The Role of Public Policy in the Interpretations and Enforcement of Force Majeure Clauses in Commercial Contracts in India: A Critical Analysis of Section 32 and 56 of the Indian Contracts Act 1872

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Abstract: *This research paper aims to critically analyse the effects of public policy in the interpretation and enforcement of force majeure clauses in commercial contracts, with a specific focus on the consequences for contract performance and the future legal implications within the framework of sections 32 and 56 of the Indian contract Act 1872. In order to analyse the ambiguity in the definition of an "extraordinary event" a mixed approach has been taken relying majorly on secondary data sources and following a textual analysis method in order to reach at plausible solutions to the ambiguity. Relying on it the author argues that the vague nature of the term extraordinary circumstances in force majeure clauses and the further absence of specific provisions dealing with such clauses in commercial contracts has led to a lot of issues in the implementation of law. Thus, the author seeks to investigate and analyse the influence of public policy principles on the interpretation and enforcement of existing force majeure clauses in commercial contracts and to further assess the implications of contractual performance and legal considerations under section 32 and 56 of the Indian Contract Act 1872, along with the growing need of proper statutory provisions to deal with such contracts. Thus, the author through the course of these arguments claims that there should be proper legislative amendment to the Indian Contract Act, 1872 in order to provide explicit definitions of the term "extraordinary events" within the context of force majeure, encompassing specific criteria such as un-foreseeability and the inability to control or mitigate the event's impact, further these amended provisions should be clearly worded to avoid any future anomalies and they should also explicitly include pandemics and future epidemics as extraordinary events in their definition, acknowledging their unique characteristics and impact.*

Keywords: *Ambiguity, Contractual Obligations, Consequences, Extraordinary Event, Pandemic.*

I. INTRODUCTION

Public policy has long been recognised as a basis on which a court may refuse to enforce the terms of a contract, despite these terms having been freely and voluntarily agreed to by the parties. It has now become a firmly established mechanism of judicial control over contractual enforcement, but despite this, the power provided by the doctrine is often criticised because it entails the application of value-laden and seemingly subjective policy considerations, including those of fairness, justice and equity, and therefore has the potential, when applied indiscriminately, to result in contractual uncertainty.

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At its most fundamental level, public policy serves as a mechanism through which society, mediated by the legal system, can maintain a degree of control over the agreements made between individuals. While individuals generally have the freedom to enter into contracts with whomsoever they choose and on terms they find agreeable, the courts retain the authority to reject contract terms when they conflict with public policy.[2] In this sense, public policy, when considered in isolation, lacks substantive meaning or content. As noted by Sutherland, it functions as a collection of general principles and specific rules within contract law. It is the examination of these contract law principles and rules, often referred to as policy considerations that allows the courts to give depth and substance to the concept of public policy.[3] On the other hand, force majeure clauses are typically included by lawyers to safeguard their clients' interests, especially in transactions involving public entities that can raise concerns related to public policy or public morality. In such scenarios, the choice of governing law for the contract may become less significant. In addition to it, other unforeseeable events such as port closures or environmental problems prevalent at the ports of loading and unloading of cargos may also take place. In such circumstances contracts are usually deemed to have been frustrated. [4]

II. SCOPE AND EXTENT OF 'PUBLIC POLICY'

At its most fundamental level, public policy represents a mechanism through which society guided by the legal system, can exert a degree of control over the contractual relationships among individuals. While individuals enjoy the freedom to enter into contracts with whomsoever they choose and on terms they see fit, the courts, guided by the principle of freedom of contract, generally uphold these agreements. However, they also retain the authority to decline enforcement of contract terms that run contrary to the principles of public policy. In essence, public policy, when viewed in isolation, may lack substantial meaning or content. As noted by Sutherland, it functions as a collection of general principles and more specific rules within contract law. It is the examination of these contract law principles and

[1] Matthew Kruger, The Role of Public Policy in the Law of Contract, Revisited, 128 S. AFRICAN L.J. 712 (2011).

[2] *Ibid*

[3] Walter Gellhorn, Contracts and Public Policy, 35 COLUM. L. REV. 679 (1935).

