CHAPTER –V

ESSENTIAL

REQUIREMENTS

OF THE RULE
1. INTRODUCTION

One of the result of the Doctrine of Freedom of will and necessity of contract follows intention of contracting parties, that is, that the two parties should always undertake the tenor of contract. They are bound to observe the common intention and they should never change its effects and limitation, in any case, unless with their mutual consent. Hence, this concept does not allow any person to modify the contractual conditions, even the judge.

'Rebus Sic Stantibus' is an implied term and is commonly considered as a stipulated clause in the contract. Besides this, the adjustment of contract on the basis of fundamental change is also a customary rule and results from the negation of the intention and customary agreement (objective agreement) of the parties. However, in case of non-contradiction with the implied intention of both the parties, can such an adjustment be considered prior to the tenor of agreement?

The answer to the above question can be interpreted only after discussing the limits and scope of the contract in question. Therefore, we can safely say that this contractual common usage practice can dominate over the binding force of the contract, only after determining and ascertaining its limits and scope. There is no doubt that determining the limitation of the customary rule under the discussion without which, the reach of these
conditions i.e. the change in conditions or the circumstances, at the time of formation, can not be a pretext to the adjustment of the contract. Therefore, the promisor has no right to refuse the continuation of the execution of the obligation without proving the conditions of accomplishment of such a change in the circumstances.

This chapter is devoted to discuss the conditions or circumstances as to when the rule of altered conditions or change of circumstances can be applied. These conditions therefore, forms the essential requirements or the basic elements of the concept discussed in the study.

It is an established fact now, that the rule under the consideration (altered conditions or the change in circumstances) happens to be in direct contradiction to the "Doctrine of Pacta Sunt Servanda" which is the binding force of the contract. Hence, it should be applied strictly and in coherence with the observance of some special conditions. In case of any doubt, in this relation, or its application, the Doctrine of Stability of Contract should be applied

Therefore, to invoke this concept of change in circumstances as a rule and to make the adjustments in the terms of the contract (to keep the contract alive), the contract should be provided with the specific conditions so that for any minor change or excuse, it may not breach the "Doctrine of Pacta Sunt Servanda" and the rule of Freedom of the Will.
2. ESSENTIAL ELEMENTS

Let us now discuss, the essential requirements or the basic elements of the rule. These are the conditions which are necessary to invoke the application of the concept. Therefore the basic elements of the rule of change in conditions or the circumstances are :-

I. The change in circumstances should be Fundamental.

II. The change of circumstances should be a result from
   (i) Exceptional
   (ii) External and
   (iii) Unforeseeable events

III. The change in circumstances as a clause should not have been foreseen.

IV. The obligations have not been entirely executed by the promisor.

V. The conduct of parties should not denote the acceptance of the new circumstances.

VI. Necessity of establishing the change of circumstances in the court

Discussion

I. Fundamental change

It means that the change of circumstances should be fundamental.
The event, which causes the change in the circumstances at the time when the contract was made, should change fundamentally. Then, even if the unforeseen events bring about merely the normal change in circumstances, then such a change can not be a reason to exonerate the promisor from the execution of the obligation. In support of this condition, one of the legal scholars writes that:

"In order that the change of circumstances be considered as basis of the adjustment or cancellation of contract it should take place as an objective change in the circumstances at the time of conclusion of the contract."

It should be kept in mind that "the change" in the concept of change of circumstances as that fundamental change wherein it altogether destroys the main objective basis which is needed for the continuation of circumstances at the time when the parties entered into the contract. It also upsets the economic balance of the contract in such a way that it alters the limit and scope of one party's obligation and imposes the excessive duty on the promisee, which is commonly unbearable.

In other words, if during the performance of a contract, some unexpected event occurs and the performance of the contract in new conditions upsets the contemplated calculations or if the execution of the
obligation in the new conditions is not in consistent with the main intention of the parties, even in such cases, we can safely say that the circumstances at the time of formation of contract have been fundamentally changed.

Therefore the test to determine the fundamental change of circumstances would be a customary test that would depend on contractual usage and practice to distinguish whether the circumstances at the time of contract have fundamentally changed or not?

