‘FORCE MAJEURE’ IN THE TIMES OF COVID-19

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View Profile

Published : August 15, 2020

On 20th April, 2020, the High Court of Judicature at Delhi in an order passed by Hon’ble Justice C. Harishankar in the case of *M/s. Halliburton Offshore Services Inc. v/s. Vedanta Ltd. and Anr*[1] stated “ The countrywide lockdown, which came into place on 24th March, 2020 was, in my opinion, *prima facie* in the nature of *force majeure*. Such a lockdown is unprecedented, and was incapable of having been predicted...*Prima facie*, in my view, special equities do exist..”[2]
Prior to this, on 8th April, 2020, the High Court of Judicature at Bombay in an order passed by Hon’ble Justice A. A. Sayed held that “In any event, the lockdown would be for a limited period and the lockdown cannot come to the rescue of the Petitioners so as to resile from its contractual obligations ..of making payments.”[3]
Notwithstanding that both the above orders were determined on the specific facts of the cases presented before the respective courts, there appears to be an apparent discord between the two orders. While the effects of the global pandemic COVID-19 and the subsequent lockdowns initiated by governments across the world are having serious repercussions on various industries and business, it has also brought to every living room, discussion on a term called “*force majeure*”, an unassuming term, that is usually inserted towards the end of most contracts, or as a miscellaneous clause.

I – The concept of “force majeure”

1. *“... if subsequent to your making the alliance with them any fresh injury or offence had been committed by Aetolians, or any kindness done by Macedonians, the present proposal ought properly to be discussed as a fresh start..”*

- *Lyciscus of Acarnania, while addressing the Lacedaemonians, 211 BC*[4]

The above quote, was probably the first ever instance, where a contract was sought to be made inapplicable on account of a fundamental change of circumstances.[5] It appears therefore that, even as far back as history can take us, the need has always been felt, between parties to a contract, for a provision that could provide for the removal of liabilities consequent upon the happening of unavoidable circumstances that interrupt the expected course of events and prevent parties from fulfilling obligations.
In later times, this concept was crystallized within the scope of the Latin term “*vis major*” which literally translates as “superior force”, which in turn gave birth to the French term “Force Majeure”.

2. “Force Majeure” has been defined in different dictionaries as meaning an “irresistible force or compulsion such as will excuse a party from performing his or her part of a contract”[6], “an unexpected event such as a war, crime, or an earthquake which prevents someone from doing something that is written in a legal agreement”[7], “superior or irresistible force” and “an event or effect that cannot be reasonably anticipated or controlled”[8].

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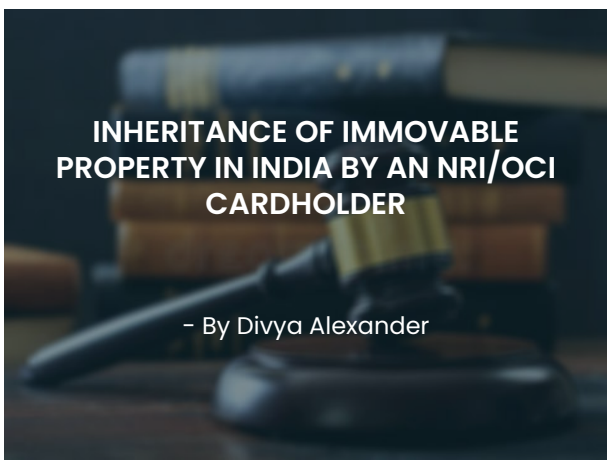

3. In the mid 20th century global economies began to enter the sphere of inter-dependence in business, liberalisation, free market economies, with a consequent rise of cross border transactions. This led to the formation of UNIDROIT[9], which, *inter alia*, published the Principles of International Commercial Contracts. These Principles were important, because until such time, the different global systems of the world had been interpreting contractual terms like "*force majeure*" under their prevailing domestic legal jurisdictions.
Article 7.1.7 of the UNIDROIT Principles of International Commercial Contracts provides for a form of "*force majeure*", where relief from performance is granted "if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences." This has now led to some form of fundamental uniformity in international transactions, with respect to the meaning of "force majeure".

