When contracts are entered between the parties, it imposes a contractual obligation on them for the performance of the contract. However, many times due to unforeseeable circumstances the performance of the contracts becomes impossible. In such cases, the contract is said to be frustrated. Here in this article, we are going to discuss the [doctrine of frustration](https://enterslice.com/learning/doctrine-of-frustration-under-the-indian-contract-act-1872/), the doctrine of frustration under the Indian Contract Act, grounds for the frustration of contract, and the effect of frustration.

**What is the Doctrine of Frustration?**

The general rule of contracts states, that the parties to a contract have to fulfill their obligations under the contract and in case of breach, the party breaching the contract has to compensate the other for the damages caused. The **doctrine of frustration** is an exception to this rule.

The [doctrine of frustration](https://enterslice.com/learning/doctrine-of-frustration-under-the-indian-contract-act-1872/) basically talks about the impossibility of performance of the contract. It means a contract cannot be executed because of an incident beyond the control of parties. The performance of such a contract becomes frustrated i.e. it becomes complicated, impossible or even illegal. The frustration of contract can be due to any unforeseen, impossible events and events out of control of the parties.

**The doctrine of Frustration under Indian Contract Act**

The Indian Contract Act, 1872, does not define the term “frustration of contract”. However, the doctrine of frustration is enshrined under [section 56 of the Act](https://en.wikipedia.org/wiki/Companies_Act). According to section 56, an agreement to do an impossible act is in itself void. Further, it states that when a contract to do an act becomes impossible, or, by reason of some event which the promisor cannot prevent, it becomes unlawful, the whole contract becomes void when the act becomes impossible or unlawful.

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| **In this regard, in the Court in Syed Khursheed Ali vs. the State of Orissa held that the doctrine under section 56 is attracted in the event of the subsequent unforeseen event for which, neither of the parties is responsible.** |

**What are the conditions required to prove frustration of contract?**

The frustration of contract can be proved upon the fulfillment of the following conditions-

* The existence of a valid contract
* The contract is not performed yet
* The performance of the contract has become impossible/unlawful
* The impossibility has occurred due to event uncontrollable by both the parties.

**What are the grounds for Doctrine of Frustration?**

Following are the grounds for the frustration of a contract-

* **Impossibility of performance**

The doctrine of frustration arises from the impossibility to complete an activity. But the principle cannot be limited to physical impossibilities.

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| It was held in Satyabrata Ghose vs. Mugneeram Bangurn & Co & Anr., that the term ‘impossible’ has not been used in section 56 of the Contract Act in the sense of physical or literal impossibility. It is not necessary that the performance of act be literally impossible but it may be impracticable and if an event totally changes the very foundation of the contract, it can be said that the promisor finds it impossible to do the act which he promised to do. Therefore, when we say the object of contract is lost, the contract is said to be frustrated.   |

* **Destruction of subject matter**

The doctrine of frustration applies when there is the destruction of the subject matter of contract.

This was further explained in the landmark judgment of *Taylor vs. Caldwell*, where Taylor had entered into an agreement to perform at an event, but on the day of the event, the hall where the event was to take place burned down. The burning of the hall depicts the impossibility of carrying forward the contract. This shows that the destruction of the subject matter of contract will make the contract automatically frustrated.

* **Death or incapacity of a party**

If the contract demands the personal performance of the parties, the death or incapacity of the party will make the contract void because the contract cannot be performed anymore.

* **Frustration by legal or government intervention**

Where, a law is promulgated after a formation of a contract, making the performance impossible then the contract becomes void.

* **The frustration of contract due to change of circumstances**

This situation occurs when there is no physical impossibility of performance of the contract, but due to change in circumstances, the main reason for which the contract was formed is defeated. The changed circumstances dissolve the contract and the parties are absolved from the performance of the contract.

* **The Intervention of War**

The intervention of war makes the performance of contract difficult, thereby making the contract void.

**What is the effect of the doctrine of Frustration?**

* **The contract is frustrated automatically**– The general rule is that the occurrence of the frustrating event puts an end to the contract automatically. The parties are not required to rescind the contract as the obligations of the parties get terminated immediately after the contract is frustrated.
* **Further obligations are discharged-** Both the parties are discharged from any obligations after the contract is said to be frustrated.
* **Accrued obligations-** The legal rights or obligations already accrued before the frustrating event occurred are left undisturbed.

The doctrine of frustration comes into play when an unforeseeable event occurs rendering the performance of the contract impossible. The frustration of the contract makes the contract void and it also discharges the parties from any liability. This doctrine is an exception to the general principles of contract under when compensation is usually given for breach of contract.  But when the doctrine of frustration is applied there is no fault of the parties and therefore, the party should not be made to compensate in such an event.

**Section 56 is based on the maxim “ les non cogit ad impossibilia” which means that the law will not compel a man to do what he cannot possibly perform.**

# The doctrine of frustration is however applicable only in 2 cases

* **If the object of the contract has become impossible to perform**

**Or**

* **An event has occurred making the performance of the contract to be impossible beyond the Control of promisor**.

**Case Laws**

**This rule was laid down in: Paradine vs Jane**, 1647 (82) ER 897: 1647 Alyen 26. Brief facts of the case are: Jane was sued for rent due to Paradine. The defendant argued that the German Prince had invaded the area where the property was situated (Occupied the property), therefore he couldn’t use the property to make any profits. He had planned to pay the rent out of the profits which he would have made, had he used the property.

The defence was not held valid; as the obligation under the contract was absolute with no exception whatsoever. Though the defendant’s proposition was a reasonable and strong one- he couldn’t have done anything about the situation- the Judge held that responsibility under the contract should be honoured under all circumstances.

