



CONTRACTUAL OBLIGATIONS DURING COVID-19: INDIAN JUDICIARY ON FORCE MAJEURE AND FRUSTRATION

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Abstract

The COVID-19 pandemic disrupted global economies and contractual relationships, presenting unique challenges for Indian contract law. This article examines the application of Sections 32 and 56 of the Indian Contract Act, 1872, during the pandemic, evaluates judicial responses, and proposes reforms to enhance resilience in times of systemic crisis. It highlights the limitations of current doctrines and suggests a statutory framework for economic hardship, standardized force majeure clauses, and judicial guidelines to better navigate future disruptions.

Keywords: *Force Majeure, Frustration, Indian Contract Act, 1872, COVID-19, Economic Hardship*

Introduction

The onset of the COVID-19 pandemic in early 2020 and subsequent government-mandated lockdowns in India (Ministry of Home Affairs Order No. 40-3/2020-DM-I(A)) caused an unprecedented halt in commercial activity. To curb virus spread, authorities implemented various public health measures, including travel bans, industrial restrictions, and the closure of non-essential businesses. While crucial for public health, these interventions severely disrupted contractual performance across numerous sectors. Consequently, agreements in several arrangements, such as real estate, construction, international trade, and hospitality, became either impossible or economically unfeasible to fulfill (Singh, 2020). This widespread disruption highlighted the far-reaching impact of public health crises on contractual obligations and commercial stability, leading to numerous *Force Majeure* (Nicholas, 1979) claims and renegotiations across the Indian economy.

The sudden and extensive nature of these lockdowns led to widespread reliance on legal doctrines such as force majeure and frustration of contract. Indian courts and arbitral tribunals faced a surge in cases examining whether the pandemic and associated restrictions constituted an event beyond the reasonable control of contracting parties. For instance, the Supreme Court of India, in cases like *Gajendra Singh v. Union of India* 2020, acknowledged the extraordinary nature of the pandemic's impact. Similarly, various High Courts provided guidance on interpreting force majeure clauses in light of unforeseen circumstances. The Ministry of

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Finance also clarified that the lockdown would be considered a *Force Majeure* event for government contracts (Office memorandum F.18/4/2020-PPD), though this guidance didn't automatically extend to private agreements. This period underscored the critical need for robust contractual clauses to address unforeseen global events and the complex interplay between public health mandates and commercial commitments.

These events brought renewed attention to the doctrines of force majeure and frustration of contract (Nicholas, 1979; O'Connor, 2003) in Indian jurisprudence. Although the Indian Contract Act, 1872, does not explicitly define "*force majeure*," the concept is generally interpreted through Section 32, which pertains to contingent contracts—those dependent on the occurrence of a future uncertain event. When a contract contains a force majeure clause, courts apply this provision to determine whether performance may be excused due to an unforeseen event. However, where such a clause is absent, parties must rely on Section 56, which codifies the doctrine of frustration and provides that a contract becomes void when performance is rendered impossible or unlawful due to an intervening event (Indian Contract Act, 1872, S. 32, S. 56).

Judicial precedents have provided interpretative clarity on these provisions. In *Satyabrata Ghose v. Mugneeram Bangur & Co.*, 1954, the Supreme Court held that the doctrine of frustration applies not only when performance is physically impossible, but also when the fundamental basis of the contract is destroyed. More recently, in *Energy Watchdog v. Central Electricity Regulatory Commission*, 2017, the Court reiterated that force majeure clauses must be interpreted strictly and cannot be invoked merely due to commercial hardship or increased costs.

The onset of COVID-19 posed a unique challenge to this legal framework. Courts were suddenly confronted with a surge of disputes concerning the applicability of force majeure and frustration in the context of a global pandemic scenario previously unexplored at such a scale. This raised critical doctrinal questions: Is the existing legislative and judicial framework adequate to resolve systemic disruptions of this magnitude? Have Indian courts maintained a consistent and equitable approach when adjudicating such disputes? And more broadly, how should the legal system reconcile the sanctity of contractual obligations with the need for flexibility in times of societal crisis?

This article seeks to address these questions through a critical examination of Indian judicial responses to COVID-19-related contractual disputes. It evaluates the coherence and equity of the interpretations adopted by various courts, analyses the doctrinal sufficiency of

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Sections 32 and 56 of the Indian Contract Act, and assesses whether legislative reform may be required. The discussion is supplemented by a review of comparative jurisprudence and legal scholarship to highlight the evolving global approaches to force majeure and frustration in the post-pandemic legal landscape.