Now let us talk about the events such as normal fluctuation of the price of goods and services, gradual rise in the cost of living and increase in wages etc, which is usually a part of the tenor of contract. These events cannot change fundamentally the circumstances at the time of formation of the contract, and also, it cannot be a pretext for the cancellation or modification of the contract. Despite this, it should be kept in mind that the customary standard is not stable as it may happen sometimes that to determine the fundamental change, besides the contractual practice and conditions, the personality of the parties and the specific conditions of the contract are also considered. On this basis sometimes, the judge by his discernment, can ignore customary standard and invoke the personal one.
It is important to mention here that the clause which distinguishes the doctrine of altered conditions or the rule of changed circumstances is the clause of “Necessity of Inherent Change”. It would also distinguish it from the “Theory of Supervening Events” or “Impossibility of Performance” or “Force Majeure”

As discussed in the earlier chapter, Impossibility of Performance, results from the change of Inherent conditions of the contract or destruction of the main clause of the mutual consent (which is the ultimate obstacle to materialize the common intention of the parties). Looking at it from the point of view of legal analysis, such a change covers the fundamental or inherent change; hence the use of expressions such as “fundamental”, “inherent” and “radical”, in cases where the change is related to the inherent conditions of the contract is not correct and logical. The change, in connection with the inherent conditions of the contract, can be defined as the change of conditions or the change in circumstances, by one of the above mentioned qualities because, as mentioned earlier, the change of inherent conditions of the contract here can be the change or destruction of the secondary clause of the mutual consent or the customary or legal necessities of the contract. Change of these conditions does not necessarily destroy the cause of
existence of the contract and also does not damage its main elements. It only results in the adjustment or cancellation of the contract.

Thus the conclusion derived from the discussion is, that we cannot accept the argument in which the change of conditions or circumstances takes place due to the destruction of the existing cause of the contract. From the legal point of view, the argument of other writers, in connection with the existence of relationship (absolute and universal) between the concept of “Change of Circumstances” and “Impossibility of Performance” with this reason that any impossibility of performance may be accounted as the fundamental change of circumstances, is also not acceptable. The change in circumstances or conditions and impossibility of performance of the contractual obligation are not co-related because the Impossibility of Performance of the contractual obligation cannot be considered as the ‘change’ in conditions or circumstances. (within the specific meaning.)

II. Resultant Change

The alterations of the conditions or we can say that change of circumstances in the contract should be a result of some events or occurrences which are not expected or unforeseen or exceptional in nature. They can be categorized as follows:
(i) Exceptional and External Event

(ii) Unforeseeable Event

Discussion:

(i) Exceptional and External Event

During the performance of long term contracts such different-different events may happen which can bring the performance of contract to face the basic obstacles. Occurrence of some of the events during the performance of contract as usual and are commonly placed in the scope of reasonable anticipations of the transacting parties. On account of that, the parties should endure its loosing effects or profit and loss effects, because as a general rule a person who gets profited by the contract should also face its probable loss. But there is a reasonable or customary possibility of occurrence of exceptional and supervening events which the parties at the time of conclusion of contract could not have been foreseen. Among such events is the event of sharp fluctuation of market prices. Although, some of such changes and fluctuations are usual and foreseeable in all the transactions, but if such changes arise out of the supervening events like the outbreak of war and the economic depression, then in such cases, these are considered as the unusual events, which gives the parties, the right to rely on the rule of altered conditions or chance in circumstances to re-modify the terms of the contract and avoid the undesired losses.
Besides this, the event that results in material alteration of the conditions of the contract or caused the change in circumstances should also be beyond the control of parties and non-imputable to their will, so that its occurrence may not be attributed to any act or intention of any of the parties. The examples of such events could be war, earthquake, occurrence of other natural calamities or intense economic depression etc.

Therefore, here we arrive at a conclusion that the change must be exceptional and external and something which is beyond the control of the contracting parties. However, if the change of circumstances or alteration in the conditions of the contract occurs due to a negligent act of one of the parties of contract or, the persons working under the supervision cause the occurrence of such an event then the party who acted negligently, is not justified in invoking this concept of changed circumstances¹, even though his action may be unintentional (because it resulted from his negligence).

