

# **THE LEGAL IMPLICATIONS IN SPORTING EVENTS IN INDIA CAUSED BY THE CORONAVIRUS IN CONTEXT OF FORCE MAJEURE AND DOCTRINE OF FRUSTRATION**

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## **ABSTRACT**

Amid the exponential dissemination and impacts on human health posed by Coronavirus, policymakers around the globe have enforced social distancing mechanisms and travel restrictions in the early months of this year, exacerbating these policies into lock-down directives and restrictions on public events. The international sports market is an economic sector approximated at \$488.5 billion going up to a whopping \$612 billion in 2022<sup>i</sup> which includes infrastructure, tournaments, skills development, production, and service industries. The range and revenue-generating possibilities are most recognizable throughout the marquee major international sporting tournaments. The organisers, promoters, teams, networks, sponsors, catering companies etc. are all components of this booming market of international sports tournaments, with large amounts of money involved in the industry. The global pandemic caused or provoked by the coronavirus or COVID-19 has had a shattering influence on sporting tournaments and events, with international events including the Olympics getting delayed by nearly a year, and other events seriously considering a severely restricted format, or potentially even discontinuation, such as that of the 2020 Wimbledon. Furthermore, internationally-watched sporting events such as basketball (NBA), football (UEFA, major European Leagues) and cricket (IPL-2020, many other bilateral tournaments) were plunged into turmoil as television companies and sport-leagues who'd already fitted specific periods for their broadcast of the game face ambiguity due to the risks of the events getting forced to cancel for fear of contracting the virus. All temporary suspensions, postponements and terminations are interruptions that also have regulatory and legal repercussions for all of the tournament's stakeholder groups, from the organizer, team members, corporate partners, media

companies and business rights holders to the viewing public. This research paper examines the legal and contractual consequences of rescinding and temporarily suspending these sporting tournaments across those stakeholder groups specifically in the context of the force majeure clause and the doctrine of Frustration while also providing suggestion as to what the next steps should be.

**Keywords-** Coronavirus, Force Majeure, Frustration, Contractual Agreements, Remedy, Sports, Broadcasters, Athletes, Ticketholders.

## **INTRODUCTION**

The Coronavirus impacts every aspect of our lives and whilst the health implications are by far the most important concern, it is also very possible that the long-term socioeconomic ramifications will be truly relevant. For several decades to come, legal matters arising in commercial, employment, and human rights legislations will be played out. In sports, they are also taken to an extraordinarily potent attention – as athletic activities are a natural source of individuals getting together in huge numbers, but also for the cultural and economic appeal of each of them. The coverage regarding the progress of the pandemic worldwide is accompanied with threats to the discontinuance of major international sporting events or preparations being created to conduct 'closed doors' tournaments.

What occurs when ever a major sporting event is scrapped as a consequence of a state or agency taking measures to keep the coronavirus pandemic from spreading? Or if a squad or individual fails to participate due to their apprehension of infecting the virus? Or if a match needs to be held behind locked doors, but fans have purchased their fares already? The potential ramifications of the court action are just about limitless: claims by television companies and corporate partners against anyone who doesn't fulfil their liabilities; players who expose them to infectious disease for negligence; viewers who have purchased tickets or hospitality bundles; and club owners that have dropped substantial income. A main concern of many of these future conflicts would be whether the coronavirus pandemic or forced measures taken on major

sporting events to postpone, suspend or function behind closed doors would free a party from the obligations of their contractual agreements as addressed by this research paper.

## **THE FORCE MAJEURE CLAUSE/PROVISION- THE REMEDY FROM A CONTRACTUAL POINT OF VIEW**

Customarily, all commercial contracts include a provision buried in the depths of the contract known as the force majeure clause. The force majeure clause is crafted to excuse or forgive the performance of contractual obligations where circumstances or conditions outside the reasonable or fair control of one party prevent the said party from completing the contractual obligation.

Generally, force majeure clauses lay down that the failure to fulfil or delay the contractual obligations arising as a consequence of an event "not within the reasonable control of the performing party" is not an infringement of the contract. These clauses also touch upon the specific events like strikes, natural calamities, sudden change of laws, national wars and actions of the government as to whether the clause is inclusive or exclusive of the mentioned events. A typical contract inclusive of the event would naturally end with 'and other alike events' while one exclusive of the event would end with 'and no other events'.