Force Majeure and Section 32

Force majeure clauses are pivotal contractual tools used to manage risk allocation in the face of extraordinary, unforeseen events that obstruct contractual performance. These clauses are generally incorporated into agreements to relieve parties from liability or obligation when circumstances beyond their control, such as natural disasters, war, strikes, or governmental interventions, render performance impossible or impracticable (Chitty, 2018). Increasingly, such clauses also encompass modern exigencies such as epidemics and pandemics, reflecting evolving commercial realities (Nwedu, 2021).

Legal Foundation under Indian Contract Law

In the Indian legal context, the term *force majeure* is not expressly defined in the Indian Contract Act, 1872. Instead, Indian courts interpret these clauses under the framework of Section 32 of the Act, which deals with contingent contracts. Section 32 in the Indian Contract Act, 1872 states "Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void." In practice, this means that if a contract explicitly states that its performance shall be suspended, modified, or discharged upon the occurrence of specific events (e.g., a force majeure event), the enforceability of that provision depends on the precision of its language and the factual matrix at hand.

This application of Section 32 fundamentally differs from Section 56 of the same Act. Section 56 addresses situations where a contract becomes impossible to perform or unlawful after its formation due to unforeseen circumstances, and in the absence of a specific contractual provision (doctrine of frustration). In contrast, Section 32 is invoked when the parties have anticipated a specific future event and explicitly provided for its consequences within the contract. Therefore, force majeure clauses function as pre-negotiated mechanisms for risk management, becoming actionable upon the occurrence of the stipulated event (Singh, 2021).

Judicial Interpretation: The Energy Watchdog Case

The landmark decision in *Energy Watchdog v. Central Electricity Regulatory Commission*, 2017, by the Supreme Court of India offers authoritative guidance on the scope and enforceability of force majeure clauses under Indian law. In this case, the Court ruled that

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the applicability of a force majeure clause must be determined based strictly on the specific language of the clause, without judicial augmentation or interpolation. The Court underscored that:

“Mere occurrence of an unexpected event is not sufficient. The contract must specifically include that event within the ambit of its force majeure clause.”
(*Energy Watchdog v. CERC*, 2017, para. 23)

The judgment reaffirmed the principle that the judiciary should not read into a contract term that the parties did not expressly include. This conservative and literalist approach preserves contractual certainty but requires meticulous drafting, especially in volatile times.

Burden of Proof and Evidentiary Threshold

Typically, the burden of invoking a force majeure clause rests squarely on the party seeking relief (Phelps, 2021). Courts have held that to successfully rely on such a clause, the invoking party must demonstrate four essential elements (Singh & Leo, 2021):

1. That the event falls squarely within the scope of the contractually defined force majeure events.
2. That the event directly impacted or prevented contractual performance.
3. That all reasonable steps were taken to mitigate the impact of the event; and
4. That no alternative means of performance were reasonably available.

During the COVID-19 pandemic, the enforceability of force majeure clauses varied depending on the contractual language. Agreements that included terms like "epidemics," "pandemics," or "government-imposed lockdowns" provided courts with textual grounds to relieve parties from performance. In contrast, contracts limited to generic terms like “natural disasters” often failed to secure judicial protection (Mehta, 2020).

Practical Implications and Contractual Drafting

The Indian judiciary’s insistence on contractual specificity means that force majeure clauses must be carefully and comprehensively drafted. This approach ensures commercial predictability and limits the scope of judicial discretion. However, it also risks harsh outcomes in systemic crises where performance is frustrated by events not contemplated in the contract.

The COVID-19 crisis underscored the importance of adaptive and forward-looking drafting practices. Parties to commercial contracts are now increasingly including detailed force majeure clauses that address public health emergencies, economic shutdowns, and supply chain disruptions. These developments reflect a broader shift toward resilient contract architecture (Patel, 2021).

The Role of Section 32 in a Post-Pandemic World

As judicial trends reveal, Section 32 does not function as a general equitable defense but as a rule of strict contractual construction. Relief is contingent upon the clause's express terms and the specific facts of the case. Thus, while Section 32 offers a statutory foundation for enforcing force majeure provisions, its applicability remains tethered to textual clarity and interpretive conservatism.

