CHAPTER VI

LEGAL IMPLICATIONS OF THE RULE
I. INTRODUCTION

After examining the concept, basis and conditions of relying on the concept of altered conditions or changed in circumstance, it becomes necessary here to discuss the legal effects of the theory. But before proceeding further, the following questions needs to be answered. They are-

Question No. 1

“In a contract where there are no provisions concerning the alteration of the conditions or the change in circumstances, and adjustment of contractual conditions have not been stipulated or the modification of the terms of the contract have also not been legally prescribed then, in order to observe the equity and justice and also in order to prevent the loss of one party, CAN the judge modify the purport of contract or not?”

Question No. 2

“Does a judge has the power to proportionate the contract to the new or changed conditions, or not?”

Question No. 3

“Whether or not, the party who sustained the loss in the beginning (and without the request of adjustment), has the right to claim it or the termination or cancellation of the contract on the ground of material alteration in the conditions of the contract or on the ground of fundamental change in circumstances

Question No. 4

“Whether the court is bound to enter to a judgment of termination or cancellation of the contract under changed conditions or altered
circumstances or is such a judgment subjected to the impossibility of its adjustment?

In general, concerning the sanction of the concept, there are three considerable solutions:

Solution no. 1

The primary legal effect of the alteration in conditions of the contract or the change in circumstances should be, the adjustment of contract, otherwise the termination of the contract has been prescribed.

Solution No. 2

The alteration in the conditions or the change in circumstances leads only to the renegotiations in the contract and the adjustment of its provisions.

Solution No. 3

The change in circumstances causes only the termination of the contract.

In above three solutions or effects or implications, the second solution suits more to legal principles because it covers the historical doctrine of "Pacta Sunt Servanda" (i.e. agreements are to be respected and the pacts must be kept) and the principle of "Necessity of Compensating the Unwanted Loss". Besides that, in the legal system of most of the countries, which have recognized this concept, the second solution seems to be followed. Despite that, it may be said that the adjustment of the contract is not acceptable in all cases because, where the adjustment by some reason is impossible or in case of possibility of performance, it cannot guarantee the fair performance of the contract and the promisor's loss is not compensated. However, it seems that
if we believe that this case is out of the scope of the concept, then we also accept that the cancellation of the contract is the last solution that can be answered on the basis of the above mentioned objection.

Undoubtedly, where the adjustment of the contract due to the continuation of the unforeseen situations can not be given a fair equilibrium between the obligations of the parties or the adjustment is basically illegal and impossible; the termination of the contract seems to be an exclusive solution to prevent the unjust loss. It must be pointed out here that, the cause of termination of contract in the above mentioned case is impossibility of its performance but not change in circumstances, because on the one hand it is the difficulty and unbearability of its performance in the new circumstances and on the other hand it is the impossibility of the adjustment of contractual conditions that makes its performance impossible. Then in such circumstances if the termination of the contract is also accepted as a sanction of the unequilibrium of obligations, then the demarcation between the concept of force majeure and the hardship (that is, the alteration of the conditions or the change in circumstances, which are completely separate concepts) will vanish.

I. LEGAL IMPLICATIONS

Therefore the two major implications or effects of the doctrine that emerges out here are the-

I. Adjustment of the contract
   and
II. Termination of the contract
Discussion:

I. Adjustment of The Contract

Here we will discuss, the concept of adjustment and methods of its application.

(i) Concept

The adjustment of contract on the ground of change in circumstances is one of the exceptions of the doctrine of *Pacta Sunt Servanda* (i.e. the agreements must be kept). As it has been mentioned before, the circumstances at the time of the formation of the contract are always fluctuating and sometimes the supervening or the unexpected events change these circumstances in such a way that the execution of the contractual obligation in the new conditions, without the adjustment of contract, makes the performance extremely difficult and unbearable and then, to maintain an equilibrium between the two considerations, also becomes difficult.

In such a situation, the re-negotiations in the terms of the contract is sought for. The renegotiations in the terms of the contract, also becomes necessary to proportion the contractual terms and conditions with the new situation or the new circumstances. Therefore, the adjustment means the modification in the purport of the mutual consent and change in the contractual conditions which is materialized in order to proportion a contract with the new intention of the parties or in relation to the new economic and social exigency arisen after the formation of the contract and before its conclusion. For this purpose, one or two more conditions which are mutually
agreed by both the parties, are usually supplemented to the contract or are deleted from it.

Sometimes, instead of that it suffices to change the unfair terms and conditions of the contract and in some cases also probably the addition, elimination and replacement are accompanied in the modification of the purport of contract to keep it alive. The modification of the contractual relationship is mostly fulfilled by three methods and the judge by considering the subject matter of the contract, the nature of the change and its effect on the terms and conditions of contract selects one of them.

The three methods general opted for modifying the contractual relations are-

(a) Suspension of the contract
(b) Decreasing the rate of the Excessive Obligation of the Promisor
(c) Increasing the rate of the Promisee’s Obligation.

Discussion

(a) Suspension of the contract

Where the alteration of the conditions or the change in circumstances is temporary i.e. in fact the occurrence of the event, which has caused the change in circumstances at the time when the contract was made, is within the limited period THEN the judge can suspend the execution of the obligation of the contract until the removal of the obstacle (of the contract).

Illustration:

**Condition:** A building contractor under a contract has undertaken the construction of a huge building. During the performance, the cost of construction material, as a result of the supervening event, are increased to
an extra ordinary extent, but in the near future it is expected that the reduction in import duties would be there, so the increase would be probably be a temporary condition and soon it would return to normal. What ought to be done?

Solution:

In the above case, the court can suspend the obligation of the contract based upon delivering of the building at the specified time, so that the promisor (contractor) can perform the contract without suffering enormous loss.

Lastly, it seems up to that, if a person or a thing essential for the performance may, as a result of the supervening or the unexpected or the unforeseen event, be unavailable at the time fixed for performance, but becomes available later on THEN the legality of suspension of the contractual obligation for the brief time, is justified.

Similarly, in the state of war, many contracts are affected by the performance becoming wholly or partially unlawful. This may be against under the general rules of intercourse with the enemy or may be the result of some express executive orders issued by the government under the power of emergency legislation. It must be pointed out here that, compulsory suspension of an engineering contract on a large scale, in order to direct the labour to produce ammunition for the war, can be considered as one of the instances of suspension of contract. In such cases court can suspend the performance of the obligation of the contract till the removal of the obstacle. Such an action by the court under such circumstances would be legal and would be justified as it is.
(b) Decreasing the rate of Excessive Obligation of the Promisor

Sometimes the judge, in order to compensate the unwanted loss, modifies the terms of the contract, so as to decrease the quality of the duty and quantity of the excessive obligation of the promisor.

Illustration:

**Condition 1:** A merchant undertakes to provide the specific goods in a large quantity at the official (government) rate for a factory, but as a result of the unexpected or the supervening event such as outbreak of war or economic slowdown or economic recession, the import of the goods (i.e. the subject matter of the contract) gets prohibited. In such a case how the performance can be met with and in case of non performance of the obligation what ought to be done?

**Condition 2:** Similarly, in case of economic recession or economy breakdown as we facing nowadays there is stoppage of work or, some of the factories manufacturing goods are closed so that the supply of goods in the market is extraordinarily decreased and consequently the full performance of contract becomes costly and more onerous or more burdensome then what ought to be done?

**Solution:**

In such cases, the judge in order to adjust the purport of mutual consent, can decrease the scope of the obligation of the merchant. It is evident that after the adjustment the promisor is responsible for the determined limit in the judgment by the court and nothing extra than that. It must be pointed out here that, the judgment of adjustment of the contract is binding on both the parties. Thus, the promisor (i.e. the factory in subject) at
one hand and though according to the general rules of the transaction is entitled to require the specific performance but on the other hand, by virtue of the rule of altered conditions or the changed circumstances, and in case of refusal of the promisor from the performance of adjustment of the obligation, can claim for the termination of the contract and the loss resulting from its non-performance. The promisor also is entitled to cancel the contract in case of non-observance of the judgment of adjustment by the promisee.

(e) Increasing the rate of the Promisee's Obligation

In this method the judge arranges the contractual equilibrium by increasing the price of goods, services and facilities.

Illustration:

Condition: In a contract of sale of goods, a seller undertakes to deliver 2000 tons of wheat at the rate of Rs. 50 per kilogram. During the performance of contract the contractual price, as a result of unexpected economic situation, is suddenly increased by 20%. What ought to be done under such circumstances or conditions?