Illustration:
In a contracted work if the contractor, knowing that the price of building materials may increase, delays the performance of the contract and after sometime if some basic changes are required to be made in the price of building materials and the execution of the obligation undertaken or the performance of the contract on new terms(altered or changed conditions) would either become difficult or costly.
In such a case, the contractor cannot maintain the economic equilibrium of the contract merely, by modifying the contract price because the main cause of this un-equilibrium and occurrence of damages is not the change in circumstances but the breach of obligation undertaken by the contractor. Hence, it amounted to the negligent act of the contractor and therefore he cannot invoke this doctrine of changed circumstances or we can also use the expression altered conditions.

**Liability of the Promisor:**

It is to be kept in mind, that the meaning of the clause of necessity of external event is not that the event that cause the change in circumstances or the event that resulted in alteration of the conditions, should be out of the scope of existence and action of the promisor rather, it means that the event should be beyond the control of the promisor or non-imputable to him. However, the internal or external event is not so significant but what is important is that the event should not be attributed to the intention of the promisor.

**Liability of the Promisee:**

It is worthwhile to point out here that, if the unexpected event is the outcome of the action of the promisee or the third party and where the promisor is not liable for his actions then, such an action would be considered
as an external factor so that it can cause the adjustment of the contract in new conditions. To attract this clause it must be proved that the failure or fault was the result of the action of the promisee or the third party; otherwise the promisor would be held liable to provide for the remedy for the loss occurring from the non performance of the contract or delay in the obligation of performance.

At this point it can be safely concluded that:

• **Point 1**

If the promisor does not perform his obligation at the stipulated time and afterwards if the external event results in the changes in the circumstances, then in such a case the breach of contract is on account of the fault of the promisor and therefore he should compensate for all the loss suffered. In other words, the alteration in the conditions or the change in circumstances is counted as an excuse, in cases where it does not occur due to the failure or fault of any action of the promisor, otherwise the cause of change in circumstances would be considered as the breach of contract by the promisor, even if the main cause of this change may be an external event and non-imputable to the promisor.

Therefore the rule of changed circumstances or altered conditions does not apply in cases, where before the occurrence of the unexpected events, the stipulated time of the performance of obligation has already reached its limit
and in spite of the promisee's demand of performance, the promisor delays the performance of the contractual obligation so much so that the contemplated conditions or the circumstance changes fundamentally. Despite that, if the promisor by producing the evidences and documents proves, that the change in circumstances was inevitable and irresistible even by the careful performance of the tenor of contract, then in such cases he can claim for modification or cancellation of the contract by the court.

- **Point 2**

The change in circumstances is counted as an excuse to exempt the promisor from the performance of the contract only in cases where it is the first cause or inevitable cause (*Causa Sini Qua Non*) of the non-performance of the obligation or the delay in its execution.

**Illustration:**

In the contract of building construction, the actions of the managing directors of the company and the external factors such as war, economic boycott, insurrection and revolution causes change in circumstances and thereby making the performance of contractual obligation difficult. In such a case the contractor cannot invoke the doctrine to put off his responsibility, under the plea of unforeseen events. It would not be accepted here that, the unforeseen events are only the consequences of the external events and his actions had no effect to the performance of contract. In such cases the promisor would be
liable to compensate only to the extent his actions hold him responsible. In other words, he would be responsible to compensate to the extent he is responsible for creating new conditions or the so discussed change in conditions or circumstances which adversely affected the performance of the obligation of the contract in question.

- **Point 3**

From the point of view of procedural law, proving of destabilization of the contract and the difficulty of its performance lies upon the person who affirms it, that is, the promisor should prove the difficulty and the unbearableness of the execution of the obligation undertaken, which is the result of the external factors and non-imputable to him (promisor). In a nutshell, if it is established that the promisor could have resisted the external event by using proper means, but he did not do so, then he has no right to invoke the doctrine of changed circumstances or altered conditions.