The force majeure clauses could also contain a considerable degree of complexity and provide for significant consequences. An example would be through excusing rent payment if the rented room becomes unavailable or unusable or include exclusions generally or specifically for foreseeable events – for example, strikes and lockouts being disallowed, or terminating / expiring server and network infrastructure commitments as potential force majeure events.

In certain situations, the classification of force majeure events does not contain illness or pandemics, in which case it does be appropriate to resort to subsequent consequences of the pandemic, i.e. lock-downs and orders of curfew that are government actions, or to principles of statutory understanding that prescribe that 'some other event' or equivalent phrase used in

the description should be interpreted with careful regard to the words which precede or succeed in bringing events of a similar nature, illustrated in the clause, within its fold.<sup>ii</sup>

The first action or move in the force majeure clause calls for the party concerned to notify and alert the non-affected party of the occurrence of the force majeure event and its effect on the performance of its covenants by the party concerned; and typically gives the party concerned the legitimate right to suspend the agreement for a limited period of time, ranging from 30 days to 90 days. Ordinarily, force majeure clauses function not to entirely exempt the contract from its performance but only temporarily suspending or delaying it. These provisions shall only apply to the suspension of a part of the contract affected by the force majeure event with the remaining contract carrying on to be operational.

Where a significant force incident occurs past the suspension duration, the force majeure clause will provide the unaffected parties with such remedies, for example, revaluation of terms of business in order to compensate for covenants distressed or affected by force majeure or to enable the dissolution of the contract.

Force majeure clauses are exceptions to the contract accomplishment, they have to be interpreted narrowly<sup>iii</sup>, and to order to invoke the provision, the incident involved must significantly obstruct and not merely make it detrimental to the execution of the contractual arrangement or perhaps technically difficult to perform on and in the initial timeframe.

The Royal Moroccan Football Federation's (FRMF) invocations of force majeure to pull out from the 2015 edition of the African Cup of Nations due to an Ebola Epidemic in western Africa have been found to be improper.<sup>iv</sup> The reason was that the host federation was able, by appropriate health measures, to organize the competition and thus the outbreak did not impede participation in the tournament, but only inconvenience it.

Therefore, care must be taken when considering invoking force majeure clauses in contracts due to the coronavirus pandemic:-

1. Whether the event itself is impeding the pandemic itself, its performance or any consequential actions taken due to the pandemic, such as travel curbs, curfew orders or lock-downs.
2. What covenant and performance aspect are directly hindered by the event?
3. Does the event make the performance of the covenant impossible or seriously impede it or makes it inconvenient or commercially burdensome?
4. What is the term of the event that has a direct effect on the performance of the contract or covenant?
5. If the force majeure provision excuses consequences of non-performance or delayed performance.
6. In the event of a continuing non-performance due to the force majeure clause, what remedies are provided for?

## **UNDERSTANDING THE DOCTRINE OF FRUSTRATION – THE REMEDY FROM THE LEGAL POINT OF VIEW**

In the circumstance that the force majeure remedy is absent in the contract or is inaccessible to a party, a different approach can be made by applying the doctrine of frustration laid out in the Indian Contract Act, 1872. According to the doctrine of frustration, on the occurrence of an unexpected incident or a change of circumstances beyond what was envisaged by the parties at the time the arrangement was entered into, a contract could be rendered impossible to perform or execute. A frustrated contract is made void and no party may even be held liable for the obligations under it – unlike a force majeure clause which excuses loss without terminating the contract on invocation, the doctrine of frustration terminates the contract once invoked.

The doctrine of Frustration leads to the contract being dissolved due to a supervening uncertainty or impossibility thus not leaving the matter to be resolved according to the parties' intent. The entire object or foundation of the contract is frustrated or made unnecessary because the unforeseen event has happened, which at the time of the execution of the arrangement was beyond the understanding of the parties.