Solution:

In such case, the judge in order to remove the difficulty of performance of the contract, adjusts the contract price, that is, increases the price of wheat. It must be pointed out that, adjustment in such a case of contract, the price of wheat will not be increased in quantum of real price because else it would be unjust imposition on the other party. Again, the law of contract requires that, the debtor (promisor) must incur the normal increase
in price as well as the creditor (Promisee) must incur the normal decrease in
the price.

Undoubtedly, the test of normal increase or decrease in prices would be
done after taking into consideration the expert’s advice as well as market
conditions. Also, if the seller, in order to perform the onerous obligation
incurs the extra expenses according to the new pricing of goods, the quantum
of damages (*quantum merit*) will be demandable, by taking into consideration
the adjustment of the quantum of obligation.

It is to be noted that, the adjustment in prices or change in the
quantum of obligation are not always carried out in favour of the promisor,
but it may also apply for the promisee, that is, sometimes the judge instead of
decreasing the quantity and quality of duty by increasing the price of goods
and services, can also decrease the contract price or, increase the scope of the
promisor’s obligation. Such an adjustment, in fact, provides for the
promisee’s interest.

(ii) **Different Ways of ‘Adjustment’**

The adjustment of the contract comes into play by option of two
parties or, at the request of one of them and the court decision or, in
accordance if the law. The three most general ways of making an adjustment
in the terms of the contract on the ground of its cause¹ can be
diagrammatically represented as follows:
Discussion

(a) Contractual

This kind of adjustment applies to a case whether the parties stipulate it expressly or impliedly or they do it after the formation of the contract by mutual consent. Therefore, the contractual adjustment is carried out on the basis of implied terms and the consequent agreement, and the cause behind it is the common intention of the parties. Sometimes, the parties stipulate expressly or impliedly in the text of the contract that if the supervening or unexpected or unforeseen event upsets the contractual equilibrium, and it makes a fundamental change in the scope of contractual obligation, to the party, who sustains the loss resulting from such a change has the right to rely on the adjustment of contract, for maintaining the equilibrium between the conditions of the contract as laid down and in the new situation or the new or changed conditions. The causes which are contained for this purpose in the contract, sometimes are concerned with the probable fluctuations of the contractual price and sometimes are connected to the change resulting
from the fall of currency. These terms are known as the adjusting terms and they are:-

- The price increase clause.
- Payment in gold or foreign currency clause.
- Payment of equivalent value of goods or services such as the price of wheat or the least labour wage, etc.

The contracts where on the ground of its subject matter, the adjustment in the price is necessary then in them, the kind of modifications in the different parts of contract should be specified and, along with it the international or agreed criterions should also be specified in the contract.²

Besides, cases in which the adjustment of contract is stipulated in the contractual terms, sometimes both the parties realize during the performance of a long term contract that the unforeseen and supervening events have made the performance of the contractual obligation so much more burdensome. THEN in such cases, if the contract is silent to the possibility of modification, the parties will reach an agreement in good faith in terms that would:

- Decrease the quality of work and quantity of obligation or
- Increase the price of good or services so that the primary equilibrium of the two considerations is also set up in the new conditions or the new arisen circumstances.

This matter is carried out by mostly concluding a supplemental or a mandatory contract on agreed terms e.g. During the performance of an engineering and building contracts where unforeseeable difficulties in the terms of the physical condition of the terrain are encountered with or, where
the labour and materials costs rise in such a way that the fulfillment of the contractual obligation undertaken in a contract becomes difficult then, in such cases the employer and the contractor must realize that for the continuation of the project they must enter into the mode of negotiations regarding the terms of the contract must be done. This modification the contract with the new conditions would enable them to mutually to fulfill the aim of keeping the contract working. This can be achieved by adding supplemental a mandatory contract.

**View under Indian Law**

It seems that, in Indian Law, regarding this subject, the case of “Alopi prashad” can be referred to

*Alopi. Prashad & Co. had been appointed as buying agents for the purchase of Ghee for the Government of India in May 1937 and were to be paid a buying commission and certain other charges for it. This contract was modified in June 1942 three years after the commencement of World War II by mutual consent.*

It must be pointed out that, this form of the contractual adjustment in practices takes place lesser, because the contracting parties in the majority of the cases enter into an agreement with full awareness of circumstances at the time when the contract was made. Besides that, it has been proved by experience that, if the contracting parties do not anticipate the occurrence of the supervening events or the unexpected events they will (mostly) not succeed in arranging the supplemental or a mandatory contract.
(b) Legislative Adjustment or Statutory

In some of the cases, the legislature in order to observe economic and social interest and to prevent occurrence of anarchy in the society, intervenes directly in the adjustment of some contracts.

For this purpose, to modify the scope of common intention of both the parties the legislature proportions the purport of mutual consent with the new conditions and adjusts or supplements it equitably. Such an adjustment is known as the statutory adjustment or direct adjustment of contract.

(c) Judicial

Judicial adjustment which is abundant argument in relation of its possibility is that the judge by virtue of the implied term of contract or stopping the unfairness and loss to one of the parties adjusts the purport of contract and proportions it with the new circumstances. With taking into consideration the concept and basis of contractual adjustment one may object to the above mentioned definition to this explanation that: If the adjustment of contract is based on the implied term of contract then, the cause of is validity will be common intention of the parties and in such a case, this adjustment is known as the Contractual Adjustment and not the Judicial Adjustment and the rule which according to that the adjustment is carried out is a Primary rule of Contract and not the Secondary Rule. Legally, the adjustment of contractual terms on the ground of occurrence of unforeseen events (in specific cases and in which the rules and provisions permits) and to grant a period of grace to the debtor by the judge are out of the scope of contract and purport of real or stated intention of both the parties so it should not be mixed with the interpretation of the contract.
Therefore, Intention of the parties should not be mixed with the interpretation of the contract. It can be inferred here that the adjustment of contract by virtue of the change in circumstances is resulting from the secondary and exceptional rule of contract and is not connected to the implied intention of the parties. Undoubtedly, to attribute the judicial adjustment of contract to the implied intention of the parties and opposed is out of the purport of the real or decelerated intention of the parties.

In order to remove this conflict, the Judicial Adjustment of contract should be counter provided for the cases where the parties have not expressly or impliedly agreed about the adjustment. And, the basis of such an adjustment should only be to observe the judicial justice and equity. In other words, with considering the concept of implied term it can be said that the judicial adjustment is applied to a case where the judge adjusts the purport of contract on the ground of the given implied term in the contract or in order to observe the equity and to prevent injustice and loss to the one party.

However, despite that, it should be admitted that the above mentioned analysis can not remove the under discussed objection. Because, the adjustment of contract on the basis of the assumed implied terms is also an instance of the contractual adjustment which is attributed to presumptive intention of the parties and the legislature, in order to supplement the tenor of mutual consent, respects such intention. Perhaps it would be better to say that, the judicial adjustment of contract is a device, by which the rules as to absolute contracts are reconciled with a special exception which the justice demands.

The judicial adjustment does not depend on the possibility of implying a term but is a substantive and a particular rule. Therefore, exercise of powers by the courts in such cases (when it decides that a contract
becomes so much more burdensome, in order to achieve a result) is just and reasonable. It must be pointed out here that, and also as has already been referred to, most of the advocates for the judicial adjustment of contract have accounted for its possibility resulting in the execution of the Secondary rule, in order to prevent loss and to observe equity and justice.

Through the support of this approach they have invoked theories preventing the Abuse of Right, Unjust Enrichment and the Lesion occurring after the formation of the contract. Despite that, regarding this subject there is still doubt and the questions that creates the doubt are:

**Question:** Whether the adjustment of contract is lawful merely by the reason of execution of Justice and Equity?

**Question:** Whether, under the pretext of preventing the loss to one party one can arrive at the primary rule of contract (i.e. *Pacta sunt servanda*) and replace the secondary rule (i.e. Adjustment of contract)?

The laws and provisions of some of the countries have answered negative to this question.

**Examples:**

**Ethiopia-** Civil code of Ethiopia provides that – Judges have no power to modify the contracts, without the explicit permission of law and order in the pretext of justice and equity.

**Egypt-** In Egyptian civil code, however, the theory of changed circumstances has officially been admitted and Jurisprudence of the country and the civil code has recognized this theory.
According to Article 147 of the civil code of Egypt:

"The contract is as law of the contracting parties and its annulment or adjustment is not permitted, unless by mutual consent of the parties or by legal causes. In spite of that, where occurrence of supervening and unforeseeable events have made performance of its own promise so much difficult and costly, the judge has the power, (considering all the relevant circumstances and with observance of equilibrium between the interest of the parties), to modify the excessive difficult and enormous loss to both the parties. Any agreement contrary to this is invalid."

It must be pointed out here that in Egyptian law, the sanction of change in circumstances and destabilization of contractual balance is only adjustment of contract.

