



OUT OF CONTROL: THE LEGAL LIFELINES OF FORCE MAJEURE AND FRUSTRATION

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In the world of contracts promises form the foundation of agreements. However, what happens if the foundation upon which those promises were made is destroyed by an unforeseen calamity a pandemic, a natural disaster, or an abrupt change in the law? This is where the legal theories of force majeure and frustration of contract come into play. Both provide a possible way out of contractual duties, but they work on different principles and are triggered by various situations. To navigate the complexities and uncertainties of modern business, it's essential to understand this key difference.[1]

To better understand how Frustration and Force Majeure work, let's explore these concepts further with the help of illustrations and important case laws.

FRUSTRATION OF CONTRACT: WHEN THE FOUNDATION CRUMBLES

Sometimes, life throws a curveball so big that it knocks a contract off its feet. That's where the legal idea of frustration of contract steps in. It happens when, after a contract is made, something completely unexpected and beyond anyone's control turns the deal upside down, making it impossible, illegal, or so radically different that it's no longer the same agreement.

Think of it like building a house on solid ground, only for an earthquake to hit and swallow the foundation. No one's at fault, and no one saw it coming. The law says that when this kind of event strikes, the contract ends automatically. Neither side has to keep any future promises, and no one can be sued for walking away. Under Indian law, this idea lives in Section 56 of the Indian Contract Act, 1872, which basically says a contract becomes void if it turns impossible or unlawful to carry out.

Let's understand the concept of frustration through various aspects:

- **Frustration by Impossibility:** This occurs when an unforeseen event beyond either party's control makes it legally or physically impossible to perform the contract. If the subject matter is lost, destroyed, or taken over (e.g., by the government), the contract is discharged.
- **Frustration by Illegality:** A contract may be frustrated if a supervening event—like a change in law or a government order—causes a transaction to become illegal altogether.

[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.



- **Frustration due to Destruction of Subject Matter:** If the subject matter is destroyed or becomes unusable for its intended purpose, the contract may be frustrated. Mere inconvenience, difficulty, or third-party refusal doesn't qualify unless it makes performance fundamentally impossible or different from what was agreed.

Real-life examples-

- A concert hall burns down before the big show.
- A new law suddenly bans what the contract was about.
- A war breaks out, or
- the key person meant to perform the job falls seriously ill or passes away.

These are more than just inconveniences—they destroy the very heart of the deal. That's frustration of contract: when the unexpected makes the impossible, well, legally impossible.

Illustrations of frustration

(i) A and B contract to marry each other. Before the time fixed for the marriage, A becomes mentally ill. The contract becomes void. *This is a case of frustration because the personal capacity of A to perform the contract (marriage) has been destroyed. The essential foundation of the agreement—A's mental soundness—no longer exists.*

(ii) A agrees to act in B's theatre for six months, and B pays A in advance. On several occasions, A is too ill to perform. The contract is void on those days. *Here, frustration occurs because A's personal illness makes performance impossible on certain occasions. Since the contract relies on A's individual skills, those parts of the contract are frustrated.*

(iii) A contracts to rent a hall from B for a wedding on a specific date. Before the event, the hall is destroyed in a fire. The contract becomes void. *This is frustration because the subject matter of the contract—the hall—has been destroyed, making the agreed performance impossible.*



(iv) A is hired to sing at a concert. Before the event, a government order bans public gatherings due to a pandemic. The contract is void.

This is frustration due to supervening illegality. A lawful contract became unlawful because of new government restrictions.

(v) A agrees to export goods to B, but a sudden ban on exports is announced before the shipment. The contract becomes void.

This is frustration because a legal ban made it impossible for A to carry out the contract as agreed.

FORCE MAJEURE: A CONTRACTUAL SAFETY NET

Imagine signing a contract, everything's set, and suddenly a flood hits or a pandemic breaks out, or a government ban changes everything overnight. That's where force majeure steps in. It's not a law on its own like frustration—it's your contract's emergency exit. But here's the catch: it only works if you've actually written it into the contract.

A force majeure clause is a list of wild-card events—natural disasters, wars, strikes, outbreaks, or government crackdowns—that let one or both parties off the hook when things go seriously sideways. It doesn't mean the contract just disappears. Depending on what's written, it might pause the obligations, push deadlines, or in some cases, allow for ending the deal altogether. But you can't just claim force majeure and walk away. Usually, you have to notify the other party and try to minimize the damage. **The big difference from frustration is this: force majeure events are unpredictable but planned for. It's like carrying an umbrella—you don't know if it'll rain, but you're ready if it does. In India, force majeure is recognized through 56 of the Indian Contract Act, and if your clause covers the situation clearly, it can override the general frustration rules.** So, if your contract has a force majeure clause, it's like having a parachute: you hope you never need it, but you'll be glad it's there when things fall apart.

Illustrations for Force Majeure

(i) A, a construction company, has a contract with the city to build a new bridge. The contract includes a force majeure clause that lists "epidemics" and "government shutdowns" as force majeure events. A new virus outbreak prompts the government to issue a stay-at-home order, halting all construction work for three months. A invokes the clause and extends the project deadline without penalty.



This is force majeure because the epidemic and government shutdown—both listed in the contract—directly prevented A from performing on time. Since the event was beyond A's control and covered by the clause, the delay is legally excused. The contract may not be considered frustrated, as the possibility of building a bridge still exists, though after the conclusion of epidemic.