[4] Marel Katsivela, Contracts: Force Majeure Concept or Force Majeure Clauses, 12 UNIF. L. REV. n.s. 101 (2007).

rules, often referred to as policy considerations, that empowers the courts to provide depth and substance to the concept of public policy.[5]

In the case of *The Driefontein Consolidated Mines Ltd. v. Janson (1901)*[6], the court held that an agreement is deemed unlawful if it contradicts the principles of public policy. The doctrine of public policy is rooted in the maxim *"ex turpi causa non oritur actio"* which essentially means that an agreement contrary to public policy is null and void as public policy is a concept that lacks a precise, fixed definition, it is dynamic and subject to change often determined at the discretion of the court.[7] The court holds the authority to interpret public policy, but if the terms of the contract violate public policy, and still both the parties have consented to them, they possibly cannot go forward with it as they can't be legally enforced.

In *Central Inland Water Transport Corporation V. Brojo Nath Ganguly(1986)*[8], while considering the scope and essentials of *Section 23*[9] the court came to the opinion that the Indian Contracts Act does not define the expression of *"public policy"* or *"opposed to public policy"*. Thus the dispute in this case was centred on the validity of an exemption clause absolving liability for negligence. The appellant argued for contractual enforcement, while the respondent contended that such clauses contravene public policy. Although the court ruled the case in favour of *Brojo Nath Ganguly*[10], stating that exemption clauses voiding liability for negligence are against public policy, and further underscored that the "*fundamental legal principles and fairness cannot be overridden by contractual agreements that negate responsibility for wrongful acts*."[11] Thus the Supreme Court in this case delivered a unanimous decision, asserting that contractual clauses excluding liability for gross negligence or wilful acts are void due to public policy concerns. Though lacking a majority-minority division, the case

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[5] *Eastwood* v *Shpstone* 1902 TS 302; *Robinon v Randfontein Estates GM Co Ltd* 1925AD 173: M-*, All"oy and Researci (SA) (Pt) Ltd, Ellis* 1984 (4) SA874 (A) at 891; *Sasfin (Pty)Ltd v Beukes 1989* 1 SA 1 (A); *Barkhizen* v *Napier* 2007 *(5)SA323* (CC).

[6] A. L. Smith, M. R., The *Driefontein Consolidated Mines Ltd. v. Janson* (1901), Times L.R., Vol. XVII., 605.

[7] Charles Chatterjee & Anna Lefcovitch, Considering the Rationale of Incorporating Force Majeure Clauses in Commercial Contracts between the Parties to a Commercial Contract, 14 INT'l. IN-House Counsel J. 1 (2021).

[8] *Central Inland Water Transport Corporation V. Brojo Nath Ganguly* AIR (1986) SC 1571

[9] Indian Contract Act, 1972

[10] *Supra note* 8

[11] *Supra note* 393.

established the principle that "*contracts cannot override fundamental legal principles when they infringe upon equitable considerations, thereby ensuring fairness and upholding public policy standards within contract law."*[12] This case highlighted the importance of not allowing contracts to undermine principles of fairness and justice.

Further the Delhi High Court further in the case of *Union of India v. M/s N.K. Garg & Co.*[13], held that: *"any agreement by which a party is deprived of interest (any legitimate claim) would be rendered void for being immoral and violative of public policy."*[14] Through these precedent cases, it is clear that the Court has consistently recognized the importance of incorporating public policy principles into the implementation of laws. Therefore, it is necessary for laws related to contractual relations or commercial contracts to be framed based on the principles of public policy. This ensures just decisions that do not infringe upon the rights of any parties involved. Given that commercial contracts often involve numerous individuals as contractual parties, it becomes even more imperative to have laws that address such matters through the lens of public policy.

III. PHILOSOPHICAL JUSTIFICATION BEHIND FORCE MAJEURE CLAUSE IN A CONTRACT

The term "force majeure" is defined in Black's Law Dictionary as an unforeseeable and uncontrollable event. It is a contractual provision that allocates the risk of loss if performance becomes impossible or impracticable, particularly as a result of an event that the parties could not have foreseen or controlled. While Indian statutes do not provide a specific definition or process to deal with such force majeure clauses, the Section 32 and 56 of the Indian Contract Act, 1872 addresses situations where a contract is contingent on an event that becomes impossible, rendering the contract void.[15]

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From a contractual perspective, a force majeure clause offers temporary relief to a party, allowing it to suspend the performance of its obligations under the contract when a force

[12] *Ibid*

[13] 2015 (224) DLT 668

[14] Umakanth Varottil, Contract Depriving a Party of Interest: Immorality and Public Policy, INDIACORP LAW, December 16, 2015