In the yesteryear, Indian courts have held that the word 'impossible' is not restricted to the physical or corporal impossibility but also includes impracticability or futility of performance. The execution of an act may not have been practically impossible, but it may become unfeasible if an adverse occurrence or changing dynamics frustrate the very basis on which the parties relied.<sup>v</sup>

In recent times, though, Indian courts have read this definition back and held that the courts have no general authority to disqualify a party from meeting its contractual obligations merely because its result has become onerous due to an unexpected turn of circumstances. A somewhat more burdensome performance method alone does not amount to a frustrating event, so a simple price increase that renders the contract more difficult to execute would not be frustrative. Thus, Commercial futility is not included in the impossibility.<sup>vi</sup>

For instance, the IPL, India Open, BWF Tours, Formula One races, and other sporting activities may well have become unfeasible to execute in their original schedules or under their original form, due to the COVID-19 pandemic. It is not evident they have become impossible to perform or administer, yet. Delaying or conducting the event inside closed doors can be solutions available to impossibility of accomplishment.

Therefore, care should be taken when applying the doctrine of frustration in contracts as a result of the coronavirus pandemic<sup>vii</sup>:-

1. A legitimate, valid as well as subsisting contract exists.
2. Some portion of the contract has yet to be executed.
3. The contract after it has been entered into is impossible to fulfil.
4. The impossibility is attributable to some event that the obligor could not help deterring.
5. The obligor does not induce the impossibility because of his / her carelessness.

## **OTHER LEGAL ISSUES- THE RULE OF MITIGATION AND RENEGOTIATION**

The mitigation rule in law of contract is a legal obligation on a person claiming compensatory damages for a breach of the contractual agreement, that is, the innocent person, to mitigate the possible losses resulting from the breach party's conduct or actions. In quite a similar manner, Indian courts would typically compel parties depending on the principles of force majeure or frustration to either establish that no alternative solutions or performance was feasible and also that the contract's underlying requirements had evolved to the point of making performance not merely onerous or arduous but actually impossible. The mitigation rule also will necessitate the stakeholders to cooperate to take all appropriate efforts to ensure reduction of damages incurred from the occurrence of force majeure incident or event.

The longstanding contracts between major stakeholders such as the organising agency, team owners, broadcasting companies that include provisions that allow parties to renegotiate the terms and conditions of the contractual agreement in good conscience whenever there is a major change of facts or circumstances that substantially changes the overall capability or effectiveness of the parties. These provisions can be contractual and legally binding, based on the nature of the language used in the sentences of the terms and conditions – thereby legally requiring the parties to renegotiate the contractual agreement. If the contracts itself do not include suitable renegotiation provisions, circumstances such as the coronavirus pandemic may require on parties to voluntarily renegotiate. These negotiations, while emerging out of independent choice and against the terms of the initial contractual agreement, are primarily influenced by the opportunity for future gains and reduction or mitigation of damages. These are likely to be effective when both participants feel that the commercial financial gain to the renegotiate is likely to eclipse the outcome resulting from any sort of arbitration or lawsuits.

## **THE LEGAL APPROACH THE EVENT ORGANISERS CAN TAKE**

Subject to the conditions of their contractual agreements with various stakeholders and the conditions of their insurance policies, event organizers may take into account postponement or cancellation of the event. Delaying or Postponing instead of termination will encourage

advertisers and broadcasters to acquire the value of their marketing privileges at a future date and would also enable hospitality and other service providers, third - party logistics providers and other contractors to offer their services at a future date.

In such a scenario, contract terms will then be decided to be kept in perpetuity with promoters, media outlets and other commercial partners until the event is organized at a specified date in the future. Event organizers will strive to modify pay-outs according to amended timeframes based on when the sports events take place instead of reimbursing deposits or payments previously received in different contracts. Conversely, organizers of the event may even have to cover the expenditures which already have incurred such as infrastructure and transportation expenses, revamping or general upkeep of sports facilities, costs besides stadium hiring, promotional expenses.

The stakeholders could also consider other alternatives, such as attempting to make the tournament a broadcast event alone and trying to hold a shortened version of the tournament. In those kind of circumstances contracts might have to be negotiated again with broadcasters, on-ground advertisers, and distributors. Broadcasters will be looking for a fee reduction seeing as commercial economic forecasts may no longer hold good at the inception of the contract into. Under certain cases this may lead to lawsuits and conflicts among the parties. Even so, organizers will have to endure operating expenses such as cash prizes, transportation cost, safety overhead expenses, catering staff, photojournalists, and hospitality expenses even in the event of a closed or locked doors tournament.