(ii) An oil shipping company agrees to transport crude oil from a Middle Eastern port to a European refinery. The contract's force majeure clause includes "war, declared or undeclared." When a civil war breaks out in the region, the shipping lane becomes unsafe though the port is open. The company invokes the clause and suspends delivery until the situation stabilizes and safety resumes.

This is force majeure because war is specifically mentioned in the contract and has made performance temporarily impossible without fault on the company's part.

(iii) A manufacturer is bound to deliver electronic parts monthly to a tech company. The force majeure clause includes "natural disasters" and "fire." A powerful earthquake strikes, damaging the factory and halting production for weeks. The manufacturer invokes the clause and informs the tech company of the delay.

This is force majeure because the earthquake—an unforeseen natural disaster listed in the clause—makes it impossible to meet delivery timelines.

(iv) A software company contracts with a server hosting provider to keep its app online 24/7. The contract's force majeure clause covers "cyberattacks" and "internet infrastructure failure." A large-scale cyberattack disrupts national internet services for two days. The hosting provider invokes force majeure to explain the downtime.

This is force majeure because the cyberattack—a listed event—was beyond control and directly impacted the provider's ability to perform.

(v) A supplier agrees to deliver agricultural equipment to a rural area. The contract includes "transportation blockades" in the force majeure clause. Suddenly, political protests block all major roads, halting movement for over a week through that route. The supplier delays delivery and invokes the clause as adopting alternate route would have cost the Supplier a lot more.

This may be considered a force majeure because the unexpected road blockades made performance impractical, and the event was anticipated in the contract. However, commercial inconvenience is not always considered force majeure by the courts, and the language of the clause becomes very important.

Key Distinctions Summarized:

Feature	Frustration of Contract	Force majeure Clause
Legal Basis	Doctrine of law (e.g., Section 56, Indian Contract Act)	Contractual provision (must be explicitly included)
Origin	Implied by law when circumstances radically change essentially making the performance illegal or impossible or destruction of subject matter	Expressly agreed upon by parties in the contract and some cases may simply grant more time to perform the obligations
Foreseeability	Event is unforeseen and not required to be provided for in the contract	Events are contemplated and thought through and specifically listed in the clause. Parties should list industry specific event which are relevant
Effect	Automatically terminates the contract from the event	Suspends, modifies, or terminates obligations as per the language used in the clause. In absence of the well drafted clause, there might not be any relief for the parties.
Scope	Applies when performance is impossible/illegal or the subject matter is destroyed.	Applies only to specific events listed in the clause

Example:

A mining company has a contract to supply raw materials to an industrial plant without any mention of the place of manufacturing. The contract does not contain a force majeure clause. A new environmental regulation immediately halts mining operations in one specific district, wherein the Supplier's industrial plant is located. In absence of force majeure clause, the Supplier is considered to be in breach of the obligations as the Supplier was free to initiate manufacturing through another district or through a sub contractor.



Landmark Judgment

1. **Standard Retail Pvt. Ltd. and Ors. v. M/s. G. S. Global Corp & Ors, (Order dated 8th April 2020) [2]**

In the abovementioned case Indian steel importers sought to stop the encashment of Letters of Credit issued to South Korean exporters, citing force majeure and frustration of contract due to Covid-19 lockdowns. Although the contract included a force majeure clause listing 'epidemic', it applied only to the suppliers, not the importers. The exporters had already fulfilled their obligations, while the importers claimed that restrictions impeded their ability to collect the goods. The Court emphasized that Letter of Credits are separate, autonomous instruments, unaffected by disputes in the underlying contract. It also highlighted that steel was classified as an essential commodity, exempt from movement restrictions, and that the lockdown was temporary and not severe enough to frustrate the contract. Accordingly, the Court refused interim relief to the importers.

2. **Halliburton Offshore Services Inc. v. Vedanta Ltd. and Anr. [3]**

In a case before the Delhi High Court, Halliburton Offshore Services Inc. asked for a temporary stay on the invocation of bank guarantees related to a project in Rajasthan, citing delays caused by the Covid-19 lockdown. They argued that the work would have been completed if not for the disruption. The opposing party, including Vedanta Ltd., said the delay excuse was an afterthought and noted that reminders had been sent since 2019. Vedanta also argued that a bank guarantee can only be stopped in cases of serious fraud. However, the Court referred to earlier rulings and said that a stay can also be granted in cases of irreparable harm or special situations. Given the impact of the Covid-19 lockdown, the Court treated it as a Force Majeure event and granted a temporary stay in favour of Halliburton.

[2] Commercial Arbitration Petition (L) No. 404, 405, 406, 407 & 408 of 2020)

[3](O.M.P. (I) (COMM) & I.A. 3697/2020)



Conclusion

In real-world contracts, a well-drafted force majeure clause is often the better and more dependable option for dealing with unexpected events. It allows parties to plan ahead by clearly listing the types of extraordinary situations—like natural disasters, wars, strikes, or pandemics or cyberattacks or transportation delays or fire—that could disrupt performance, and sets out exactly what happens if they do. This brings clarity, reduces uncertainty, and avoids the need to rely on court interpretations. The parties stay in control of how risks are shared and how the contract should respond when things go wrong.

On the other hand, the doctrine of frustration acts as a legal backup when no such clause exists or when an event falls outside the scope of the contract. It steps in only when something truly drastic and unforeseen makes the contract impossible to perform or changes its very nature. But since courts apply frustration very narrowly and cautiously, it's harder to rely on and far less predictable.

In short, while frustration can be a lifesaver in extreme situations, force majeure offers a more practical and controlled way to handle the unpredictable. Together, they provide a safety net for contracts—but it's always wiser to build than net yourself.

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