[15] Poorvi Sanjanwala, Kashmira Bakliwal, "what is force majeure?" The legal term everyone should know during Covid-19 crisis, The Economic Times, *available at*: https://economictimes.indiatimes.com/small-biz/legal/what-is-force-majeure-the-legal-term-everyone-should-know-during-covid-19-crisis/articleshow/75152196.cms

majeure event occurs. The concept of force majeure has its origins in English law, with notable development in the case of *Taylor v. Caldwell*[16] which initially recognized that in maritime and state laws, force majeure has applicability across various legal systems.[17] However, under common law, it is not automatic and must be invoked by the parties involved in a contract. But it is the lack of universally accepted definition of force majeure that has led to these multiple interpretations of force majeure clauses, making it challenging to establish a standard force majeure clause in both theory and practice. Force Majeure is essentially a contractual provision where contracting parties agree to excuse delays or the inability to meet specific time-bound obligations by the other party in the event of unforeseeable and significant occurrences that are beyond ordinary human imagination.[18]

Moreover, the scope of force majeure is not exhaustive, and events like the COVID-19 pandemic continually test its boundaries. Consequently, the disputes regarding the application and extent of force majeure are common. In most cases, contracts specify circumstances that should be assessed contextually as force majeure. But at its core, a force majeure event is often associated with *"Acts of God"* due to their obvious reasonable insensibility, inconceivability, and supernaturalism. However, some force majeure events can be human-induced, including government actions which may encompass wars, policies, and regulations, which too can sometimes result from Acts of God. For instance, government responses to Acts of God, such as a pandemic for instance, may lead to preventive measures that obstruct the fulfilment of contractual obligations among parties.[19] Thus, understanding the concept of force majeure varies across jurisdictions, with different approaches. In Common law practice, as there is typically no general definition for this concept.[20] Instead, the interpretation of force majeure often hinges on the specific national laws in place. As a result, what qualifies as a force majeure event can vary depending on the terms of individual contracts and the legal jurisdiction in

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[16] (1863)122 ER 309.

[17] *Oil Plunges Below Zero for First Timein Unprecedented Wipeout*, BLOOMBERGLAW, https://news.bloomberglaw.com/environment-and-energy/oil-plunges-below-zero-for-first- time-in-unpreceden-wipeout.

[18] Cosmos Nike Nwedu, The Rise Of Force Majeure Amid The Coronavirus Pandemic, NATURAL RESOURCES JOURNAL , Winter 2021, Vol. 61, No. 1 (Winter 2021), pp. 1-18

[19] *Supra note* 7

[20] *Supra note* 6

question?[21] It's also crucial to note that a force majeure clause cannot be implied or invoked into a contract; as it must be expressly provided by the parties because does not operate in void, on the assumption of default by unspecified events and under any principles of unwritten rules. Even when a contract includes a force majeure provision without conditions or subsequent steps for it to be invoked, parties may find themselves navigating the complexities of litigation or arbitration, depending on their chosen method of dispute resolution.[22]

IV. EVALUATION OF ISSUES RELATING TO FORCE MAJEURE CLAUSE IN A COMMERCIAL CONTRACT AMID EXTRAORDINARY CIRCUMSTANCE

There is no particular section present in the Indian laws that deals with the area of force majeure contacts specially in the area of commercial contracts. But over the past few years specially since the rise of COVID 19 across the world, various debates have been raised regarding the ambit of the term "*extraordinary circumstances"* and whether or not it can include circumstances of a pandemic as well? And if it can then what will be the remedies that may be provided during the course of such events? In India the laws on force majeure events is embodied under Section 32 and 56 of the Indian Contract Act. 1872. Section 32 of the Contract act deals with *"contingent contracts"* which states that *"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."* Further Section 56 of the Contract acts enshrines the *Doctrine of frustration* or *impossibility of contracts,* which provides that *"a contract to do an act which, after the contract is made, becomes impossible or unlawful or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful."*[23]

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[21] Logan Johnson & Benjamin Cohen, *Coronavirus and Force Majeure: Who is Liable*? SHJ LAW FIRM: INSIGHTS (March 4, 2020), https://shjlawfirm.com/2020/03/04/coronavirus-and-force-majeure- who-is-liable.html.

