses, judicial interpretations, and adaptations in contractual practices. Industries severely impacted by the pandemic, including hospitality, tourism, manufacturing, and retail, faced unprecedented challenges in upholding their contractual obligations.

The comparative analysis between pre and post-COVID-19 contexts showcases the Indian legal system's commendable adaptability. The pandemic triggered significant changes in termination dynamics, risk allocation strategies, and the utilization of digital platforms and ADR mechanisms. The legal framework evolved to accommodate pandemic-related challenges, striking a balance between enforcing contracts and recognizing the need for flexibility. The case law analysis further demonstrates the legal system's responsiveness.

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<sup>7</sup> <https://indiankanoon.org/doc/123403504/>

While pre-COVID-19 cases highlighted the importance of enforcing agreements, post-COVID-19 cases introduced a more pragmatic approach. Judicial pronouncements acknowledged the pandemic's exceptional nature and allowed for the application of force majeure and frustration doctrines to address disruptions. The COVID-19 pandemic has reshaped the way businesses approach contractual relationships. Post-COVID-19 adaptations, such as renegotiation, digital transformation, and ADR mechanisms, reflect a more collaborative and pragmatic approach. The pandemic has underscored the significance of foreseeing unforeseen events and incorporating adaptive clauses in contracts to address potential disruptions.

The lessons learned from this analysis provide valuable guidance for businesses and legal practitioners moving forward. The legal framework's adaptability underscores the importance of reviewing and revising contractual terms to account for exceptional events. Collaborative solutions, supported by legal mechanisms, ensure that parties can navigate uncertainties while preserving business relationships. In conclusion, the termination of agreements in India has experienced a transformative journey, driven by the dynamics of the pre and post-COVID-19 periods. This study has shed light on the evolution of contractual obligations, the legal system's adaptability, and the imperative of balancing contractual enforcement with the recognition of unforeseen challenges. As businesses continue to navigate the ever-changing landscape, this analysis serves as a guidepost for fostering resilient and adaptable contractual relationships.