II. Termination of The Contract

(i) Concept

As it has been mentioned already that the adjustment of contract would be considered as the primary effect of the rule of the altered or the changed circumstances and where the possibility of adjustment exists to claim for termination of the contract, then it stands as not acceptable. Therefore, if the adjustment of the contract is not possible for some convincing reasons, the law in order to compensate unjust loss will allow the cancellation of contract and termination of obligation would be resorted to as
the last solution. For example- A legislature in order to observe the economic and political interests of the country and national security approves the rule denoting prohibition of adjustment in prices of the concluded contracts with foreign companies. Similarly, this prohibition of adjustment of some foreign contract may be against the general rules of intercourse with the enemy, or may be the result of express executive orders used under the powers of emergency legislation.

Sometimes without approval a rule regarding this subject, basically the continuation of performance of the contract in the new and altered conditions, even by adjustment is not possible. In this case, the sustained loss can be claimed for by the termination of the contract by the court. Thus, the fundamental change in circumstances that causes the cancellation of the contract is only in case where, the adjustment of contract according to the provisions of the law is not possible or in case of possibility it can not compensate the loss resulting from such a contract.

In International Law also, although according to the Article 62 of Vienna convention on the law of Treaties (1969), a fundamental change of circumstances, which has occurred with regard to those existing at the time of the conclusion of a treaty has been considered, as a ground for terminating or withdrawing from it, but in the International States practices the best procedure for making the inflexion in the legal relationship is to renegotiate the treaty and to proportion its provisions with the present conditions and social changes. Moreover this International doctrine also confirms this viewpoint. Therefore, in order to observe the doctrine of "Pacta Sunt Servanda" (agreements are to be respected) on one hand, and on the other hand to compensate the Unwanted Loss and Damage, it should be interpreted
that the purport of this Article is only in cases where the modification of the treaty is not possible.

It is to be noted that, the legal effect of pronouncement of the termination of the contract by the court is, from when the circumstances or conditions of the contract have changed and not from the date of the pronouncement of the judgment (of termination). Also, this effect is applied from the moment of occurrence of the unforeseen event. Consequently, this judgment removes the natural effects of the contract from the time of disturbance of the contractual equilibrium and since that time it destroys the existence of contract also. Therefore, here the justified causes of the termination of contract, adjustment of contract and their termination in the American Law, English Law and the Indian Law will be analyzed.

(ii) Causes (Justified) of Termination

The causes which justify the termination of contract in the new conditions (With reference to United States of America, United Kingdom & India) are those that destroys the physical or judicial possibility of the adjustment of contract because if they do not check the adjustment they destroy its necessity and main purpose. In better words, sometimes the adjustment of purport of contract in the new situation i.e. on account of altered conditions or the change in circumstances, is contrary to law or common intention of both parties, and the agreement between the two parties is not possible. And also, sometimes the adjustment of contractual terms and conditions and also purporting the contract with the Status Quo (present situation) are not possible, But in any case, the adjustment, on the ground of continuation of the unforeseen conditions, cannot compensate the unwanted
loss and provide for the means of the continuation of the performance of the contract in the request conditions. Therefore here, the causes and factors which destroys the possibility of the adjustment of contract and justifies its cancellation in the altered or changed circumstances is described.

The justified causes of termination of the contract majorly are:

(a) Continuation of the Unforeseen Situation.

(b) Judicial Impossibility of the Adjustment.

(c) Adjustment is Contrary to the Common Intention.

(d) Disagreement on the Adjustment.

Discussion

(a) Continuation of the Unforeseen Situation:-

When keeping the economic balance of the contract on the strength of alteration in the circumstances is not possible and, the rise in prices of the raw materials, products and operating expenses, labour wages and other similar things is to such an extent that, even the adjustment of the contract cannot remove the bad effects of the intense economic depression; nor can it compensate reasonably the losses, then the sustained loss on the ground of checking the substantial damages, the party sustaining the loss, has the right to claim for the termination of contract, by the court.

Sometimes, the gravity of the economic situation is to such an extent that, it causes undesirable effects even in the variable criterion of prices, such as criterion of the cost of living, criterion of the agricultural products or labour wages, that it in turn causes the impossibility of the adjustment of contract (according to these criterions). It is evident that, as per the concerned
the court is bound to establish whether the gravity of the economic situation is suggestive of such continuation which makes the adjustment of the contract ineffective or not. For this purpose, the court should consider the nature of the contract, its degree of gravity and continuation of the economic depression and also its relation with the continuation of the execution of the contractual obligation.

It is to be noted that where the change in circumstances is temporary, then to claim for the termination of contract is not acceptable, because in this case the given loss is compensated by the adjustment of contract and application of the so modified contract provides the main intention and subject of both the contracting parties.

(b) Impossibility (Judicial) of Adjustment

Where the legislature, in order to observe the economic and political interests of the country approves a rule denoting prohibition of adjustment in prices of the concluded contract with the companies, It may be understood that- This prohibition of adjustment may be result of express executive orders issued under the power of emergency legislation.

Illustration:

In a contract for the purchase of office automobiles concluded between a government institute and an automobile factory for a term of three years in which the factory undertakes to deliver the requested automobiles according to the international standards at the specified time and fixed price. Now, after the date of agreement and during the performance of the contract, the factory decelerates on the ground of extraordinary increase in
manufacturing expense of the requested automobiles and hence fails to execute its obligations as per the conditions contained in the contract, unless the contract price becomes just by the adjustment. On the other hand, the government organization (i.e. promisee) on account of the legal preventions cannot modify the contract price, then in such a case what ought to be sought?

Solution:

In the above mentioned illustration, the promisor (factory) can claim for the termination of the contract by the court. The court has the power to accept this application on the ground of legal impossibility of the adjustment of the contract and by pronouncing the cancellation of the contract, it exempts the promisor from further performance.

It must be pointed out here that the legal or the judicial impossibility of the adjustment of contract may be carried out in two forms such as -

1) Express

2) Implied

Discussion

1) Express Form

It is carried out where non-allowance of the adjustment or possibility at the specified rate has been expressly and directly stipulated in the statute or executive orders have been issued as per it. Consequently, the adjustment in the first case at a rate more than the rate given in the second case is illegal and hence invalid.
2). Implied Form

It is carried out where the adjustment of contract has not been expressly mentioned in the statute or executive order are issued as per it, but it can be inferred from the illegality of the adjustment from their potential tenor. For example: If under the exchange provisions of a country or, the provisions of Law of Budget for all the ministries, governmental institutes and companies and in order to import the goods of the subject of the contract where the specified exchange quota has been allotted then, in such a case, to increase the price of this contract is considered as illegal because here there is an illegal increase of ceiling of allocated foreign exchange and breach of regulations of control or limitation of export of foreign exchange from the country.

(c) Adjustment: Contrary to the Common Intention

Where in contract for the supply of goods or services, and which should be executed as per the obligations resulting from it during the fixed time and where it is clear from the terms or nature of the contract that, it was to be performed only at or within the specified time and that time of the performance was the essence of the contract then, in such a case, if the adjustment of the contract requires delay in the performance, the promisor has the right to demand the termination of the contract by the court by virtue that the adjustment is impliedly contrary to the common intention of both the parties. It seems that this possibility is illustrated by *Jackson v Union Marine Insurance Co.*
However if by the analysis of the common intention of the parties, it is found that the full performance of the contract within the specified time in the form of multiplicity of the object has been contemplated by the parties and, that the performance of the contract is the main object of the parties and, its performance within the specified time is the subsidiary object then, in this case, the termination of the contract is not permissible because, the adjustment of the contract is not contrary to the common intention of the parties and it can compensate for the loss resulting by the disturbance of the economic balance of the contract. Basically it means that, where the delay in performance of the contract, is contrary only to the secondary subject of both the parties then it cannot terminate the binding of the contract and nor does it hurt the main elements of obligation of the contract.

(d) **Disagreement on the Adjustment**

Another justified cause for the termination of the contract is the disagreement of the parties on the adjustment of purport of the contract. This disagreement is in case where the promises does not accept the request of the adjustment of contract and does not agree with the renegotiation in the contract. It is a case where the contracting party refuses the adjustment of contract for convincing reasons or disagrees with the adjustments without any reason.

After the above discussion we can infer that the two major implications that emerges out as the legal effects of the doctrine are –
I. Adjustment of contract

II. Termination of contract

It would be worthy to discuss these implications (effects) i.e. Adjustment and Termination of contract with respect to the American Law, the English Law and the Indian Law respectively.

3. ADJUSTMENT AND TERMINATION OF CONTRACT IN AMERICAN LAW.

As already mentioned, that the term “change of circumstance” in American Law has been laid down with the new “Doctrine of Commercial Impracticability”. Under this doctrine – when the execution of contractual obligations due to the unforeseen and supervening events becomes impracticable, the contract is terminated. In such a case, it exempts the promisor from the subsequent performance of contract.