(ii) **Unforeseen Event**

The event which causes the change in circumstances should be reasonably unforeseeable at the time of formation of contract so that the promisor could not have anticipated the occurrence of such an event. Undoubtedly, the event which is inserted in with the reasonable foresight of the parties also becomes located with the scope of mutual consent and it
checks the creation of any infirmity of the validity of contract. With the possibility of foreseeing the event, the parties are bound to contemplate for the necessary measures to avoid happening of any such undesired effects. Also to reduce the difficulties of performance of the contract in the altered or changed conditions the parties to the contract are required to stipulate the necessary ingredients in the terms of the contract, by using appropriate means. Therefore, except for the exceptional events which cause the adjustment or the cancellation of the contract, the possibility of its occurrence also should not have been foreseen by the parties.

Illustration:
The events such as the normal rise and fall in prices of goods and services, gradual increase in the expenses of production the of raw materials and wages, which are considered by the parties reasonably at the time of formation of the contract, cannot effect the operation of the contract nor cancel its binding force nature. But, the intense economic depression and abnormal fluctuation in prices, which happens suddenly and as a consequences of events such as war, inflation, intervention of government in fixing the prices of goods and issuance of rules and provisions of the prohibition of exports and imports of some of the goods etc. may cause adjustment for cancellation of contract.
It should be born in mind that, the unforeseeability of the event does not mean that the event had never occurred. The event is unforeseeable only in cases where there is not any specific cause for its exception, for example earthquake in a place where the place is not prone to seismic activities, undoubtedly would be considered as a supervening event. In other words, it means that the unforeseeable event is that event whose occurrence is exceptional, unexpected and unusual. An event may not be considered as foreseeable merely because it had happened in the past, because sometimes such an event just for the reason of its exceptional and unusual nature (and also there is no reasonable and probable cause of its anticipation of its occurrence), is counted as unforeseeable event.

It is interesting to note that the "Impossibility of Foresight" of the event should be reasonably evaluated and to determine the unforeseen event, the behavior of a reasonable man should be taken into consideration. To prove the event as an "unforeseeable event", two points should be considered in evaluating its unforeseeability quotient. They are:

- The happening of the event should not be predicted by person with a reasonable bent of mind.
- The degree of probability should also be rational; otherwise the occurrence of events such as war, earthquake, volcanic explosion etc. could also be foreseen. Hence, it is sufficient here to term an
event into an unforeseeable one if its effects are unexpected and improbable in such a way that no body cared for it in the normal conditions or circumstances and with a reasonable mind.

It would be enlightening here to discuss the position under various legal systems, starting with French legal System, because it is supposed to be a strong legal system with strict interpretations and application of law and then proceed on to American and English concept respectively.

French legal system

In the French legal system, by applying the *Theories' Imprevison* and *Force Majeure*, an event may effect, in case where it is reasonably unforeseeable, because where the event is foreseeable, it cannot be said that the promisor is prevented from fulfilling it by some elements not within his control or his failure was due to some outside cause for which he could not be held responsible. Besides that, by taking into consideration, (in case of doubt) the legal principle based on continuation of responsibility of promisor, the event which is foreseeable is not considered as Force Majeure and consequently it cannot cause the exemption of the promise from performance of the contractual obligation undertaken in a contract.

Therefore if an event is reasonably foreseeable but the promisor for the reason of his individual inability such as- inexperience, ignorance or
negligence etc. could not foresee it, then such a person shall be responsible to compensate for loss suffered. Despite that, sometimes, to determine the unforeseeable event it can invoke the subjective (personal) test. It is generally in case where the parties can foresee personally the occurrence of an event, while such an event is not reasonably foreseeable. In this case the normal inference would be that they have contracted with reference to that risk; i.e. - the altered or changed circumstances or conditions and also the difficulty in performance of the contract. On this ground, they have then no right to rely on doctrine of changed or altered circumstances.

It becomes necessary to point out here that, the event which causes the change in the economic conditions besides being unforeseeable, should also be irresistible and inevitable. In fact, due to occurrence of such an event the performance of the contract becomes more difficult and costly. Therefore, where a party promises to do a contract and, it could with reasonable diligence check the happening of the event but he did not do so then, in such a case, for non performance of the contract if the loss is incurred then the promisor must make the compensation to the promisee for the loss so suffered.