The stakeholders must keep in mind that just about any type of temporary suspension will necessitate an enhanced version of existing contracts if the event's deferment date stretches further than the contract period. This would also involve some reconstitution of contracts with on-site sponsors, accommodation and other service providers, contract employment, etc., for whom the contracts largely involve fans to be present in order to try and make them feasible. In a present illustration, with regard to the IPL, travel restrictions will lead to a decrease in the involvement of international players and thereby make the game less entertaining for spectators, which can have an effect on both field and broadcast advertising proceeds.

Once contracts are reconstituted, it is necessary to keep in mind long-term relationships and accords with closest neighbours and trading partners, specifically in the context of multi-year or multiple-season contractual agreements.

In order to check if some of the fixed expenses involved can be recovered, event organizers should review and revise the terms and conditions of their insurance policies and plans. Conversely, insurance policies are highly improbable to absorb financial losses such as income from broadcast television, promotion income and revenue from issuing tickets or loss of income from gate receipts, on-site sponsors as well as on-ground vendors on the occasion of a closed-door tournament. If event planners have explicitly taken out insurance policies to cover the possibility of a pandemic in the very first place, they will feel more confident contemplating the temporary suspension or possible cancellation. It has been widely reported and proclaimed, for example, that Wimbledon's organizers actually took out a 'pandemic insurance' approximately valued at USD 2 million a year during the 2003 SARS outbreak, a near epidemic. Only as culmination of this forethought, their insurers could pay USD 141 million this year, that will allow them to offset the expenses already accumulated and to reimburse their vendors according to contractual agreements.<sup>viii</sup>

## **THE LEGAL APPROACH THE BROADCASTING COMPANIES CAN TAKE**

Broadcasters frequently engage with tournament organisers in long-term multiple-year contracts. For starters, a USD 7.75 billion contract spanning several iterations of the Olympics was entered into between National Broadcasting Company (USA) and the International Olympic Committee.<sup>ix</sup> Likewise, in 2017 Star India purchased the television rights to the IPL for USD 2.55 billion over a five-year period.<sup>x</sup> Such valuations are typically based on a variety of factors, including estimated advertisement sales, market, viewership numbers and demographic.

As the pandemic will lead to a timeline shift or a season loss or depletion, television companies will also need to re-evaluate their contractual agreements with event organizers. They could

consider increasing the term of the contractual agreements to include an additional season during which a season has been scrapped. They could also conduct both a reassessment of copyright payments and a appeal for access to historical records in the event of a postponement or termination. The advertisements will need to be re-constituted for multi-year broadcasting contractual arrangements, taking into consideration the lack of income arising from the postponement or termination and bearing in mind the long-term arrangement between the stakeholders.

The commercial negotiations will differ based on whether there is an actual termination, extension or postponement, a decrease in the overall number of players, visa constraints resulting in restricted attendance and consequent dilution of viewing and commercial interests. In the context of the IPL, if international players are barred from competing, ratings may be affected, promoters and advertisers may lose confidence and withdraw etc.

Broadcasters will also look to monitor and adjust their multi-year arrangements with on-air sponsors, based on the number of competitive matches that happen. On-air marketers may request proportionate refunds for advancements paid or a full reimbursement if they have not yet played a single competitive match. The television companies should also be willing to postpone commercial slots entirely if promotional activations or marketing campaigns are related to the sports event taking place at a certain time of the year.

## **CONTRACTUAL AND LEGAL IMPLICATIONS ON EVENT OR TOURNAMENT SPONSORS AND VENDORS**

A major sporting event that has been cancelled or held behind locked-doors is likely to undermine and erode the interest of the on-ground sponsorship arrangements because the opportunity to communicate with fans inside the grounds is compromised. The on-ground vendors and sponsors can opt to terminate their contractual agreements with event planners if organizers are reluctant to offer a substantial amount of their entitlements or if they are unable to renegotiate compensation rates in a diluted resources bundle.