4. In most common law countries, where the principles of law are 'judge-made' and bound by precedent, the term "force majeure" was not automatically applied to contracts. Parties to contracts who wished to have "force majeure" relief were required to spell out what constitutes "force majeure" in the contract itself. There was also a closely related and narrower concept of "Frustration of Purpose", which applied when there was no "force majeure" clause in the contract and when the actual performance of the contract was radically different from what the parties intended.[10] It was understood that when force majeure had not been provided for, and a supervening event prevented performance, it would be treated as a breach of the contract, in which case, the law relating to frustration of purpose, would be the sole remaining course available to the party in default to end the contract.

5. Common law jurisdictions also applied two other principles as under:
A. Even if a "force majeure" clause covers the relevant supervening event, the party unable to perform will not have the benefit of the clause where performance has merely become (1) more difficult, (2) more expensive, and/or (3) less profitable.[11]
B. Relief pursuant to a "force majeure" clause will be available only on the occurrence of an actual event, not the perceived threat thereof.[12]

6. On the other hand, most civil law jurisdictions like France codified such principles, broadly encompassing the following requirements:
A. Externality - The defendant must have nothing to do with the event's happening.
B. Unpredictability - If the event could be foreseen, the defendant is obligated to have prepared for it, and that being unprepared for a foreseeable event leaves the defendant culpable.
C. Irresistibility - The consequences of the event must have been unpreventable.
As is the case with civil law jurisdictions, the above tests for determining "force majeure" were to be applied strictly, and the courts have interpreted these tests, conservatively for the most part.[13]

II - "Force Majeure" in the Indian Context

1. Insofar as India is concerned, the legal system is a hybrid one – which is to say that our system draws heavily from, *inter alia*, both the civil law system as well as the common law system.[14]

2. Therefore, to understand what "force majeure" means in the Indian context, one would have to consider both the civil law aspect (codified principles enshrined in Acts enacted by the Indian Legislature) as well as the common

law aspect (case-laws by Indian Judiciary).

3. The law or code, to be considered insofar as the understanding of the concept “force majeure” is concerned, is the Indian Contract Act, 1872, and within it, Section 32 - which deals with Contingent Contracts and Section 56 - which is commonly referred to as the ‘Doctrine of Frustration’. The relevant portions of both the Sections are appended hereinbelow.

4. Section 32 of the Indian Contract Act, 1872 reads as under:
“*Enforcement of contracts contingent on an event happening.*
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.”

5. Section 56 of the of the Indian Contract Act, 1872 reads as under:
“Agreement to do impossible act.
An agreement to do an act impossible in itself is void.
1) Contract to do act afterwards 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.
2) ...”

6. In order to understand the interplay between these two sections, we must consider the chronological evolution of the law in relation to “force majeure” in India, as set out by judicial precedents.[15]

7. One of the very first decisions that was decided in independent India, was that of *Satyabrata Ghose v/s Mugneeram Bangur & Co.*[16], where the Hon’ble Supreme Court held that “the word “impossible” in Section 56 has not been used in the Section in the sense of physical or literal impossibility. To determine whether a force majeure event has occurred, it is not necessary that the performance of an act should literally become impossible, a mere impracticality of performance, from the point of view of the parties, and considering the object of the agreement, will also be covered. Where an untoward event or unanticipated change of circumstance upsets the very foundation upon which the parties entered their agreement, the same may be considered as “impossibility” to do as agreed.” In this case, therefore, the Hon’ble Supreme Court tried to create a differentiation between “force majeure”, which they opined as ‘impracticality of performance’ as opposed to Section 56, which dealt with the ‘impossibility of performance’.