[22] RobertM.Finkeletal.,*COVID-19:DraftingForceMajeureClausesinLightoftheCOVID- 19 Pandemic* (April 14, 2020), https://www.wilmerhale.com/en/insights/client-alerts/20200413-drafting- force-majeure-clauses-in-light-of-the-covid-19-pandemic.html

[23] Preetam D'Souza and Ranjit Mahishi, "COVID 19 : IMPACT OF FORCE MAJEURE IN INDIAN COMMERCIAL CONTRACTS", Kochhar & Co., *available at:* https://kochhar.com/wp-content/uploads/2021/08/COVID-%E2%80%93-19-IMPACT-OF-FORCE-MAJEURE-IN-INDIAN-COMMERCIAL-CONTRACTS.pdf

It is with the aforementioned provision of the Indian Contract Act, 1872 that parties can plead impossibility of performance of contracts and consequently frustration of a contract on account of any extraordinary event, which may be beyond the control of the parties. Commercial contracts are any legally binding agreements between two or more parties, which regulate the business relationships between individual or businesses where each party has agreed to perform some act or to refrain from doing certain other act. They are mostly written contracts or documents, which may be verbal as well under certain circumstances. However, commercial contracts define specific obligations of each party involved and outline the repercussions if any of the terms and conditions are not adhered to. These contracts are essential for businesses and organizations, aiming to ensure that legal agreements facilitate the realization of the contract's full benefits. The contract outlines all the critical factors, including the terms and conditions. And a breach of such contract takes place when one party fails to meet their contractual obligations.[24]

Commercial contracts almost always include a force majeure clause, and the circumstances under which this provision can be invoked is also stated which mostly include general events of *Acts of God*. But there are also some contracts which include certain *catch- all phrase* such as *"any other cause whatsoever"* or *"beyond the control of the respective party",* and it is under such provisions that ambiguity in implementation of law arises, as to what can be considered as an acceptable situation to breach one's contractual obligations. Further, Section 56 of the Indian Contract Act, 1872 or the "*doctrine of frustration"* was laid down in India by the Supreme Court decision on the case of *Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)*[25] wherein the Court established that "*if a contract explicitly or implicitly includes a provision enabling the discharge of performance in specific situations, the contract's dissolution will follow the terms outlined within the contract itself."* In such instances, the legal framework of Section 32 of the Act is applicable. However, if frustration occurs outside the boundaries of the contract, it falls under the purview of Section 56.[26]

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[24] *Ibid*

[25] 1954 SCR 310

[26] Prakriti Syngal and Pranav Kaushik, 'The Interplay Between Section 32 And Section 56 Of The Indian Contract Act, 1872,' S&A Law Offices, available at: https://www.mondaq.com/india/litigation-contracts-and-force-majeure/1307648/the-interplay-between-section-32-and-section-56-of-the-indian-contract-act-1872

The findings of the Supreme Court in the above case was further upheld and reaffirmed in the *Energy Watchdog and Ors. vs. Central Electricity Regulatory Commission and Ors.*[27] case where the supreme court emphasized on the concept of force majeure, that "*it should be interpreted narrowly and should not be extended to cover events that could have been anticipated."* It further highlighted that, for an event to be considered under the definition of an extraordinary event it must be reasonably beyond human control and must not be reasonably foreseeable. This case significantly gave more clarity on the interpretation of force majeure contracts and helped in improving the quality of regulatory decision-making process, as it demarcated the boundaries for the use of such regulatory power.[28]

One common challenge in implementing commercial contracts arises when interpreting events that fall within the scope of *catch-all clauses*. These clauses are often broadly worded, requiring the state to assess each situation on a case-to-case in order to determine what falls under their provisions. For instance, the COVID-19 pandemic is an example of such an event which led to the disruption of various commercial contracts, leading to subsequent concerns among the parties involved. It is thus crucial to distinguish whether the non-performance of a contract is a result of an "*extraordinary event"* or a deliberate act to benefit one party, specially in cases like the COVID-19 pandemic, where some parties may have deliberately invoked *force majeure* provisions to escape the execution of their contractual obligations, even in the cases where their actions might have been motivated by self-interest.

Therefore, making this distinction is essential to ensure fairness to both parties, as even if an event like COVID-19 falls under a *force majeure* clause, it's important to remember that it alone does not automatically absolve a party from their contractual obligations. The force majeure event must directly impact the non-performance of the contract, and the party seeking to rely on it should also be obliged to mitigate the impact and explore alternative means of fulfilling their obligations.