The “Theory of Commercial Impracticability” has also been approved by the Uniform Commercial Code (UCC), United States of America (1969). According to this code:-

"Delay in delivery or non delivery in whole or in part by a seller who complies with the paragraphs (b) and (c) is not a breach of his duty under a contract for sale, if performance as agreed has been made impracticable by the occurrence of a contingency, the non occurrence of which was a basic assumption on which the contract was made."\(^8\)
According to an official comment to the Uniform Commercial Code (UCC), increased cost alone does not excuse the performance unless the rise in cost is due to some unforeseen contingency, which alters the essential nature of the performance of contract i.e. the thing undertaken would, if performed, be a thing different from that contracted for. Then in such a situation—when the performance of the contract becomes onerous or more expensive, it is not sufficient to excuse the performance, on the ground of it being costly or expensive.

To support this, the leading case *Mineral Park Land Co. v Howard* can be invoked. In this case, the Californian court has recognized the abnormal rise in price, on the reason that, it has occurred due to some unforeseen events which altered the essential nature of the performance of contract.

Thus, in American law the sanction, of the alteration in the conditions or the change in circumstances or impracticability, is the termination of performance and exemption of the promisor from the subsequent fulfillment.

In spite of that, a considerable change is being felt and which is still under way. The change in the thought, points towards the inclination for the renegotiation in contracts in which the performance due to the supervening events or unexpected or unforeseen events becomes impracticable. However, this change is not new in the American Jurisprudence, because before approving the Uniform Commercial Code, the courts also, in some of the cases by virtue of the expression of impracticability, had pronounced the adjustment and revision in the contract. It can well be illustrated by the case *Transbay Construction Company v City and Country of San Francisco (1940)*11

321
Therefore, in American Law at the present, the adjustment in the terms of the contract, has still not been completely and officially recognized. In spite of that, this question has been raised in some of the famous legal writings that:

Questions:

- Whether the courts can or cannot choose the middle solution of adjustment of the terms of the contract instead of the termination of contract?

- Whether the courts by adjustment of the terms of the contract, are allowed to divide proportionally the losses between the contracting parties or not?

In this connection some of the legal scholars have suggested the renegotiations in the contractual conditions whereas the other group of lawyers has disagreed with this suggestion.

However it is to be mentioned here, that the remedial relief is also available under the *Doctrine of Divisibility* and *The Second Restatement* suggests that the courts may sense a contact in the interest of justice although and even if the normal tests for divisibility are not met with. Indeed, it is possible to reshape the contract by the process of allocation by the rules governing the temporary impossibility and by supplying a term that is "Reasonable" in the given conditions or the circumstances.

The party to whom the performance is owed, has the power to reform the contract by waiving its restrictive clauses or substantial non-performance and the other obstacles, thereby re-instating the duty of performance, *albeit* on somewhat different terms. This power
demonstrates that one of the basis of the Doctrine of Impossibility is the Un-conscionability of insisting on the strict performance in the light of the radically altered conditions or the changed circumstances.

It must be pointed out here that in the International Contracts, the Commercial Impracticability is considered as a clause to adjust the contractual terms and it has been recognized as an important renegotiation clauses\textsuperscript{12}

4. ADJUSTMENT AND TERMINATION OF CONTRACT IN ENGLISH LAW.

In English law, in view of the fact that the “Fundamental Change” of the conditions or the circumstances governing the contract is one of the causes of frustration and, it brings about only the termination of the obligation and exemption of the promisor from the subsequent performance.

Before 1943, the general rule of Common Law was that the Doctrine of Frustration has not terminated the contract from the beginning but it caused the exemption of the parties from the further performance of the contract. From this rule two results which can be derived at are:

❖ The rights which had been created before the frustration were valid and enforceable; consequently the benefits conferred upon the parties under the contract were irretrievable.

❖ The rights which had not been created till the time of frustration were not valid and enforceable; consequently all
sums which would be paid later were not necessary to be paid after this.

However, this rule, due to non-determining the duty to perform a part of the contract and also, due to lack of the order concerning the compensation method of the expenses which the promisor had incurred before the frustration, could not modify justly the contractual rights and liabilities of the contracting parties. For this reason, the English Legislature, to resolve the above mentioned problem, has approved the –

The Law Reform (Frustrated Contracts) Act on August 5th 1943, under which, the contract is terminated from the beginning.

Now in order to survey the method of adjustment of rights and liabilities of the parties to the frustrated contracts, some of the provisions of the above said act will be described.

According to “The Law Reforms Act (Frustrated Contracts) 1943”-

Section (1) According to sec (1) of the Act-

Where a contract governed by English law, has become impossible of the performance or has been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section (2) of this act, have effect in relation thereto.

Section (2) According to sec (2) of this Act-

All sums paid or payable to any party is pursuance of the contract before the time when the parties were so discharged (in
this Act referred to as "the time of discharge") shall, in the case of 
sums so paid be recoverable from him as money received by him 
for the case of the party by whom the sums were paid and, in the 
case of sums so payable, cease to be so payable.

Provided that if the party to whom the sums were so paid or payable 
incurred expenses before the time of discharge, or for the purpose of, the 
performance of the contract, in the court may, if it is considered just to do so 
having regard to all the circumstances of the case, allow him to retain or, as 
the case may be, recover the whole or any part of the sums so paid or payable 
not being an amount in excess of the expenses so incurred.

Section (3) According to sec (3) of the act-

Where any party to the contract has, by the reason of anything 
done by any other party thereto in, or for the purpose of, the 
performance of he contract, obtained a valuable benefit (other 
than a payment of money to which the last foregoing subsection 
applies) before the time of discharge, they shall be recoverable 
from him by the said other party and such sum (if any), not 
exceeding the value of the said benefit to the party obtaining it, 
as the court considers just having regard to all the circumstances 
of the case and in particular:-

(a) The amount of any expenses incurred before the time of 
discharge by the benefited party in, or for the purpose of, the 
performance, of the contract, including any sums paid or 
payable by him to any other party in pursuance of the contract 
and retained or recoverable by the party under the last 
foregoing subsection and,
(b) The effect in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

It must be pointed out here that "The law Reform (Frustrated Contracts) Act, 1943", does not apply to-

(i). Contracts of Insurance
(ii). Contracts for sale of goods
(iii). Voyage charter parties and other contracts for the carriage of goods by sea.

Discussion:

(i). Insurance Contracts:-

This exception preserves the rule that there can in general be, no apportionment of premiums under an insurance policy once the risk has begun to run. The essence of the Contract of Insurance is that "The contract is for the whole entire risk and no part of the consideration shall be returned."13

Thus, if a ship is insured but lost in some way and loss is not covered by the policy after the part of the period of insurance has run, then no part of the premium can be recovered back. This is obviously in accordance with the intention of the parties for such a contract is essentially speculative. Had the ship been lost, by one of the perils insured against on the first day, the insurer would have had to bear the whole loss. Conversely, he can keep the whole premium if, the ship is lost by a peril that is not covered by the policy at any time during the period of the insurance.
(ii) **Contracts for the sale of Goods**

Sec 2(5) (c)\textsuperscript{14} provides that the 1943 Act shall not apply to following two types of contracts:

(a) It does not apply to "Any contracts to which section 7 of the sale of Goods Act, 1979 applies.

**Sec-7 of sale of Goods Act**

Under this section – an agreement to sell specific goods is avoided if the goods perish without any fault on part of the seller or the buyer, before the risk has passed to the buyer. That is, the buyer is not liable for the price and neither party is liable for damages. The same result would normally follow from the common law rules of frustration as the destruction of specific goods would frustrate the contract. The cases in which the 1943 Act would (if it were not excluded by sec 2 (5) (c) make a difference are, those in which there has been an advance payment or part delivery.)

(b) The Law Reforms (Frustrated Contracts) Act,\textsuperscript{15} 1943 does not apply to "any other contract for the sale or the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the Goods have Perished.

These words seem to refer to a case which would not fall within the section 7 of the Sale of Goods Act, 1979 because, the risk has already passed to the buyer. It is difficult to imagine how in such a case the contract could be frustrated by the perishing of the goods. Perhaps the point of accepting such a case from the Law Reform Act 1947 is, to make
it clear that the buyer is liable for the whole price and that there is no power to order restitution or to apportion expenses.

Therefore in English law, the termination of contract from the beginning has been recognized as the legal effect of the doctrine of Frustration. Subsequently the adjustment of contract, which is the main legal effect of the Doctrine of altered conditions or change in circumstances, does not apply to the already frustrated contracts in English Law.