The on-ground vendors or sponsors must keep in mind that the lack of networking and greeting sessions, drink and hospitality collaborations and other transactions scheduled for players and fans would suffer from a closed doors tournament or shortened tournament. The expenses effectively paid on promotional advertisements and materials or on-ground displays might not even be reclaimable in the circumstance of a temporary suspension unless the contractual arrangements have been insured and thus be compensated.

It is reported that the 2020 Tokyo Olympic and Paralympic Games already had raised global sponsorship sales of over USD 3 billion<sup>xi</sup> and an approximate Rs. 600 crore with on-ground sponsorship deals and Rs. 500 crore<sup>xii</sup> from team sponsorship deals already had been raised by the IPL 2020. If and when the tournaments do get restarted, then all of these sponsorship deals would have to be reconstituted.

The on-site sponsors and vendors, such as catering providers, security personnel, contracted labour, cameramen, etc., may try to either cancel or re-negotiate the conditions of their agreements in the event of a cancellation or delay. The expenses already accrued may not be retrievable as a result of the contractual obligations. For seasonal partnerships such as drinks suppliers, transportation companies, ticketing vendors, hospitality service providers etc., can consider reviewing the force majeure clause of their arrangement and may reconsider withdrawing fees or all other commitments before the sporting tournament can be held.

## **WHAT ABOUT THE HEART AND SOUL OF SPORTING EVENTS- THE TICKETHOLDERS?**

In the circumstance of a temporary suspension, ticket holders will not necessarily forfeit the value of the ticket. The tickets would presumably maintain their value until the day of temporary suspension of the tournament. A ticket holder may well be allowed to even get a reimbursement for postponed sports matches, depending entirely on the ticketing terms of agreement, if the ticket holder is unable to attend the tournament on the future re-scheduled date. Even the European Football Organization (UEFA )already has confirmed that it would refund all Euro 2020 ticket holders who cannot make it on the latest 2021 days.<sup>xiii</sup> Ticket

holders will indeed be entitled for reimbursement in the case of a scrapped game or would need to be issued with tickets to alternate matches or sporting activities if such an option is appropriate. Based on the ticketing conditions, season ticket holders will be entitled to demand a reimbursement for games scrapped or suspended. Unilateral provisions for ticketing that exclude clubs or organizations from prosecution in the event of cancellations are difficult to be accepted by law.

When one looks at the situation in India, all ticket refunds were deemed under consumer rights law and contract law. Ticketing terms of the contract are regarded as 'standard form contracts' throughout Indian contract law. The Indian courts have held that contract agreements which are unilaterally imposed by one party on the other party may, in certain situations, be considered unacceptable and, therefore, difficult to enforce<sup>xiv</sup>. Thus, clauses that only give the tournament organizer the option to rescind but no right to the paying customer are highly improbable to be upheld in the Indian system.

The Courts in India have also upheld a partial reimbursement of the ticket price to prevent the event organizer from being unjustly benefited while also supplying the event organizer with ample insurance to reimburse expenses incurred during the event.<sup>xv</sup> It is possible that the event organisers will be forced to refund at least part of the gross ticket price to ticket buyers in case of cancellation of events by the Indian Courts or the consumer protection authorities.

## **LEGAL IMPACT ON THE ATHLETES AND PLAYERS- CAN THEY DECLINE TO PLAY?**

Although a delay or temporary suspension of a sporting event for athletes who have worked tirelessly is clearly upsetting, athletes will still be expected to cover some of the economic burden much as all stakeholders. Due to the time constraints and interruptions to their sporting timetable a postponement may not always be viable for athletes. In the case of tournaments or season that has been cancelled or permanently delayed, the terms of the relevant athlete contracts will dictate their treatment contingent upon whether players are paid by season due to scheduling fluctuations or are charged fixed daily or weekly salaries.

The temporary suspension of the T20 Global League in 2017 triggered a disagreement between both the South African Cricketers Association (SACA) and Cricket South Africa (CSA) over the allocation of the player fee, leading to the inability to reach a broadcasting agreement. As a part of the temporary suspension, the South African players were compensated with 60 per cent of their salary while foreign players were compensated with 50 per cent of their salary, the SACA and CSA entered into an agreement to pay money to the contract next season.<sup>xvi</sup> The payment was received taking into consideration the lack of player incentives to compete in other competitions over the same time span.