Post-pandemic jurisprudence has continued to reaffirm the principle set out in *Energy Watchdog*—that courts must adhere to the letter of the contract. This posture strengthens the sanctity of contracts and minimizes interpretive uncertainty, but it also calls for heightened contractual foresight in light of an increasingly uncertain global environment.

Frustration and Section 56: Statutory Impossibility and Judicial Caution

In the absence of a force majeure clause, Indian contracting parties affected by unforeseen events often invoke Section 56 of the Indian Contract Act, 1872. This section codifies the common law doctrine of frustration, which provides that a contract becomes void if a subsequent event renders its performance impossible or unlawful.

Text and Scope of Section 56

Section 56 of the Indian Contract Act states:

“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” (Indian Contract Act, 1872, S. 56).

For this doctrine to apply, the following conditions must be met:

- A valid and subsisting contract must exist.
- An unforeseen and supervening event must render performance impossible or unlawful.
- The event must not be caused by the promisor's act or negligence.
- The impossibility must be fundamental and not merely temporary or partial (Singh, 2021).

In contrast to Section 32, which operates through express terms in a contract, Section 56 functions as a default legal provision that automatically voids the contract once frustration is established, without requiring any affirmative act of rescission by the parties.

Judicial Interpretation and Doctrinal Limits

Indian courts have traditionally taken a cautious and narrow view of Section 56, reserving its application for truly exceptional circumstances. The Supreme Court in *Satyabrata* Copyright © 2022, Scholarly Research Journal for Humanity Science & English Language

Ghose v. Mugneeram Bangur & Co., 1954, clarified that “impossibility” in this context is not confined to physical impossibility. Instead, it can include situations where the contract's purpose is frustrated or performance becomes impracticable due to an unforeseen event:

“The performance of an act may not be literally impossible, but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view” (*Satyabrata Ghose v. Mugneeram Bangur & Co.*, 1954).

However, the Court emphasized that this doctrine must be used sparingly to avoid undermining the principle of *pacta sunt servanda*, the sanctity of contracts.

In another landmark case, *Alopi Parshad & Sons Ltd. v. Union of India*, 1960, the Supreme Court refused to invoke frustration merely because the contract became economically burdensome. The Court held that fluctuations in market conditions or governmental policy changes do not satisfy the threshold for frustration unless performance becomes objectively impossible (*Alopi Parshad & Sons Ltd. v. Union of India*, 1960).

Application During COVID-19

The COVID-19 pandemic renewed focus on the scope of Section 56, especially for contracts that lacked force majeure clauses. Despite the unprecedented nature of the crisis, courts remained restrained in applying the doctrine. For instance, in *Standard Retail Pvt. Ltd. v. G.S. Global Corp.* 2020, the Bombay High Court held that nationwide lockdowns did not automatically frustrate contracts. The Court noted that performance was still possible with delays or added costs, which does not qualify as legal impossibility under Section 56.

Similarly, in *Ramanand v. Dr. Girish Soni*, 2020, a tenancy dispute during the lockdown, the Delhi High Court held that lease agreements are governed by property law and not contract law. Therefore, Section 56 was inapplicable, reaffirming the limited scope of frustration in Indian jurisprudence (*Ramanand v. Soni*, 2020).

These rulings highlight a consistent judicial philosophy:

- Section 56 is an exceptional and narrowly construed remedy;
- Commercial hardship alone is not grounds for frustration;
- The party claiming frustration bears the burden of proving that the very foundation of the contract was destroyed.

Functional Limitations

A key critique of Section 56 is its binary structure: either the contract is valid, or it is void. Indian courts lack the statutory authority to revise or rebalance contracts in light of changed circumstances. Unlike jurisdictions that permit partial discharge or renegotiation,

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Indian law does not offer judicial flexibility to deal with scenarios where performance is still possible but commercially onerous (Mehta, 2021).

Furthermore, the temporary nature of COVID-19 lockdowns exposed the limitations of the doctrine. Courts generally ruled that short-term disruption does not meet the legal standard for frustration unless it defeats the fundamental purpose of the contract.