5. ADJUSTMENT AND TERMINATION OF CONTRACT IN INDIAN LAW.

It seems, that in the Indian law, the alteration of the conditions or the change in circumstances though in common concept is considered as the main element of the “Frustration” and “Impossibility” but it has been mentioned before that the term “Change in Circumstances” or the expression “Altered Conditions” from the legal point of view in contemplation is applied only in cases where the possibility of performance of contract in such a way exists. But in spite of that, the performance on the ground of commercial hardships which make the contract unprofitable or more expensive from the commercial point of view becomes fulfilled. Therefore, alteration of the conditions or the change in circumstances, in the particular meaning, does not cover the frustration and impossibility. For this reason, under these doctrines, merely because the performance becomes more onerous, the contract is not terminated. However, in Indian Law, in view of the fact that the Fundamental Change of Circumstances or the Material Alteration in the
Conditions of the contract is considered as one of the causes of frustration and, it brings about only the termination of the contractual obligation and exemption of the promise from further performance.

Indian Law, basically observe strictly the doctrine of "Pacta sunt Servanda" as discussed in the previous chapter and this is amply shown by the judicial decisions of the country. For example in Alopı Prashad and Sons Ltd. v Union of India16 and in Davis Contractors Ltd v Fareham Urban District Council and many others17. For this reason, the Indian judges and lawyers interpret strictly the Doctrine of Frustration.

Under Indian Jurisprudence, the Doctrine of Frustration must be applied within very narrow limits as has been held in different expressions that:

Frustration is not to be lightly held to have occurred.18 And

It is useful within its proper limits.19 Or,

Disappointed expectations do not lead to frustration. A contract is not frustrated because its performance has become more onerous. The court has no power of observing from the performance of contract merely because it has become onerous on account of unforeseen circumstances.20

In Indian legal system under the Doctrine of Frustration, a contract may be discharged if, after its formation events occur making its performance impossible or illegal, as laid down in section 56 of the Contract Act, India (1872). Also the "implied term" and "just and reasonable solution" as the theoretical basis or juridical bases of the
doctrines of frustration are not basically applicable in India as referring to the theories of B. K. Mukherjee J. of the Supreme Court of India in the case of Satyabarata.21

"These differences in the way of formulating legal theories really do not concern us so long we have the statutory provision in the Indian Contract Act. In deciding case in India, the only doctrine that we have to go by is that of supervening Impossibility or Illegality as laid down in section 56 of the contract Act, taking the word "impossible" in its practical sense and not in literal sense. It must be borne in mind, however, that section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties."

In spite of that, it can be inferred from some cases in India that the implied term as a basis of frustration has been recognized. For example, the Madras High Court has, in a case, implied the theory of implied term as a basis of frustration. It held that such an intention could be gathered from the surrounding circumstances. The Indian Supreme Court has also observed that there is an implied condition in ordinary contracts that the parties shall be exonerated in case, before the breach, where the performance becomes impossible on account of physical causes or legal prohibitions.22

However in Indian Law, basically, the adjustment of contractual terms and condition on this basis has not been recognized. The Supreme Court in Alop Prashad's case and the like, held that if a consideration of the terms of the contract in the light of circumstances, when it was made...
shows that, the parties never agreed to be bound in a fundamentally different situation which emerges unexpectedly, the contract ceases to bind at that point, not because, the court in its discretion considers it “just and reasonable” to qualify the terms of the contract, but because, on its true construction it does not apply to that situation.

Even in cases where due to a wholly abnormal rise or fall in price, a sudden depreciation of currency or an unexpected obstacle to execution, or the alike contracts where, the contract on basis of equity and implied term should be adjusted, the courts have terminated such contracts. For example, in *Alopi Prashad and Sons Ltd v Union of India.*

*Case Details: Alopi Prashad and Sons Ltd. v Union of India.*

In this case the plaintiffs were acting as the agent to the government of India for purchasing Ghee for the use of Army personal. They were to be paid on the cost basis for the different items of the work involved. The performance was in progress when the Second World War intervened and the rates fixed in peace time were entirely superceded by the totally altered conditions prevailing in war time. The agents demanded the revision of rates but received no replies. They however kept the supplies. The government terminated the contract in 1945 and the agents claimed payment of enhanced rate. But they could not succeed.

However, a single judge of the Madras High court in a case where after the firm price contract for supply of transformer oil there was a phenomenal rise in price of the transformer oil by 400% due to war conditions in the Middle east, held that the abnormal increase in price due to was conditions was an untoward event or change of circumstances
which totally upset the very foundation upon which the parties rested their bargain. This view is not warranted in view of the decision of the Supreme Court in Aloi Prashad’s case.

Therefore, in Indian law the termination of contract from the beginning has been recognized as the legal effect of Frustration or Impossibility and the adjustment of contract which is the legal effect of the Doctrine of Altered Conditions or the Doctrine in changed circumstances on this basis does not apply to the already “Frustrated Contracts”.

6. REVIEW

After discussing the concept extensively and ardently in the light of the concept of altered conditions or the change in circumstances of the contract (after its formation and before its conclusion) we reach to this conclusion that the change of circumstances or the alteration in the conditions, leads only to the re-negotiations in the contract and adjustment of the terms of the contract with respect to the new conditions. Now the thing that comes to mind is that, this solution suits to the legal principals because it upholds the very principle of the “Pacta Sunt Servanda” (i.e. agreements are to be kept and respected) as well as the “Principle of Necessity of Compensation of Unwanted Loss” and also adheres to the theory of “Equity and Justice”.

In American Law, the sanction of the change of circumstances or Commercial Impracticability is also the termination of performance of the obligation thereby resulting in the termination or cancellation of the contract, and exemption of the promisor from the subsequent fulfillment.
In spite of that, a considerable change, which is still underway, consists of inclination towards renegotiations in the contract in which the performance due to supervening events becomes impracticable. However, in American present law the adjustment of contract has still not been completely recognized.

In English and Indian Law, the termination of contract from the beginning has been recognized as the legal effect of the Doctrine of Frustration consequently, the adjustment of the contract which is the main legal effect of the rule of altered conditions or the circumstances or the changed circumstances does not apply to the frustrated contracts.
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334
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CHAPTER-VII

CONCLUSION AND SUGGESTIONS
Contract law is the product of a business civilization. It will not be found in any significant degree in the pre-commercial societies. A rapid development of the contract law began in the 12th century and several causes contributed to this growth. The increased wealth and commerce of the country made a more convenient and highly developed system of contract law, an absolute necessity. In a society where the exchange of goods and services is so central to its economic order as in a developing capitalist society based on a free enterprise, a means of supporting the process of exchange, needs to be found. In this context, the foundations of the modern contract law were established. Therefore, "Contract" is the juristic form for the distribution and utilization of the goods and personal abilities that are in existence in the society.¹

For many years it was held that, a man was strictly bound by his contract and that in absence of any express limitation of his liability, he must take the consequences for unable to perform his contractual obligations. So the rule laid down was of 'Absolute Contract' which admits no exception in favour of the promisor who was liable for breach, notwithstanding the subsequent occurrence of any accident or other contingency which prevents him from performing his contractual obligation undertaken in a contract. When we talk of 'obligations' it is important to mention here that the general rule that is recognized in the law of obligations is the 'doctrine of stability' of contract and it has been always considered by jurists in their interpretations and judges in their decisions. There is no doubt that the theory of freedom of will and the rule of contract follows the common intention of the contracting parties which requires mutual consent. This is also a constant binding force as private law of the parties is constantly binding. In such a case the parties to the contract have no right to avoid the performance of the contractual
obligation undertaken or change the terms and conditions of the contract. Despite this it must not be inferred, implied or assumed that the terms of the contract would remain fix. The various compulsory and voluntary factors cause changes in the performance of the contract.

The rule however, followed in the law of contracts is based on the maxim ‘Pacta sunt servanda’ meaning “Agreements are to be respected.” The philosophy behind the rule is that the party to an agreement is responsible for its non execution even if the cause of failure or non performance of the contractual obligation or breach of the contract, occurred because of the unforeseen or unexpected circumstances or some supervening event. This philosophy is still in the heart of modern times for reasons of legal certainty and stability. In long term contracts where the circumstances at the time of conclusion of contract changes fundamentally in such a way that its performance becomes extremely difficult or expensive or more onerous but not impossible then in such cases what ought to be done? Here we are talking of circumstances at the time of formation of contract and that it the time when the parties entered into the contract and which changes at the conclusion of the contract. In such long term contracts (where the circumstances change fundamentally at the time of conclusion of contract in such a way that the performance of the contractual obligation becomes more onerous or more burdensome though not impossible) then the theory of equity and justice demands the ‘adjustment of contract’ instead of termination or cancellation of the contract.