8. Thereafter, in the following two cases, the Hon’ble Supreme Court, also recognised the principles of common law as referred to above, *viz.*, that inconvenience or hardship would not be equivalent to impossibility. These were,
i. *M/s Alopi Parshad & Sons Ltd. /s. Union of India*[17]**,** in which the plaintiffs, who were in agreement with the Union of India for supply of ghee to the Indian army, pleaded ‘frustration’ as there was a rise in demand for supply of ghee and the prices had to be decreased. The Hon’ble Supreme Court held that the Indian Contract Act, 1872 did not “enable a party to a contract to ignore the express covenants thereof and to claim payment of consideration, for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made."
ii. *Naihati Jute Mills Ltd. v/s Hyaliram Jagannath*[18], where the Hon’ble Supreme Court referred to the English law on frustration, and concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. It was held that, in general, the courts have no power to

absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.

9. In *Dhanrajamal Gobindram v/s Shamji Kalidas and Co.*[19], the Hon'ble Supreme Court widened the scope of "force majeure", inasmuch as strikes, breakdown of machinery were sought to be included within its context, if the defaulting party did not have control. The Court held that "An analysis of ruling on the subject shows that reference to the expression is made where the intention is to save the defaulting party from the consequences of anything over which he had no control."

10. In *Sushila Devi v/s Hari Singh*[20], the Hon'ble Supreme Court dealt with a case of a negotiated lease of a property in Gujranwala, which after the partition of India, became situated within Pakistan, hence making the agreement impossible to perform by the intending lessees, who were Indian. While recognising the impossibility of performance, the Hon'ble Supreme Court, also recognised that since the Deed of Lease in respect of the property had not yet been executed, the applicable act was the Indian Contract Act, 1872 and not the Transfer of Property Act, 1885, and therefore the provisions of the Indian Contract Act, 1872 would apply, including the provision relating to the Doctrine of Frustration, *i.e.* Section 56. [21]

11. In the case of *Rozen Milan v/s Tahera Begum*[22], an agreement had been entered into between the plaintiff and the defendant for sale and purchase of Thika Tenancy. The agreement having not been carried out, the plaintiff filed a suit for specific performance of agreement. During the pendency of the suit, The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 was promulgated, whereby such Thika Tenancy Lands along with the interest of the landlords therein was to be vested in the State, free from all encumbrances. The Court held that the introduction of this new legislation, made the contract impossible to perform, and the therefore, contract was held to be void.

12. Again, in *State of M.P. v/s Narmada Bachao Andolan*[23], it was held, *inter alia*, that, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse.

13. The most recent case decided by the Hon'ble Supreme Court on the concept of "force majeure" was that of *Energy Watchdog v/s CERC and Ors*[24]. The broad facts of the case were that Adani Power had been awarded a contract for supply of power after the completion of a successful bidding process. At the bidding stage, an option had been given to bidders to quote escalable or non-escalable or partly escalable tariffs, and Adani Power had quoted non-escalable tariffs. Due to a change in Indonesian law after about 40 years, the price of coal changed resulting in higher prices for Adani Power, they filed a Petition before the Central Electricity Regulatory Commission (CERC) seeking to be discharged from the Power Purchase Agreement on account of frustration or in the alternative sought measures to restore themselves to the same economic condition prior to the occurrence of the change in law. Thereafter, the Hon'ble Supreme Court was tasked with deciding an appeal from the judgement of the Appellate Tribunal for Electricity. In this case, Hon'ble Justice Rohinton Nariman, while briefly summarising the jurisprudence around "force majeure" held that, "*Force majeure is governed by the Indian Contract Act, 1872. In so far as it is relatable to an express or implied clause in a contract,.... it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. In so far as a 'force majeure' event occurs de hors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract.*"

III – "Force Majeure" Clauses

1. This above discussion and particularly the decision in the case *of Energy Watchdog v/s CERC*[25] therefore brings us to the key principles of the topic at hand:

A. A "force majeure" clause cannot be impliedly read into a contract.

B. In the event there is a force majeure clause, the language of the clause would have to be considered to determine the nature of "force majeure" events under the clause?