Unless the agreement is ambiguous, players, event organizers, team managers or club members can also be able to discuss for a short amount of time, a waiver of wages by players or a wage cut by making a collective arrangement. Recently, for instance, football players at Real Madrid took a mutual pay reduction in light of the latest pandemic 's impact on team income and non-playing wages.<sup>xvii</sup> Several other clubs including Arsenal, Borussia Dortmund, Bayern Munchen and Juventus have also taken pay cuts to compensate for the daily wage workers.<sup>xviii</sup> Athletes must keep in mind that in the circumstance of a shortened or reduced spectator game, the promoter is unlikely to have the legal or statutory ability to minimize the cost solely due to a decline in the utilization of marketing incentives and partner case activations. Furthermore, where a portion of the fee is discretionary and related to the presence of the sponsorship deal, then the portion of the compensation may be decreased.

## **CONCLUSION AND SUGGESTION**

The sporting activities will possibly remain postponed for a significant amount of time. A temporary suspension or termination would negatively affect all the players of the sports community. Therefore, it is important for each major stakeholder to create a crisis plan with a strategic approach upon first instance laying forward their choices in varying circumstances and the implications which are probable to occur. The crisis response plan should contain numerous components such as public response, employment effect, legal responsibilities, and terms of pay-out for insurance policies.

During this point, if the fate of the particular sporting tournament is still uncertain, it will also be helpful to seek for legal advice and examine the specifics of the contractual agreements and assess the implications of a potential discontinuance, temporary suspension, shortened sporting event or closed doors tournament on their contractual duties and responsibilities. Parties must examine in their contractual agreements in particular the phrasing of entitlement provisions, force majeure clauses and termination/cancellation clauses.

The parties can also discuss using the impairment clause of their contracts, as long as the contractual agreement allows for it. The impairment provision effectively creates the contractual solution for alternative services to individuals without having to respond to revocation in the event that their privileges and entitlements are restricted, disabled, or unable to perform. It also allows the parties to pursue extra privileges roughly equivalent in number and value as the privileges and entitlements restricted, impeded, jeopardized, or unclaimed. For instance, a broadcasting company with a long-standing affiliation and a multiple-year signed agreement with an event organizer may well not wish to discontinue their agreement due to a temporary suspension or discontinuance of the sports competition but may ask for alternative rights including the right to telecast old footage or replays of older tournaments. A perfect example would be the Star Network broadcasting old IPL matches due to the suspension of this year's edition as it was given old footage by the stakeholder.

In the case that parties intend to revoke commitments, parties could perhaps read the terms and conditions of the force majeure clause and confirm that it really covers pandemics or state intervention or not. If the parties conclude to enforce force majeure, the parties should further review the pre-conditions or requirements for adherence, including period of notice, mitigation commitments, effect on pay-outs and right to discontinue. In the lack of a force majeure provision, parties may propose to informally seeking out to creditors to re-negotiate conditions and might consider focusing on the doctrine of frustration and the impossibility of performance to cancel if it is not possible. In the event that the sporting tournament has already been postponed or forced to cancel, a formal notice should have been sent to the parties to whom contractual obligation and accountability is due. For instance, tournament organizers would need to inform teams, broadcasting companies, promoters and sponsors, teams would need to inform participants, sponsors, vendors; television companies would need to inform marketers,

etc. These telecommunications must be finalised after taking into account of the possible financial and legal impact of such a delay or termination.

All the Parties could further consider introducing a discussion with their contractual partners, particularly long-term as well as multiple-season clients, to evaluate and re-constitute key terms of their contracts that have already been affected by temporary suspension or discontinuance, including provisions such as consideration, financing costs and deliverables. Parties during that phase can also analyse substitute rights where and if they are suitable.

In the event that the contract was indeed covered by insurance, the parties really should evaluate their insurance plans to validate that termination or temporary suspension covers reimbursements or expenses already incurred in connection with a tournament, as well as any commitments to be implemented or procedures to be finished in order to make a claim to be sustainable or viable.

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