It is possible that complex issues may arise when determining this causal link between events, particularly in situations where the immediate and direct cause is not the COVID-19 pandemic itself but rather actions taken by authorities in response to it, such as lockdowns, curfews, or

[27] MANU/SC/0408/2017

[28] *Supra note* 27

restrictions on movement of people and goods. Thus depending on the language of the *force majeure* clause, such governmental actions may be considered as a separate or independent *force majeure* event that justifies non-performance of a contract.[29] Therefore, a force majeure clause, if present in the contract, should require parties to make reasonable efforts to fulfil the contract through alternative means. Even if there is no express provision, the party invoking a force majeure event to excuse non-performance must demonstrate that they were unable to meet their obligations despite taking steps to mitigate the impact of the force majeure event.[30]

V. CASE STUDY ON FORCE MAJEURE CLAUSE IN A COMMERCIAL CONTRACT WITH SPECIAL REFERENCE TO COVID-19

The impact of a force majeure event on a contract can result in various outcomes. Some commercial contracts may necessitate a high threshold of "impossibility" for contract termination, permitting one party to terminate the contract only if the obligations are fulfilled which becomes genuinely impossible. In contrast to this, other contracts may include provisions that enable parties to temporarily suspend specific obligations during the course of the situation.[31] They may also provide for suspension in cases where, although performance is technically possible, it remains impractical or commercially unfeasible.[32] The emergence of COVID-19 in 2020 for instance gave birth to a lot of debates as to whether a pandemic would be an acceptable, legitimate reason to raise a *force majeure* defence in commercial contracts. These debates relatively drew inferences from different premises that tend to focus mainly on one side of an argument without considering the other side of whether or not COVID-19 can at all be considered as a classical *force majeure* event or not.

The key components of the current debates revolve around: (a) the specific language and terms within a contract that might allow the invocation of force majeure due to COVID-19; (b) the presence or absence of a force majeure provision in the contract; (c) whether the grounds for excusing performance encompass a pandemic or related circumstances; and (d) whether the contract includes a stipulation for formal notice, and if so, whether this notice requirement has

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[29] Adarsh Saxena, Aditya Sikka & Drishti Das, FORCE MAJEURE IN THE TIMES OF COVID -19, Cyril Amarchand Mangaldas blogs, April 30,2020

[30] *Ibid*

[31] *Supra note* 17

[32] *Ibid*

been fulfilled.[33] However, there have been a lot of contrary opinions by various researchers about the matter at hand which have made its way into various articles revolving around the issue of if COVID 19, if it can be considered as a force majeure event and whether or not it can permit one party to terminate their contract under such clause. Therefore, this paper takes a different approach of understanding the implications in the enforcement of such contracts on the contracting parties.

As we know that the pandemic has been an event that could not have been predicted before its outbreak and thus it has caught various parties involved in any such contracts off guard, due to which multiple contracts specially commercial contracts dealing in shipments and trade were left in array dur to the various restrictions imposed by different countries across the globe. The World Health Organization (WHO), also declared 2019-nCoV as previously unknown to humanity until its identification in Wuhan, ChinaTherefore not only was the containment of COVID-19 beyond the control of any of the parties, but the development of a curative vaccine for the pandemic became beyond the scope of mainstream scientific knowledge.[34]

During this time, the various restrictions imposed by countries around the world on movement and trade, resulted in the nullification of numerous commercial contracts due to non-implementation. Which, in turn, gave rise to various legal issues among the contracting parties, primarily due to the fact that the definition of an "*extraordinary event*" within force majeure clauses was completely vague and unclear, as to what can be an extraordinary event under which a party can be excused from its contractual obligations, which made the implementation of the clause although more difficult as it became complicated to determine which party actually could take the support of the clause and which party just wanted to use it as a medium to escape the implementation of their obligations. Thus, the uncertainty stemming from the lack of proper legislative frameworks governing such clauses added to these debates. These debates contributed highly in determining and highlighting the necessity to enact specific laws which can prevent any similar issues from happening in the future, and the ways to achieve

[33] Michael W. O'Donnell & Aimeé Vidaurri, *Critical issues facing essential suppliers in the COVID-19 pandemic* (April 2, 2020), available at: https://www.nortonrosefulbright.com/en/ knowledge/publications/ 049b6458/ critical-issues-facing-essential-suppliers; Brain Perrott, *Coronavirus: Can it be a Force Majeure Event*? February 2020, available at: https://www.hfw.com/Coronavirus-Can- it-be-a-Force-Majeure-event-Feb-2020.

[34] *Supra note* 11

this objective is by making certain changes to existing laws related to commercial contracts, including necessary provisions, and making essential adjustments to ensure legal clarity.