C. In the event that the contract can be performed in an alternate manner the doctrine of frustration shall not apply.

D. In the event that there is no "force majeure" clause, it is essential to determine whether the fundamental basis of the contract is altered in order to apply the doctrine of frustration.

E. The application of doctrine of frustration must be narrow and by strict interpretation.

F. Merely because the performance of a contract becomes commercially imprudent or costly, this by itself is not sufficient grounds for deeming the purpose of the contract as frustrated.

2. In light of the above, it is pertinent to consider the language in the contract for determining a "force majeure" event and the applicable consequences thereafter. A typical "force majeure" clause may comprise of four ingredients:

A. Nature of the "force majeure" event.[26]

These could be particularly named events or specific descriptions such as earthquakes, strikes, pandemics, riots, floods etc. or otherwise general, with a 'catch-all' phrase, for instance, an act of God covering circumstances beyond the reasonable control or foreseeability of the parties.

B. Obligation to mitigate.

The party claiming relief pursuant to a "force majeure" clause is usually under a duty to show it has taken reasonable steps to mitigate/avoid the effects of the "force majeure" event.

C. Service of Notice

Parties may consider whether prompt notification of the occurrence of a "force majeure" is a contractual condition precedent to relief or not, and the mode and manner in which such notice is to be made or served.

D. Consequences upon the occurrence of a "force majeure" event

Although most "force majeure" clauses build towards a suspension of obligations of the parties during the period of the continuation of the "force majeure" event, and a resumption of contractual obligations thereafter, in some contracts this period of suspension may be crystallised to a period of, for example, 30 days or 60 days or such other definite period.[27] It may also be provided therein that in the event that the "force majeure" event does not cease within such stipulated period, then the contract would automatically stand terminated, or that the affected party would have the right to terminate the contract. There are also many instances, especially in the case of time sensitive contracts, wherein the very happening of a "force majeure" event results in an immediate termination of the contract.

3. After understanding the essentials of a "force majeure" clause and its applicability, let us evaluate the possible outcomes in light of COVID-19.

IV – Can a "force majeure" clause be successfully invoked in light of COVID-19 being declared a pandemic?

1. On 11th March, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a global 'pandemic'.[28]

2. Thereafter in India, the Ministry of Health and Family Welfare issued an advisory on social distancing, with respect to mass gatherings and has put travel restrictions to prevent spreading of COVID-19.

3. The Department of Expenditure, Ministry of Finance on 19th February, 2020, vide an Office Memorandum[29], clarified that the disruption of the supply chains due to spread of coronavirus in China or any other country should be considered as a case of natural calamity and "force majeure clause" may be invoked, wherever considered appropriate, following the due procedure.

4. On 24th March, 2020 the Prime Minister announced a complete nationwide lockdown, with a narrow exception conferred upon certain 'essential' sectors.

5. On the same day, i.e. on 24th March, 2020, The Ministry of Shipping issued an advisory to all Major Trusts for invoking "force majeure" clause on Port activities and Port operations.[30]

6. The above advisories together with the continuing lockdown have given rise to the argument that the present circumstances necessitate the invocation, in contracts, of "force majeure". As set out above, "force majeure" cannot be impliedly read into a contract. However, even in the event that a "force majeure" clause exists in the contract, it appears that there could be two possible instances:
(a) the contractual definition of a "force majeure" event expressly includes the word epidemic and/or pandemic, or
(b) the "force majeure" clause covers extraordinary events or circumstances beyond the reasonable control of the parties. As stated above, such a "force majeure" clause with a catch-all wording may be invoked if it is determined, *inter alia*, that it was the intention of the parties to provide for the consequences arising from the occurrence of a situation that was beyond the reasonable control of the parties and that the factual circumstances caused by the epidemic/pandemic are indeed beyond the reasonable control of the affected party. Having said that, the present situation is an ever-evolving one, and whether a party can be excused from a contract on account of COVID-19 being declared a pandemic is a fact-specific determination that will depend on the nature of the party's obligations and the particular terms of the contract.