Comparative Note

Civil law systems offer a more flexible approach. For instance, German contract law recognizes the doctrine of *Wegfall der Geschäftsgrundlage* (disruption of the contractual foundation), allowing courts to modify contracts where unforeseen events radically alter the contractual balance (Zimmermann, 1996). Similarly, the UNIDROIT Principles of International Commercial Contracts provide for contract adaptation when performance becomes excessively burdensome, even if not impossible (UNIDROIT, 2016).

These comparative approaches suggest that India's rigidity under Section 56 may be ill-suited to address the complexities of modern global disruptions. Legal scholars have thus advocated for statutory reform inspired by international frameworks or emergency legislation like Singapore's COVID-19 (Temporary Measures) Act, which temporarily suspended contractual obligations during the pandemic (Chong, 2020).

Judicial Response in India: Navigating Contractual Obligations in a Pandemic

The outbreak of COVID-19 and subsequent nationwide lockdowns in India triggered widespread contractual disruptions. From commercial leases and infrastructure contracts to service and supply agreements, parties frequently invoked *force majeure* or claimed frustration under Sections 32 and 56 of the Indian Contract Act, 1872. As a result, the judiciary was thrust into the role of interpreting these provisions during an evolving public crisis—balancing equitable considerations with the sanctity of contractual obligations (Singh, 2021).

General Approach of Indian Courts

Indian courts adopted a cautious, case-by-case methodology, consciously avoiding blanket rulings that all contracts were frustrated due to the pandemic. The judiciary emphasized several key principles:

- Impossibility must be proven, not merely asserted due to inconvenience or economic unviability.
- Contracts are binding and enforceable unless invalidated by law or an express clause.
- The language of *force majeure* clauses must be scrutinized to ascertain intent.

- Government restrictions must demonstrably and directly prevent contractual performance (Mehta, 2021).

This restrained judicial stance sought to deter opportunistic reliance on the pandemic to escape unfavorable contractual terms.

Key Judicial Decisions During COVID-19

Standard Retail Pvt. Ltd. v. G.S. Global Corp., 2020

In this early case, the Bombay High Court addressed whether the lockdown constituted frustration of a steel supply agreement. The petitioner sought an injunction against the invocation of letters of credit, citing the impossibility of performance. The Court held:

“The lockdown cannot come to the rescue of the petitioners to resile from their contractual obligations, especially when the contract was not rendered impossible but merely delayed” (*Standard Retail Pvt. Ltd. v. G.S. Global Corp.*, 2020).

The Court emphasized that commercial hardship does not meet the threshold for frustration under Section 56.

Ramanand v. Dr. Girish Soni, 2020

This case involved a tenant seeking rent suspension during the lockdown. The Delhi High Court ruled that leases are governed by the Transfer of Property Act, 1882, not the Indian Contract Act, and hence Section 56 did not apply. However, it permitted temporary rent reduction on equitable grounds, considering the tenant’s financial position and the nature of the premises (*Ramanand v. Dr. Girish Soni*, 2020).

The judgment offered a framework for evaluating future lease disputes based on factors such as closure duration and the tenant’s capacity to pay.

Halliburton Offshore Services v. Vedanta Ltd., 2020

In this case, the Delhi High Court refused to restrain the encashment of bank guarantees under a construction contract affected by lockdown measures. The contractor had invoked *force majeure*, but the Court held:

“The mere plea of hardship or commercial difficulty is not sufficient. There must be evidence of a direct and proximate impact of the COVID-19 restrictions on performance” (*Halliburton Offshore Services v. Vedanta Ltd.*, 2020).

This ruling underscored judicial unwillingness to interfere in commercial arrangements absent explicit contractual or statutory justification.

Trends and Observations

Several patterns emerged from judicial responses during the pandemic:

Textual fidelity: Courts interpreted *force majeure* clauses strictly based on their wording.

Narrow scope of frustration: Section 56 was applied only where performance was genuine and absolutely impossible.

Equitable discretion: In lease and license disputes, courts offered temporary relief where legal doctrines did not fully apply.

Sector-specific analysis: Industries such as construction, logistics, and hospitality received more nuanced consideration due to heightened operational impact (Chitashvili, 2021).

Evolving Jurisprudence and Institutional Learning

COVID-19 also encouraged judicial engagement with international standards and comparative jurisprudence. Although Indian courts did not adopt foreign doctrines like hardship or economic impossibility, they referenced frameworks such as the UNIDROIT Principles of International Commercial Contracts and judgments from the UK and Singapore (UNIDROIT, 2016; Chong, 2020).