Performance of a contract depends upon various factors which can be both compulsory and voluntary. Also, the boost in bilateral ties is generally based on long term contractual obligations. In long term contracts, where the circumstances change at the time of the conclusion of the contract and the change is so fundamental or the alteration in the conditions is so material
that, the performance of the contractual obligation becomes extremely
difficult or more onerous or highly expensive though not impossible and this
alteration of the conditions or the so attracted change in circumstances
intensely upsets the contractual equilibrium and the economic balance of the
contract, then in such cases, the solution most sought after is the 'adjustment'
of contract to make its performance possible thereby keeping the contract
alive. This solution also respects the rule of 'Pacta sunt servanda' and is also
in cohesion with the theory of equity and justice. For this reason, the rule of
altered conditions or changed circumstance has acquired new importance.

This rule is an emerging concept and is giving a new dimension to
the trade laws because, it relates to both Internal and International Law in a
way that both contradict each other on the legal rule of 'Pacta sunt
servanda'. The point of contradiction is that if the circumstance changes
fundamentally then how can the promisor fulfill his contractual obligation?
To counter this contradiction and to establish the contractual equilibrium, the
need is felt to conduct research on this topic because it aims at avoiding the
cancellation or termination of the contract by adopting re-negotiations in the
contract and adjustment of its conditions, thereby making the performance
effective. Therefore, the underlying principle is that if due to unavoidable and
unforeseen circumstances, the performance of the contract becomes difficult
or more onerous though not impossible then to avoid its cancellation or
termination; the adjustment in the terms of the contract should be resorted to

With the tremendous growth in trade activities in the present scenario,
the need for harmonization of laws is also strongly felt, because though the
contractual excuse clauses in different legal systems have common basis yet
the International contracts suffer serious setbacks because the view point
taken to interpret them is different by different countries. A unified law is not
always a better law not need it produce better results in applications. The
challenge before the lawyers and jurists is to use this opportunity of legal change for harmonization to produce better law, because, the process of harmonization has turned out to be somewhat different than it was expected, a decade ago.

'Change' as a expression in commercial law is inevitable and the motivating cause of this change is the ever changing structures and concepts of commercial markets and business practices. The recorded increase in trade activities and rapid communication have created a large regional and global markets to appreciate this change in commercial law practices because it is driven by the powerful economic forces visible throughout the world. At this point of time, it would not be incorrect to say that if law is permitted to stand still it would fail to respond to the needs of business society engaged in commercial transactions. Also we cannot allow our past to rule our future. If we do not appreciate to adapt with these rapidity of changes in commercial laws, both at domestic and International level then the "consumers" of the law (Commercial) will certainty find other non legal ways to structure their commercial needs and in turn it would result in causing disregard to the laws of respective nation as well as trade laws. This is the crux of the subject of this research work.

Looking at the present trend of ever increasing trade communities and fast developing International trade relations between the countries, this doctrine has acquired a new importance as it helps to maintain the balance of the economic equilibrium of the contract because the underlying principle of this rule is that if the economic equilibrium of the contract gets destabilized and the performance of the contractual obligation undertaken becomes more difficult, more expensive, more burdensome or more onerous, though not impossible, due to the occurrence of some unexpected, unforeseen or supervening contracts, the terms of the contract shall modify. Here, the
change in circumstances refers to the objective conditions of the contract which existed at the time of formation of contract and changed fundamentally at the time of conclusion of the contract. Therefore in cases where the circumstances or the conditions gets altered because of any unforeseen or inevitable or unexpected events, so as to render the performance of the contractual obligation difficult or more onerous, though not impossible, then the only way to make the performance of the contractual obligation effective is to, modify the terms of the contract. This philosophy realizes its roots in the theory of *Equity and Justice* and also upholds the very essence of contract that is performance. It is a powerful concept as it respects the general rule of 'Pacta Sunt Servanda' as well as principle of 'Compensation of Unwanted Loss'.

With the tremendous growth in trade activities in the present era of globalization we have to acknowledge its importance in International Relations between different nations because it aims to provide the much needed stability in international contracts by maintaining the contractual as well as the economic equilibrium of the contracting parties. Hence, the need justifies to pursue research on this concept of Altered Conditions or change in circumstances because it aims at giving the much needed boost to our economy facing the last imprints of the recession now a days.

The scope of the rule is limited to those conditions or circumstances on which the performance of the contract depends upon i.e. which forms the very basis of the performance of the contractual obligation. And the change here refers to change of those very circumstances which have been taken into consideration by the parties at the time of conclusion of the contract. Therefore, it can be concluded that change in conditions or circumstances of the contract, is basically the result of occurrence of some tortuous event e.g.
war do serious economic crises as can be seen in its last lap now-a-days or change in governmental policy etc (import export inhibitions/regulations)

The legal effect of this rule of Adjustment in contracts due to the altered or changed circumstances at the time of conclusion of contract is widely seen now-a-days because of the open welcome given by countries in developing international trade relations BUT its history can be traced back since ancient times where we can catch its glimpses from the legal concepts prevalent in Greece and ancient Rome.

The **First Chapter** as a customary rule gives the introduction of the study. It lays down the object and the scope of the concept and the methodology followed by also describing the scheme of the chapterisation in this study.

The conclusion derived from the **Second Chapter** i.e. evolution of the concept in its historical background is that it had solid foundations in its judicial and legal aspects in earlier times also. The historical or its evolutionary journey has been traced back from the Ancient Era through the Medieval Time, and to the Modern Times. Sources have suggested its strong traces since Ancient times. They can be seen strongly imbibed in the Roman law that developed the Doctrine of Impossibility to deal with impossible performances. In the Medieval times the canon law also developed the law of altered circumstances to deal with the unexpected events that made the performance difficult or more onerous. In the late medical and early Modern times the jurists developed a more philosophical and moral explanations of these doctrines with the time the explanations were simplified and the lacuna's were filled and so modifications and interpretations took place in various ways. If the concept is understood properly and rationally it explains why relief is sometimes given when performance becomes impossible. The ‘relief’ here can be equated with the expression ‘adjustment’ in the terms of
the contract referred to in this study. It can be referred to as a 'weak link' in strengthening International contracts in today's era of globalization.

The Third chapter discusses the legal nature and scope of the doctrine. The conclusion derived is that if the economic balance of the contract which the parties have anticipated at the time of formation of contract, as a result of the occurrence of the enforceable, inevitable and irresistible events, upsets the contractual equilibrium intensely then consequently as a result of this imbalance if the performance of the contractual obligation of the contract becomes extremely difficult or more expensive then the adjustment in the terms of the contract would be done to keep the contract at vie.

The scope of the concept is hence limited to those circumstances on which the performance of the contract depends. It is applicable to the contracts which carry out their object during a specified time. Therefore the scope is limited to the contracts which have continuous and variant effects and where the main object of attention, is the stability of the contractual economic equilibrium of the contract between the parties. The rule is also supported by the views of the learned legal scholars and eminent jurists. Their explanations and interpretations carried along with them a considerable influence so much so that it found its way into the legal systems different countries under the same expression i.e. *Rebus Sic Stantibus*.

The third chapter also witnesses the explanation of the concept of the rule of altered circumstances by explaining its basic elements. The conclusion drawn from the discussion is that the doctrine of changed circumstances has been formed by two basic elements. They constitutes the base and nature of the concept. They are the legal element and the economic element. The frustration of the illegal element destroys the very foundation of the contract whereas frustration of the economic element destabilizes the economic
equilibrium of the contract and hence causes difficulty in the performance of the contractual obligation of the contract. Also we know that the conditions or circumstances never remain fixed because the theory of change is constant and inevitable. In this work, the explanation has been limited to the economic circumstances prevalent at the time of formation of contract. On this basis, if the economic balance of the contract gets seriously or intensely destabilized as a result of some unforeseeable events thereby resulting in the incredible increase in the scope of contractual obligations and resulting in making the performance of the contract difficult or more burdensome for one of the parties to the contract. Then according to the rule of changed circumstances the other party deserves to be compensated for the loss suffered on account of this change in conditions. Therefore, it can be concluded that the rule of altered circumstances can only be invoked in cases where the performance of the contract in new conditions (i.e. the changed conditions) becomes difficult. This concept has been examined religiously and ardently in the lime light of legal systems of United States of America, United Kingdom and India. While examining the concept, it is of course a natural argument to discuss the definitions prior to any other discussions hence, the definitions of the formative elements of the rule has been discussed foremost.