7. Under these circumstances, and while determining the applicability of "force majeure", in light of the COVID-19 pandemic, it would be helpful to understand how legal systems, particularly in Asia have dealt with similar situations in the past, with respect to "force majeure" in relation to the SARS (Severe Acute Respiratory Syndrome) epidemic in 2003 and also analyse their proposed response to the present COVID-19 pandemic.

8. In 2004, the Hong Kong Court, in the case of *Li Ching Wing v/s Xuan Yi Xiong*[31] considered whether the SARS outbreak in 2003 operated as a frustrating event. There, a tenant of a two year lease had sought to invoke the doctrine when he was subjected to a ten day SARS-related isolation order. However, this argument of the tenant, was rejected by the Court, which decided that a ten day period was insignificant in view of the two year duration of the lease, and although SARS may arguably be an unforeseeable event, it did not "*significantly change the nature of the outstanding contractual rights or obligations*" of the parties in this case.

9. In China, during the SARS outbreak in 2003, the Supreme People's Court issued a notice (SARS Notice) on 11th June, 2003 addressing, inter alia, the application of the principle of fairness in contractual disputes during the SARS outbreak. The SARS Notice said a "force majeure" could treated as having been established if (i) a failure to perform was directly caused by administrative measures taken by government to prevent the SARS epidemic; or (ii) it is fundamentally impossible for a party to perform its obligations due to the SARS epidemic. The general requirement was that the parties act in a fair and reasonable manner including in respect of the variation of obligations and requests for financial adjustments, with an expectation that the parties adopt

a fair approach. It appears that the way the SARS Notice was applied was subject to contractual arrangements and all other circumstances but with a direction to the courts to adopt the principle of fairness in deciding disputes.

10. This was virtually treated as a precedent and following the COVID-19 outbreak, on 16th April 2020, the Supreme People's Court of China issued a new guidance opinion which made some important points and in addition confirmed that "*force majeure"* should be available during the COVID-19 pandemic. In setting out guidelines in respect of the application of "*force majeure"* provisions, the Supreme People's Court has provided guidance regarding the obligations on any party claiming "*force majeure"* to mitigate their losses and to mitigate the effects of non-performance on the other parties involved, the requirement of give notice promptly following the occurrence of an event of *"force majeure"* , and has also set out that that where a party's performance is affected but not necessarily prevented and "*only causes difficulties in the performance of the contract*", the parties may nevertheless still seek renegotiation.

11. Furthermore, according to the China Council for the Promotion of International Trade, a government-linked entity, China has issued 4,811 'force majeure' certificates as of 3rd March, 2020 due to the COVID-19 epidemic, which cover contracts worth 373.7 billion Chinese yuan ($53.79 billion). Such certificates are issued by the government to companies that apply for them.

12. Singapore has recently passed the COVID-19 (Temporary Measures) Act[32] for according temporary relief arising from an inability to perform contracts. The purpose of the enactment was to put a freeze on taking legal action for breach of certain contracts for the next 6 and possibly up to 12 months. If there is a dispute as to whether the Act applies, the Ministry of Law has been empowered to appoint a panel of independent assessors to determine any disputes. The Act also contains special provisions with relation to rentals of non-residential premises. If a tenant gives a "Notification for Relief" to the landlord, there is a moratorium on taking action arising from the failure to perform the obligations. These include, starting or continuing court or arbitration proceedings against the tenant and its guarantor, levying distress against property of the tenant, and
Exercising a right of re-entry or forfeiture under the lease or licence of immovable property. The moratorium will end at the end of the prescribed period.
If there is a dispute as to the eligibility for relief, any party – most likely the landlord who receives a notification for relief – may submit it to an assessor for determination, whose decision is final. The Act does not affect action being taken pursuant to frustrated contracts or based on a "force majeure" clause.