Courts acknowledged the limitations of current contract law in dealing with systemic disruptions. This was reflected in recognition of government interventions—for instance, the Ministry of Finance's February 2020 circular that categorized COVID-19 as a *force majeure* event in public procurement contracts (Government of India, 2020).

Critique of Judicial Posture

Despite their cautious pragmatism, Indian courts have been criticized for overemphasizing contractual rigidity. Critics argue that this approach disproportionately impacted small businesses, tenants, and vulnerable service providers (Desai, 2021). The judiciary's reluctance to develop a middle path—such as temporary suspension or contract rebalancing—highlighted structural inflexibility in Indian private law.

Furthermore, while courts encouraged mitigation, they seldom defined what constituted "reasonable" mitigation under pandemic conditions, leaving parties uncertain and potentially exposed to future disputes.

Recommendations

Codifying Economic Hardship as a Distinct Doctrine

India currently lacks a formal statutory doctrine of economic hardship. In contrast, civil law jurisdictions such as Germany and international instruments like the UNIDROIT Principles permit judicial modification of contracts where performance becomes excessively burdensome

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but not impossible (UNIDROIT, 2016). Amending the Indian Contract Act to incorporate a hardship provision—akin to Article 6.2.2 of the UNIDROIT Principles—would enable courts to authorize renegotiation or partial adjustment, offering a middle path between strict enforcement and total discharge (Chong, 2020).

Standardization of Force Majeure Clauses

The pandemic exposed inconsistencies and ambiguities in contractual *force majeure* provisions. To address this, government agencies, legal bodies, and industry associations should promote model *force majeure* clauses that explicitly reference pandemics, epidemics, and government-imposed lockdowns. Such standardization would improve contractual risk allocation and reduce litigation over interpretation (Mehta, 2021).

Temporary Statutory Relief Frameworks for Crises

In future public emergencies, Parliament could consider enacting time-bound statutory frameworks that provide temporary relief from contractual obligations. Singapore's COVID-19 (Temporary Measures) Act of 2020 is a prime example of how targeted legal interventions can protect affected sectors, especially micro, small, and medium enterprises (MSMEs), without undermining overall contractual stability (Chong, 2020). Such legislation could prevent courts from being overburdened and from having to stretch doctrinal boundaries.

Judicial Guidelines on Mitigation and Commercial Impracticability

While courts repeatedly invoked the duty to mitigate losses, they rarely clarified what reasonable mitigation entails in a pandemic context. The Supreme Court of India or High Courts could issue practice directions or guidelines defining key parameters for assessing mitigation, alternative performance possibilities, and partial impracticability. This would offer greater predictability and reduce litigation costs (Singh, 2021).

Greater Use of Alternative Dispute Resolution (ADR)

The pandemic underscored the importance of fast and cost-effective dispute resolution mechanisms. Courts and policymakers should encourage expanded use of arbitration and mediation for commercial disputes arising from crises. This could include establishing dedicated pandemic-dispute panels, promoting online dispute resolution (ODR), and developing streamlined procedures for time-sensitive claims (Desai, 2021).

Conclusion

The COVID-19 pandemic severely disrupted Indian contractual relationships, testing the Indian Contract Act, 1872's adaptability, particularly Sections 32 and 56. While courts diligently balanced contractual sanctity with business realities, they consistently demanded

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explicit contractual support for force majeure claims, strictly applying Section 56 only to objective impossibility. This rigidity, despite offering certainty, revealed limitations in handling systemic crises.

Though some equitable relief was granted in specific cases (Ramanand v. Dr. Girish Soni, 2020), the overall reliance on narrow textual interpretation highlighted a crucial need for greater flexibility in India's contract law. To address this, India must adopt a multidimensional strategy. This involves codifying economic hardship (UNIDROIT, 2016; Chong, 2020), standardizing force majeure clauses (Mehta, 2021), enacting temporary statutory relief frameworks during emergencies (Chong, 2020), issuing judicial guidelines on mitigation (Singh, 2021), and promoting Alternative Dispute Resolution (ADR) (Desai, 2021). Such proactive measures will build a more resilient legal infrastructure for future global shocks.

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