VI. RECOMMENDATIONS

Certain steps to remove the ambiguity in law and enhance the clarity in the definition of an "*extraordinary event*" within *Sections 32 and 56 of the ICA, 1872*, pertaining to force majeure clauses, and to address the absence of adequate compensation provisions based on public policy principles for potential future pandemics like COVID-19, could include:

a. Legislative Amendment: this is a necessary step which the legislatures should take considering the anomalies that arose during the COVID -19 in the implementation of force majeure clauses in commercial contracts due to the absence of a specific provision in law dealing with such events could have led to such debates being avoided. Moreover the clause dealing with such *extraordinary events* should be explicitly added to the Indian Contract Act, 1872 which should further encompass certain specific criteria's, such as un-foreseeability and the inability to control or mitigate the event's impact to broaden the definition. Such new legislations should also be based on public policy principles in order to ensure proper implementation of law.

b. Incorporate Pandemics: The amended provisions and such contracts laws should also include pandemics or any such epidemics that may arise in the future as an extra-ordinary events under the definition of a *force majeure* event, acknowledging their unique characteristics and impact, to avoid any such future ambiguities in the implementation of law.

c. Clarity in Clauses: Clear and comprehensive wording should be used while drafting of force majeure clauses in contracts, specifying the types of events that trigger them, their consequences, and any compensation provisions in case of such events. Such laws should also provide comprehensive penalties and regulation provisions for proper implementation of the law, in order to avoid cases as that of the COVID -19, which led to various inadequate decisions by the court of law due to the ambiguity in law.

d. Public Policy Principles: The framework for compensation provisions for the parties pleading under force majeure clauses, should be based and further developed on *public policy principles*, which can be invoked even in the absence of a clear force majeure

clause. This framework should address situations like pandemics and provide guidelines for equitable compensation to the parties.

e. Dispute Resolution Mechanism: Certain dispute resolution mechanism should be established that addresses issues arising from such force majeure events or contract infringement cases, as this measure can help the parties in out of court settlements and speedy trials, preventing the parties from the hassle of going to the courts and would further help them reach a common consensus on such contractual issues.

VII. CONCLUSION

The interplay between public policy, force majeure clauses, and their interpretation in commercial contracts forms a complex and vital component of contract law, gaining particular relevance in the context of extraordinary events like the COVID-19 pandemic. Interpreting these clauses can pose challenges, with variations based on contractual language and laws, leading to disputes and ambiguities. In India, Sections 32 and 56 of the Indian Contract Act, 1872, primarily govern the legal framework for force majeure, addressing situations where a contract becomes impossible to perform due to unforeseen events and offering a basis for pleading the impossibility of performance. Nevertheless, these provisions are not exhaustive, leaving room for interpretation and application.

A prominent challenge in the domain of force majeure is posed by catch-all phrases such as *"any other cause beyond the control of the respective party,"* which are often included in contracts. These broadly worded clauses require individual assessment on a case-by-case basis, contributing to the ambiguity surrounding what qualifies as a legitimate reason for breaching contractual obligations. The COVID-19 pandemic has notably intensified these debates, with parties grappling over the applicability of force majeure and the extent of its coverage.

To address the prevailing challenges and uncertainties in force majeure, particularly in the context of extraordinary events like pandemics, several recommendations have been proposed. A legislative amendment to the Indian Contract Act 1872, is suggested to provide explicit definitions of "extraordinary events" within the context of force majeure, encompassing specific criteria such as un-foreseeability and the inability to control or mitigate the event's impact. These amended provisions should also explicitly include pandemics and future epidemics as extraordinary events, acknowledging their unique characteristics and impact. Clarity in contractual clauses is another crucial aspect, emphasizing the use of clear and

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comprehensive language in force majeure provisions that specify the types of events triggering them, their consequences, and compensation provisions. Moreover, a framework based on public policy principles for compensation provisions should be developed, even to be invoked in the absence of a clear force majeure clause.

In essence, the legal landscape involving public policy, force majeure clauses, and their interpretation within commercial contracts is a dynamic and evolving arena. The experiences and lessons drawn from the COVID-19 pandemic underscore the necessity for legal clarity and preparedness to tackle unforeseen challenges, thus ensuring a harmonious balance between contractual freedoms and the values of society. These recommendations aim to contribute to a more robust and equitable legal framework, alleviating ambiguities seen in previous cases and improving the quality of regulatory decision-making, all while upholding the paramount principles of fairness and justice.

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