Illustration:

In a factory, the owner knows that if the labour goes on strike and the work is stopped then the execution or fulfillment of the contract would suffer and that
would incur a huge loss. In such a case, if the factory owner could avoid labour strike, but negligently he did not take the required steps and as a consequence of the strike the fulfillment of the contract cannot be done at the fixed time then in such a case, the promisor will not be exempted from the performance of the contractual obligation of the contract. He cannot take the plea of changed circumstances or altered conditions as a rule to excuse from the liability of performance.

American Legal System

In American Jurisprudence, the same view, that a contract cannot be frustrated by foreseeable event has been accepted as a final solution. One of the American legal scholars regarding this subject, on the strength of the judicial decisions had said that:

"If the event, which causes the impossibility or performance, is reasonably foreseeable, the frustration will not be considered as an excuse."

English legal system

In English legal system, it is possible that the event, which is reasonably foreseeable by the reason of impossibility or anticipation by the parties, causes the frustration and cancellation of the contract. According to G.H. Trietel, the renowned English Scholar,
“Nor is the doctrine of frustration excluded merely because the parties (or one of them) could, as a remote contingency, have foreseen that the event would occur. No doubt, in this sense ‘reasonably foreseeable’ that Edward VII (who was then 60 years old) might fall ill at the time fixed for his coronation, but this did not prevent the doctrine of frustration from applying in the coronation cases.

Where the parties can foresee the risk that a supervening event may interfere with the performance of the contract, the normal inference drawn is, that the parties have contracted with reference to that risk. Then in such cases, the contract cannot be frustrated. To support this view, Vaughan Williams L.J. has said that “The test (of frustration) seems to be whether the event which causes the impossibility was or might have been anticipated”

Despite that, many other dieters similarly support the view that a contract cannot be frustrated by unforeseen or foreseeable events.

III. Clause of Unforeseeability

It means that the change in circumstances as a clause should not have been foreseen by the parties to the contract. It is another important condition to invoke the rule of changed circumstances or the altered conditions. According to it, Unforeseeability as a clause should not have been
foreseen reasonably i.e. under the normal conditions or the circumstances and with a reasonable bent of mind by a normal person.

For adjustment or annulment of the contract in new circumstances now, the inclusion of the, change of circumstances or alteration of the conditions or the hardship as a clause in the terms and conditions of contract, is a necessary matter. Therefore, where the parties have included in the text of contract, the specific clause concerning the event that causes the change in circumstances of the contract or alteration in the conditions of the contract, this doctrine of changed circumstances does not apply, even though the change of circumstances or conditions may be a result of external, exceptional or unforeseeable event.

The concept discussed in this study is an interpretative and supplemental rule, that in case of brevity or ambiguity in the contract, it interprets it and in case of silence it supplements it. Basically, where the express or implied terms of contract contains the clause of change of circumstances or the hardship, the contract follows the principle of “intention” of the contracting parties and prevents the parties to invoke any supplement rule.

However, where the parties in a contract have expressly or impliedly provided that in case of occurrence of the difficult situations resulting from strike, war, inflation, revolution and destabilization of
economic balance between the two considerations either party can claim for the adjustment or cancellation of the contract by the court. In such cases, the adjustment or cancellation is applied under the stipulated contractual provision and not under the doctrine of altered conditions or the doctrine of changed circumstances. Also, in cases where the conditions and terms of contract, despite the happening of unexpected events, binds the parties to perform the contract, the difficulty of execution of the obligations cannot be considered as an excuse to non performance, adjustment or termination of contract. In such a case, even other necessary conditions come together and despite that, the rule discussed cannot be invoked. It must be pointed out here that, to adjust or cancel the contract, on the basis of the doctrine of material alteration in the conditions or the fundamental change of circumstances, is only possible where the text of the contract does not have any express provisions foreseen concerning the methods of renegotiations in the contract or the cancellation of the contract.

IV. Execution of the Obligation

It means that the execution of the contractual obligations must not have been entirely performed by the promisor. It is also one of the other necessary conditions to apply this doctrine. According to it, the event which causes the change in circumstances should happen after the agreement.
it was made) and before the end of its performance, that is till the time the contractual obligations are still executable.