13. Notwithstanding the above discussion, the answer to the question raised at the beginning of this Chapter, *i.e.* whether a "force majeure" clause be successfully invoked in light of COVID-19 being declared a pandemic, is not as clear as it seems. It is also to be borne in mind that the relevant "force majeure" event need not be COVID-19 itself. It is possible that the consequences of COVID-19, such as the nationwide lockdown and stoppage in services, and the resultant impact upon the ability of the affected party to fulfil its contractual obligations that may be treated as the relevant "force majeure" event.

14. In order to understand the concept of a seemingly "force majeure" event like COVID-19 as against the effect of such a "force majeure event, that could be deemed a "force majeure" event, independently, an analysis of the corporate law terminology of "material adverse effect" may prove helpful.

V – "Force Majeure" v/s. Material Adverse Effect

1. The concept of “force majeure”, while it generally affords an opportunity to a party to obtain some form of suspension of the contract, in some contracts, the occurrence of a “force majeure” event is deliberately excluded, under a “material adverse effect” or a “material adverse change” clause.

2. Material Adverse Effect is a term a term usually used in documents related to mergers and acquisitions, share purchase agreements, credit & lending agreements, and such other similar agreements in the corporate sphere. A Material Adverse Effect means a change in circumstances that significantly reduces the value of a company.

3. A typical Material Adverse Effect clause typically comprises three parts:
First, a typical definition: any event, development or condition occurring that has had, or would be reasonably expected to have, a material adverse effect on the business, financial condition or results of operations of the company.
Second, a typical exclusion: specified events, such as acts of God, weather events, floods, earthquakes, natural disasters, pandemics, terrorism or military actions, and other broad categories of market or credit conditions.
Third, it is typically a ‘condition precedent’ to closing i.e. the fact that has not been a material adverse effect, means that the contract can proceed towards its closing i.e. the conclusion of the proposed transaction.

4. However, even when a material adverse effect clause explicitly or generally includes language to exclude a pandemic, such as COVID-19 from the definition of a material adverse effect (to a seller’s benefit), it may also include a disproportionate-effect exclusion (to a buyer’s benefit) to provide that such exception shall not apply when the ‘effect’ of COVID-19 outbreak has a disproportionate adverse effect on the target company as compared to the adverse effect it has on other companies operating in the same industry.

5. Therefore, in light of the above, it becomes increasingly apparent that it is possible that COVID-19 per se, will be excluded from the definition of 'Material Adverse Effect' but that the impact and adverse effects of COVID-19 may be treated as a 'Material Adverse Effect'.

6. Furthermore, the reality of the situation is indeed that most businesses and contracts that are affected today, are not directly on account of COVID-19, but rather on account of the effects of the consequences that COVID-19 has had on the global economy.

VI – Conclusion

Although the global situation continues to evolve rapidly, COVID-19 is now a known factor. While the extent to which it will cause further disruptions, in various industries cannot be accurately predicted at this time, it is expected that we may see further complications involving global economies the foreseeable future. At the same time, commercial relationships and trust still remain paramount in our competitive economic world of today. Ideally, therefore, before seeking relief under a “force majeure” clause, it is crucial that a party understands its rights and obligations under the contract by which it is bound as well as the remedies available to it under the law. In addition, it may also worth reviewing the insurance coverage, if any, to determine whether invocation of a force majeure clause would preclude a company from later making a claim on account thereof. Prior to entering into a legal dispute, a party should consider the consequences from a sound commercial perspective, noting the future impacts it may have on the long term relationship with the other parties

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on his/her particular facts and circumstances. The latest provisions of the applicable laws, judgements and notifications of the authorities must be considered.