The Doctrine of frustration was evolved as a response to the aforementioned doctrine. There were cases where the contract couldn’t be performed through no fault of the defendant, and the rigidity of the English rule was found to be unreasonable, unfair, hence an exception to this rule was necessary. The doctrine of Frustration was incorporated in the contract law as a remedy to the above situation.

**Furthermore, Krell v Henry (Coronation case)** highlights that the above principle is not restricted to physical impossibilities. It also extends to cases where the performance of the contract is achievable tangibly, but the purpose for which the parties had constructed the agreement has failed to materialise. To better illustrate this point, we should discuss the facts of Krell v Henry, which are:

The defendant agreed to rent a flat from the plaintiff for two days, on which days it had been announced that the crowning would take place, and, therefore, a parade would pass along that place. Some portion of the rent was paid before the event. Later, the parade was dropped because the King was ill, the defendant objected to pay the remaining amount.

The court concluded that the real intention of the parties, which was given effect by the contract, was to have a view of the parade. This was the cornerstone of the contract; With the Coronation process not taking place on the given date, the object of the contract was frustrated. As a result, the plaintiff was not qualified to recover the balance of the rent. It is a perfect example of the court not restricting itself to physical possibilities.

##### **Limits of the Doctrine**

The norm is that the parties will be held responsible for breach of the obligation under the contract and the parties getting discharged due to frustration is an exception. Acting in consonance with this approach, the courts have made an observation that change of circumstances must be ‘’such as to upend the object of the contract. Some impediment or some deviation is very common in all transactions, and it cannot be assumed that any agreement has been made on the implied understanding that such a thing will not take place to any extent’’.

‘’Commercial hardship’’ or ‘’Bad bargain’’ is an important limit to the doctrine.

**Davis Contractors Ltd v Fareham UDC** perfectly illustrates this point. Brief facts of the case are: Davis Contractors agreed with Fareham UDC to build 78 houses over eight months. Time taken to complete the project was 22 months because the plaintiff was short on labour and materials.

The plaintiff’ contended the delay had increased the costs, and the delay was caused due to circumstances beyond anybody’s control. They pleaded to the court to declare the contract frustrated, therefore were entitled to quantum meruit for the value of work done. The decision was in favour of the defendant. No doubt that the contract had become more onerous but in no way, this can be interpreted as the frustration of contract. This is what lord Reid stated as the difference between the contract becoming more onerous and it becoming frustrating.

# Doctrine of Frustration in India

**Section 56 of the Indian Contract Act**: As with most laws in India, the contract act is influenced by English laws/doctrines(The act was passed when India was under colonial rule). This doctrine constitutes the Indian Contract Act,1872, as Section 56( Agreement to do impossible act). An agreement to do something, which was possible or lawful when the contract was constructed, but subsequently, becomes impossible or unlawful without any fault of either party, then such an act will be void.

### Major Indian Case related to this doctrine

**Satyabrata Ghose v Mugneeram Bangur and Company & Anr**.: The defendant company launched a scheme related to developing the land into a housing colony. The plaintiff was granted a plot on payment of advance money. The company committed to constructing the roads and drains necessary for improving the land, thereby making it suitable for building and residential purposes. Following the completion of development work, the purchaser was to pay the remaining amount to complete the conveyance. Meanwhile, a large part of the land was taken over by the State during the Second World War for war purposes. The company attempted to rescind the contract on the ground of supervening impossibility.

Held: The court dismissed the defendant’s suit stating that the ‘’impossibility’’ under Section 56( Agreement to do impossible act) doesn’t mean in the physical or literal context. It refers to change in circumstances which completely upsets the very foundation upon which the parties rested their bargain. The requisition orders, it must be noted were temporary in nature. There was no timeline mentioned within which the project had to be completed. With the absence of any deadline whatsoever in the contract, and when it was natural for some restrictions to be in effect during the war, thereby causing difficulties and delay in the project. This delay caused by the requisition order didn’t affect the fundamental objective or struck at the roots of the adventure.

**Sushila Devi vs Hari Singh**

This case expanded the scope of the Doctrine of Frustration. ‘’Impossibility’’ under Section 56 of the Contract act should not be restricted to humanely possible scenarios. In this case, lease of certain property was the subject matter of the agreement. Later, because of partition the property to be leased became a part of Pakistan, thereby making the terms of agreement impossible.

**Force Majeure clauses** are generally embodied in the form of contractual provisions, agreed upon between parties, to excuse non-performance of contract in cases of events beyond their control - such as an Act of God, natural calamities, war, labour unrest, epidemics, pandemics, etc. If the words 'epidemic' or 'pandemic' are used in the Force Majeure clause, then in all likelihood, the Force Majeure clause is triggered under the contract with the declaration of Covid—19 as a pandemic.

Force Majeure2 means "an event or effect that can be neither anticipated nor controlled, is unexpected and which prevents someone from doing or completing something that he or she had agreed or officially planned to do."3 Webster's Dictionary defines Force Majeure as: "(1) Superior or irresistible force. (2) an event or effect that cannot reasonably be anticipated or controlled."4 In modern business practice, Force Majeure clauses are generally embodied in the form of contractual provisions, agreed upon between parties, to excuse non-performance of contract in cases of events beyond their control - such as an Act of God, natural calamities, war, labour unrest, epidemics, pandemics, etc. If the words 'epidemic' or 'pandemic' are used in the Force Majeure clause, then in all likelihood, the Force Majeure clause is triggered under the contract with the declaration of Covid—19 as a pandemic.

Unlike Force Majeure clause which is typically in the form of a contractual provision, frustration of contract or impossibility to perform is statutorily provided under Section 56 of the Contract Act. Therefore, if the contract does not expressly or impliedly contain exemptions for non-performance in the nature of Force Majeure, a party seeking to set up a defense dehors the contract can place reliance on Section 56 of Contract Act.