Undoubtedly, the events which happen after the full performance of the contract are not effective to the legal situation of the provision and by the fulfillment of the obligation of mutual consent; the contract comes to end, so that it cannot invoke the discussed doctrine. Where the part of obligations have not been executed before the alteration of the conditions or the change in circumstances or happening of the difficulty, the event occurring after that, is effective only to the related part of the performance i.e. which has not been fulfilled so far. For example, if after the fulfillment of the part of obligations, the circumstances changes fundamentally, then the adjustment or termination of the contract will apply only on the part remaining in the contract.

Where the change of circumstances has the partial effect and covers only some parts of the obligation, the legal effects of doctrine would also be partial and would only concern to the part of obligation wherein the performance has becomes difficult or costly due to arrival of new conditions. It is evident that in such a case, the liability of the promisor for the execution of the part of obligation which is possible, still remains. It must be pointed out here that the partial effect of change in circumstances is valid and irrevocable only where the remaining partial obligations, which are still
executable, can materialize the main object of the promisee. To determine whether the partial execution of contract can provide for the main object of the parties or not, it should be examined here, whether the contract on ground of multiplicity of the object is dissolvable into various contracts or is it a complete unit of the matter which with its full performance in the form of unity of desired object has been as contemplated by the parties, so that the part performance of its any part has not got any interest for the parties. To answer this question, - the nature of the contract and the conditions contained in it along with the established usage and the relevant indications and circumstances should be considered as well.

Where, by analysis of common intention of the parties, it is found that the full performance of the contract in the form of multiplicity of object has been contemplated by the parties then , in such a case, if the economic condition of a part of the contract changes, this doctrine can be applied on the ground of separable contracts and can be applied to that particular part only, which has changed and which resulted in the material alteration of the conditions or the circumstances of the contract.

But, if it is found that the full performance of contract in the form of unity of the desired object has been contemplated by the parties then, in such a case, it is required to separate the tenor of the contract, on the strength of the partial change in circumstances and it is not permitted because, besides
the theory of *Freedom of Will*, the principal of *Non-Separation of the Contract* applies to such a contract and its partial adjustment or cancellation destroys the unity of its conditions.

But, where the change of circumstances is related to the conditions, which are considerable and executable as apart from the other contractual conditions then, by the adjustment or annulment of these conditions, the tenor of contract can be separated. In support of this principle in the Public International Law, it can invoke the article 44 of the Vienna Convention on the Law of Treaties (1960) which has recognized the separatibility of the treaty provisions in the specific conditions.

V. Conduct of the Party

The conduct of the parties should not denote the acceptance of the new or changed circumstances. During the performance of the contract if the circumstances change, then after the occurrence of such a change in circumstances or such happening of the alteration in the conditions of the contract, the conduct of the parties should not indicate the acceptance of the new or altered or changed conditions and the difficulties arising from it with respect to the performance of the contractual obligations.

Undoubtedly, where the new conditions or the circumstances have been expressly or impliedly accepted by the parties, the rule of altered or
changed conditions or circumstances cannot be invoked for the adjustment or cancellation of the contract. Therefore, the party who despite the difficulties in the performance of contractual obligations in the new or changed circumstances, engages for its performance, with reference to that risk, the normal inference derived is that the promisor has taken the action against himself and therefore should also suffer the (outcome) effects from it. In this case, no excuse would be acceptable. Thus, one of the other necessary conditions for the application of above concept is that the claim of alteration of the conditions or the claim of the change of circumstances by one of the parties should not be after the expressed, implied, verbal or practical acceptance of the new or changed circumstances or conditions of the contract.

From the point of view of legal analysis it is to be noted that, "To invoke this doctrine or rule, the demand of its application or invocation should take place within a reasonable or proper time after the occurrence of the change; because, as it has already been mentioned that this doctrine is an exceptional rule of irregularity."

The legal principle in the Law of Contract is, that the agreements must be kept and it must be restrictively interpreted. For this purpose, in order that this exception may not permanently disturb the validity of the legal principle, the demand of application of the doctrine or demand of its
Invocation should be limited to a reasonable period of time. It is to be noted that, the test of reasonable period or time is the contractual usage.