The Doctrine of ‘Rebus Sic Stantibus’ suggests that the binding strength of the contracts has religious roots too. The study of its historical journey suggests that the validity of the contract under changed conditions or circumstances had been under consideration since long. The whole process of its evolution was going on, even if it was in the minds of legal scholar and jurists. With the expansion of trade facilities and activities, it derived the much needed attention. The interpretations and explanations of the legal scholars and jurists carries a considerable amount of weight along with and the impact had seen so breathtaking that its reflection is seen in the judicial
systems of many countries. In this research work the study of similar contractual excuse clauses prevalent in different legal systems have been discussed.

In the Fourth Chapter, analysis of the contractual excuse theories prevalent under different legal systems have been done explicitly. In French legal system it is covered under the concept of Force Majeure and Theory of Imprevention. Force Majeure under French law is an irresistible and unforeseeable event which makes the performance of a contract Impossible. Under French Law, a then line is drawn between Force Majeure Imprevention. Force Majeure on one hand relates to impossibility of performance where as on other hand Imprevention are the circumstances which destabilizes the contractual equilibrium of the contract where economic conditions are such that fundamental and far reaching changes occur to render the performance difficult. The point of distinction in both the doctrines i.e. Force Majeure and Imprevention is that the effect of ‘Force Majeure’ is the cancellation of the contract whereas the effect of Imprevention is the continuation of the contractual relationship and compensation and this can be treated as a way of adjustment of the contract which is infect the soul of the doctrine of altered or changed circumstances too. However, in French legal system the doctrine usually observed is that of ‘Force Majeure’ The doctrine of Imprevention began since the case of Bordeaux Gas and was later extended to public law. The conclusion drawn is that in French law, the concept of changed circumstances has been accepted by the way of doctrine of Imprevention. This doctrine is exercising the well known theory of international law also i.e. ‘Rebus Sic Stantibus’.

With the expansion of trade facilities and activities, there has been a steep rise in the commercial activities between the national. In International contracts the performance usually takes place for long durations and during
this it comes across various changes that may destabilize the contractual equilibrium and hence questions the validity of the contract. The *Clause of Hardship* had been incorporated under different expressions in the legal systems of countries that have common law system and hardship was one of the causes of effecting the validity in the contract. But during the last decade this term or expression has been applied as 'hardship'. The conclusion drawn is that if the hardship occurs, the contract is to be renegotiated.

In American Legal system the mode of discharging the contract is laid down in *Doctrine of Commercial Impracticability* which states that the contract stands discharged in cases where the performance of the contract becomes impossible or Impracticable due to some unforeseen or unexpected events beyond the control of the parties. America flirts with the concept by equating the expression Impossibility with 'Impracticability'. From the discussion it can be concluded that Impossibility takes place when the performance of the contract becomes absolutely impossible whereas 'Impracticability' comes into play where the performance though is possible but only after suffering excessive loss. The basic difference is based on excessive and unreasonable difficulties and suffering of enormous loss with respect to performance of the contractual obligation because American Courts are reluctant to accept anything short of Impossibility as an excuse for the performance of contract in case where the circumstances changes. Though Impossibility and Impracticability are interchangeable expressions but their effect is same i.e. both result in cancellation or termination of the contract. Therefore the conclusion inferred after the discussion is that though the reflection of the rule of changed circumstances (under the study) can be seen in American Legal System under the Doctrine of Impossibility or Impracticability but it has not been given an independent status which is required because the legal effects of both are different.
Impossibility or Impracticability is the termination or cancellation of the contract (Clause Rebus) but legal effect of the rule of altered circumstances is the adjustment of the terms to keep the contract alive (and it also adheres to the rule of Pacta Sunt Servanda) Though the acceptance of the rule of altered circumstances is felt but giving it an independent recognition would mean finding a midpath to balance the equilibrium of the contract. The very essence of finding a midpath by modifying the terms of the contract keep the contract alive would relate to respecting the principle of Trade Laws i.e. Pacta Sunt Servanda and also the principle of Compensation of Unwanted loss.

English law affords great assistance in investigating the clause of ‘Rebus’ under Doctrine of Frustration. It is a well recognized influential and accepted rule of law where the contract is discharged on account of fundamental change in circumstances due to happening of some unexpected, unforeseen or supervening events. Taylor v Caldwell² is a memorable case because it helped to bridge the gap between the civil doctrine and the common law. It can be concluded after examining the frustration in English Legal system that the concept of changed circumstances has not got any independent expression but is covered under the ‘Doctrine of Frustration’ and has been recognized as one of the causes of termination. Therefore it is emphasized that if this concept was recognized since times immemorial then with the growing global trade, the need is felt to formally and officially recognize it because it can not run side by side on under the umbrella of Doctrine of Frustration because legal effects of both have a striking differences. Difference is in terms that the legal effect of Application of Doctrine of Frustration results in cancellation or termination of contract but in rule of changed circumstances the legal effect arising is the adjustment of
the contractual terms & hence keeps the contract alive and it also upholds the very rule of ‘Pacta Sunt Servanda’ (i.e. agreements are to be kept).

In Indian Legal system ‘Frustration’ is covered under section 56 of the Indian Contract Act, 1872. Although Indian legal system has not defined doctrine of frustration but has frequently used this term and in fact Impossibility and Frustration are two expressions which the Indian Judiciary has liberally used in various cases. The doctrine of Frustration comes into play when a contract becomes impossible of its performance, after it is made, on account of circumstances beyond the control of the parties. The rule laid down under section 56 of the contract Act of India (1872) says that it is a positive rule relating to frustration and it does not leave the matter of frustration to be determined by the courts and the courts are not expected to go beyond the scope of the terms of the contract. It means that courts are required to examine the contract as well as the circumstances under which it was made and the belief, intention and knowledge of the parties would relate to the evidence whether the changed circumstances altogether destroyed the very basic nature of the contract or not?. It can be concluded here that the scope of the section 56 of the Indian Contract Act (1872) is not well defined which creates confusion. The Supreme Court says that “Frustration as an expression is applicable to executory contracts but it well not apply to executed contracts” But Professor I.C Saxena in his article ‘Frustration in frustration’ has criticized these interpretations. Broadly it can be said that frustration in essences, is an unforeseen and unexpected dissolution of the contract due to occurrence of some unexpected or supervening events which makes the performance impossible. It seems that in Indian Law, the change of circumstances has been considered as a primary element of frustration but it has not been given an independent status. The Indian Judiciary has always taken the view that courts have no power to absolve a contract on the ground
of performance becoming more onerous, difficult or more burdensome. The pace at which the trade is developing, a strong need is felt, in this era of globalization facing last imprints of recession, that this rule be given an independent recognition. It would strengthen the trade relations and would give the required boost to the economy. By incorporating it as an Independent rule it would fill the gap and cure the incompleteness of section -56 of the Indian Contract Act (1872).

Primarily in premature times the rule laid down was of Absolute Contracts which admitted no exception, notwithstanding subsequent occurrence or any other contingency which prevented performance of the contractual obligation when we talk of ‘obligations’ the general rule of law of obligations a the doctrine of stability of contract. Also the theory of freedom of will and the rule of contract follows common intention of the parties which requires mutual consent. Hence, this concept does not allow anybody to modify the contract. Despite this, it must not be assumed that the terms of the contract would remain fix especially in International contracts which are usually of long durations various compulsory and voluntary factors cause changes in the performance of the contract thereby rendering the performance impossible, at times But the rule followed in the commercial law is based on the maxim ‘Pacta sunt Servand’ (i.e. agreements are to be respected). The underlying principle of this rule is that the party to an agreement is responsible for its non-execution even if the cause of failure or non performance of the obligation and finally the breach of contract occurred because of some unexpected or supervening events. The whole discussion trades to a question that in long term contracts if the circumstances at the time of conclusion of contract changes fundamentally in a manner that the performance of the contract becomes extremely difficult or more burdensome or more onerous that what should be done? Would it be correct to terminate
the contract? According to the rules of Frustration the legal effect in such cases arises only termination or cancellation. In such cases the doctrine of altered circumstances comes to rescue, by keeping the contract alive by modifying the terms of the contract. But when can the rule be invoked or what are the conditions that would justify the application of the rule in current case is discussed extensively here. Therefore the Fifth Chapter lays down the conditions that would justify the application of the doctrine of changed or altered circumstances. The conclusion drawn is that if the change of circumstance is so fundamental as to change the very foundations of the contract it would be a reason enough to invoke the rule of altered circumstances. Along with the change should have been unforeseeable and must be a result of some external, exceptional, unexpected and unforeseeable circumstances. Execution of the obligation should not be completed and conduct of the contracting parties should not acknowledge these changes are some of the essential requirements of the rule. Minor changes like fluctuations in the market or gradual increase in the cost of living etc does not come under the purview of this rule. Hence, it is concluded that the doctrine of changed circumstances should be invoked or applied by keeping a restrictive nature and by strictly interpreting the conditions of the contract to avoid its misuse.