[1] O.M.P. (I) (COMM) &I.A.3697/2020
[2] *Ibid* at Para 20
[3] Para 4 (d) of the Order passed in Standard Retail Pvt. Ltd. v/s M/s. G.S. Global Corp & Ors [Commercial Arbitration Petition (L) No. 404 of 2020] and others.
[4] Polybius, Histories at 9.32
[5] The quote of Lysciscus is also accepted by most legal scholars as one of the early origins for the Latin maxim *Clausula rebus sic stantibus*, a doctrine used primarily in public international law that essentially serves an 'escape clause' to the general rule of *pacta sunt servanda* ("promises must be kept").
[6] Collins Dictionary
[7] Cambridge Dictionary
[8] Merriam Webster Dictionary
[9] Formally, the International Institute for the Unification of Private Law. India became a member in 1950.
[10] "If some unforeseen event occurs during the performance of a contract which makes it impossible of performance, in the sense that the fundamental basis of the contract goes, it need not be further performed, as insisting upon such performance would be unjust." - Taylor v/s Caldwell, (1861-73) All ER Rep 24
[11] Classic Maritime Inc v/s Lion Diversified Holdings bhd [2009] EWHC 1142 (Comm), Transatlantic Financing Corp. v/s U.S. 363 F.2d 312[11], Dorn v/s Stanhope Steel, Inc., 534 A.2d 798, 586 (Pa. Super. Ct. 1987)
[12] Hackney Borough Council v/s Dore (1922) 1 KB 431, OWBR LLC v/s Clear Channel Communications, Inc., 266 F. Supp. 2d 1214
[13] For instance in CE 9th April 1962, "Chais d'Armagnac" and the decision of the Administrative Court of Grenoble, 19th June 1974 in the "Dame Bosvy" case.
[14] Customary law also forms a large part of base of the Indian Legal System.
[15] Although this Article attempts to cover most of the relevant decisions in relation to "force majeure", it is by no means exhaustive and is merely illustrative.
[16] 1954 SCR 310
[17] 1960 AIR 588
[18] 1968 (1) SCR 821
[19] AIR 1961 SC 1285
[20] AIR 1971 SC 1756
[21] A similar situation had also been dealt with a few years earlier by the Hon'ble Supreme Court in Raja Dhruv Dev Chand v/s Raja Harmohinder Singh AIR 1968 SC 1024 where however, the Deed of Lease had been executed. In this case, the Court held that as set out under Section 4 of the Transfer of Property Act, 1885 all its provisions were to read into the Contract Act but not vice-versa, meaning thereby the general provisions of the Contract Act would not apply to a Deed of Lease that had already been executed, which was in the nature of a completed conveyance as opposed to an executory contract. This view was reaffirmed by the Hon'ble Supreme Court in T. Lakshmipathi v/s P. Nithyananda Reddy, (2003) 5 SCC 150 where it was observed that, "*Doctrine of frustration belongs to the realm of law of contracts; it does not apply to a transaction where not only a privity of contract but a privity of estate has also been created inasmuch as lease is the transfer of an interest in immovable property within the meaning of Section 5 of the Transfer of Property Act (wherein the phrase 'the transfer of property' has been defined), read with Section 105, which defines a lease of immovable property as a transfer of a right to enjoy such property*"
[22] Civil Appeal No. 814 of 2005
[23] 2011 7 SCC 639
[24] (2017) 14 SCC 80
[25] *Ibid*

[26] In some contracts, the definitions clause would define a “Force Majeure” event, and the “Force Majeure” clause appearing in the operative portion of the contract would cover the remaining ingredients set out above.

[27] In some agreements, particularly in commercial lease agreements, there is also a provision that stipulates that the lease term shall stand extended by the time period of the “Force Majeure” event. For instance, if the lessee has been unable to utilize the leased premises for a period of 30 days, the lease terms shall be deemed to extended for a period of 30 days.

[28] Available at https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020

[29] F.No.18/4/2020-PPD, available at https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf

[30] Press release available at https://pib.gov.in/PressReleasePage.aspx?PRID=1609718

[31] [2004] 1 HKLRD 754

[32] Available at https://www.moh.gov.sg/docs/librariesprovider5/pressroom/press-releases/annex-for-notification-8-apr-2020.pdf