Therefore, where the promisor, within the reasonable period does not claim for the adjustment or cancellation of contract and continues the performance of contract according to the new rates (new or changed conditions or circumstances), his action should be considered as an implied consent and hence would be interpreted as waverining the invocation of this rule or doctrine. In fact, the promisor by his way of continuity in performance of the contractual obligation indicates two things:-

1. **Implied assent** to the binding contract in the present conditions

2. **Non-necessity of the adjustment** or cancellation of it.

However, if the promisor, after the change in conditions or the change in circumstances, stops the execution of contractual obligations in the hard or difficult conditions, but at the same time does not claim for the application of the rule set forth during the reasonable period of time, then the question which arises is-

➤ “Whether, non-invocation of the doctrine or silence regarding the matter should be interpreted in the sense of the implied consent to the validity of the contract in the new conditions or not?”
Concerning this question some of the legal writers have responded negatively and have pointed out that the interpretation of silence as a ground for the real intention of the parties is difficult and an improbable problem. Furthermore, consent can not be inferred from the silence. But, to prove this claim, that in such a case the doctrine of altered conditions or change in circumstances has been accepted by the promisor, it is not necessary that his silence should be interpreted as a sign of consent, because such interpretation is contrary to legal principles. Regarding this subject, here it is sufficient to say that the right to claim the application or invocation of the rule for the purpose of observance stability of agreements and also to prevent any disorder in the contractual relationship it should be invoked within a reasonable time and this test of reasonability would depend upon the circumstances of the case. Therefore it can be concluded that, this right is a conditional and executory right that should be exercised within the reasonable time. For this reason, non claim for such a right during the reasonable time causes its decline. It must be pointed out here that the under discussion clause has also been recognized in the Public International Law.\footnote{7}
Vienna Convention on Law of Treaties provides that:-

“A state may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under article 46 to 50 or article 60 and 62 if, after becoming aware of the facts:

(a) It shall have expressly agreed that the treaty is valid or remain in force or continues in operation as the case may be or

(b) It must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.”

VI. Establishment in the Court

One of the results of non absolute exercise of this rule is merely the claim of the change in circumstances or conditions and the difficulty of execution of obligation does not prevent the performance of contractual obligations. Undoubtedly, any one who claims a right has to establish the same. The promisor, according to the given conditions, has to continue the performance until the above said claim has not been established and unless the suspension of fulfillment of obligation in the new situation has been stipulated in the text of contract.
The doctrine of 'Pacta sunt servanda' also confirms this legal analysis, because under the doctrine, the parties are bound by any obligation as required by the contract to which they have agreed. They have no right to suspend or terminate the performance of contract under various pretexts; otherwise they are convicted for breach of the contract and must compensate for any loss suffered in the due course. However, taking into consideration the general principle of 'Pacta sunt servanda' i.e. the agreements must be kept the execution of contractual obligations must continue as usual, until the claim of destabilization of economic balance of the contract and excessive difficulty of its performance are not established by court. In this case, also, none of the parties can terminate the contract or withdraw the operation of it, even if they have no right to claim for adjustment of contract by the court under excessive difficulties of execution of obligation.

Therefore, it is evident that, if the fundamental change in circumstances is established by the court, the legal effects of adjustment or cancellation will exercise since occurrence of this change. In such case, the promisee is bound, until the date of pronouncement of the judgment of adjustment to increase the contract price to the level mentioned in the judgment by the court and pay the difference between the contract price and the modified price. In case of termination of contract also, the
promisee compensates for the extra expenses which the promisor until date of pronouncement of the judgment of termination of contract has incurred due to the performance of the contract.

But in case of non-establishment of such claim, the promisor must make a compensation to the promisee for any loss incurred and which has been sustained on account of non-performance of the contract or any delay in its performance. Therefore from the point of view of legal principles it is fully rational that the promisor till the establishment of his claim is bound to continue the execution of obligation. There is no doubt that, where the claim of change in circumstances is not yet established in conforming to reality then, to permit for the suspension of performance of contract is contrary to the doctrine of 'Pacta Sunt Servanda' (agreements must be kept) and it is obviously the breach of the doctrine of Freedom of Will as
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