After examining the essential requirements of the doctrine in the fifth chapter, the, its implications are explained in the Sixth Chapter. The conclusion drawn is that if frustration occurs, the termination of contract and exemption of the promisor from the subsequent performance has been recognized as the official legal effect in American legal system under the Doctrine of Impossibility or Commercial Impracticability in English law and Indian legal system, termination of contract from the beginning is officially recognized as the legal effect of frustration under Doctrine of Frustration in
English law and under section- 56 of the contract Act of India (1872). However the legal effect of the rule of changed circumstances is first the adjustment of the terms of the contract to keep the contract alive. This upholds the principle of ‘Pacta Sunt Servanda’ and the rule of ‘Compensation of Unwanted loss’ However in cases where the adjustment is not possible, then only it results in termination or cancellation of the contract.

After examining the whole concept, in the light of rules said down by the legislature and interpretation of these rules by the judiciary of different legal systems, conclusion is drawn and suggestions are discussed. The abstract of all the chapters is concluded here to sum up. The underlying principle of the doctrine of changed circumstances that emerges out is that if in a contract, the circumstances changes fundamentally (after the formation of contract but before the conclusion of the contract) in such a way that the performance of the obligation becomes difficult or more burdensome or onerous as a result of some unforeseen, unexpected or supervening events, beyond the control of the parties THEN in such cases on the ground of equity and justice the adjustment in the terms of contract should be resorted to keep the contract alive. This rule is not applicable to executed contracts. In other words, if the fundamental change of circumstances intensely upsets the economic equilibrium of the contract and the contractual equilibrium of the obligations thereby rendering the performance difficult or more burdensome that the adjustment of contract would be resorted to. In cases where adjustment is not possible only then termination or cancellation of the contract would take place. By analyzing similar other expressions in various legal systems, has revealed that though the contractual excuse clauses in different legal systems have common basis yet International Contracts suffers serious setback because the view taken to interpret it by different countries is different. In other words, the main problem faced in International contracts is
that the rule is interpreted and incorporated by different approaches even though they largely share a common sense of the best outcome to practical problems that arise frequently.

As trade continues to evolve the legal structure for these commercial transactions must have the required flexibility to grow and remain relevant. This concept of altered circumstances has been recognized in the internal law of some countries as well international law so it can be counted as a general rule of contracts in trade laws. For these reasons, it should be given an independent recognition to fill the gap and cure the incompleteness of the trade laws.

Over a time, this change in the harmonization of trade laws would be seen as setting an example to the legal community round the world by providing them ample supply of flexible tools to support their trading imaginations and developing the economy in a more efficient and flexible manner.

In view of the above discussion following suggestions are suggested:

1. **Creation of International Code:**

   Creation of a Standard International Code with respect to the rule of Altered or changed conditions or the circumstances will help in the harmonization of trade laws. It would enable fading of the boundaries between the Domestic and the International trade and would result in a stable and harmonized legal approach to all similar commercial transactions.

2. **Revision of International Code:**

   Code Revision is another option by way of which the countries would give this concept an independent status in respective
legal systems of different countries. Mexico started it several years ago to modernize and harmonize the trade laws and related statutes under the "Code go' Commercial". Although, it is a difficult and time-consuming process to revise a code that has been a monumental success and has been incorporated in the laws of respective nations but still it is the need for the hour. The harmonization and modernization would give a required boost to the economic and trade relations between the countries.

3. **CISG:**

   It is suggested to the Convention on Contract for International Sale of Goods which pursues the strategy of harmonization of the trade rules by seeking a single world wide formal statement of contract rules to make an amendment in the limelight of the discussed rule. But it is a long process and requires ratification by every nation of the world.

4. **ICC:**

   The International Chamber of Commerce is an organization set up to cure the lacunas' in the ever expanding trade activities between the nations. With the increase in commercial trade their relations are expected to get complicated. Therefore, the need is felt to develop the International Trade Laws by establishing a unity with respect to economic relations between the countries. It would smooth the rough patches in the International Trade and would enable the Bilateral Arrangements (between the trading nations) to grow faster. It is suggested that the International Contracts be construed in the light of Hardship clause as drawn by International Chamber of
commerce (ICC), 1985 in the light of the rule of altered circumstances.

5. **UNDROIT:**

It is known as the International Institute for the unification of Private Law. It is an independent inter-governmental organization which was set up in 1926 as an auxiliary organ of the League of Nations with its seat in Rome. It is established with a purpose to study the needs and methods for modernizing, harmonizing and coordinating the private International Law, in particular the Commercial Law between states and its primary work is to draft the International Conventions to address the needs of the trading communities. It is suggested that it may make an effort with respect to the amendment, complement or approval of article/articles relating to the discussion on altered or changed circumstances.

6. **UNCITRAL:**

It is United Nations Commission on International Trade Laws. When the world trade began to expand the government needed a global set of standards and rules to harmonize the national and International regulations. It aims to work for the unification of the International Trade Laws. Its main area of work is to reduce the legal obstacles to the formation of International Trade and Trade Laws. It is suggested to make a recommendation to UNCITRAL to make an effort to amend, complement or approve the article/articles in the light of the study on altered or change circumstances.
7. **United States of America**

United States of America flirts with the clause of hardship by using interchangeable expressions i.e. Impossibility and Impracticability under the doctrine of Impossibility which later on was substituted by the expression Impracticability (Second Restatement). It is easier to incorporate the rule of changed or altered circumstances in American Legal System because in American Jurisprudence it is recognized that, "A thing is impossible in legal contemplation when it is not practicable and a thing is Impracticable when it can only be done at an unreasonable cost or by undertaking an excessive burden". American courts have shown inclination for the adjustment of contract or renegotiations in the contract, in cases when the performance becomes more difficult or Impracticable due to some supervening event and which is also beyond the control of the contracting parties. It can be considered as a smart step in developing law of obligations also. Hence, it is suggested to the American Legislature that it may consider the viewpoints discussed and may make an amendment in the light of the said discussion and annex to Uniform Commercial Code (UCC), 1969.

8. **United Kingdom**

Performance of a contract depends upon various factors and in long term contracts the circumstances may change at the time of conclusion of contract. If the circumstances change fundamentally at the time of conclusion of the contract (than they were at the time of formation of the contract), in such a manner that the performance of the obligation becomes extremely difficult then, on the ground of justice and equity, adjustment in the terms of contract must be made.
to uphold the principle of ‘Pacta Sunt Servanda’ for this reason: the doctrine of changed or altered circumstances has acquired a new dimension in the Trade Laws. By giving this doctrine an independent recognition, the much needed flexibility would be imparted to the Law of Obligations. Hence, it is suggested to the English Legislature that it may consider the above viewpoint and may annex it as a supplement to the Law Reforms (Frustrated Contract) Act, (1943)

9. INDIA:

The underlying principle of the rule of altered conditions or the change in circumstances is that, if in a contract (after the formation of the contract but before its conclusion) some unexpected, unforeseen or supervening event happens which may render the performance of the contractual obligation of the contract extremely difficult or more burdensome or more onerous then, according to the principles of Justice and Equity, rather than terminating a contract, adjustment in the contractual terms should be made to keep the contract alive. It upholds the basic principle of Commercial Laws i.e. ‘Pacta Sunt Servanda’. Therefore, the emphasis is laid on this concept. Also, with the tremendous growth registered in the trade activities and ever increasing bilateral arrangements between the nations, a buffer is needed to smoothen the roughness faced in these commercial ties.

Commercial law practices are ever changing because the expression “Change” in its literal sense is the basic rule of nature. Therefore, to sum up, it can be said that change in trade laws is inevitable because it is driven by the powerful economic forces visible throughout the world. Hence, if the Law is permitted to stand
still it would fail to respond to the needs of ‘commercial consumers’ in this era of globalization; though it is not acceptable. So, to give a required boost to our economy, facing the last imprints of recent recession and to maintain the stability in contracts the emphasis is laid to give this rule an independent recognition.

We can conclude now by saying that ‘Law’ in its true form is required to adapt itself to this rapidity of economic changes. Marginal price fluctuations or gradual increase in the cost of living can be left out of the scope of this doctrine but a sudden crash of economy or unreasonable hardship in performance of obligation do come under the purview of this study and in such cases the Law must provide relief on the ground of Equity and Justice. Therefore, it is suggested to the Indian Legislature that it may consider the above discussion and may make an amendment in the light of altered or changed circumstances as a rule and annex a proviso under section-56 of the Indian Contract Act, (1872) so that the expression of “Impracticability”(performance of the contract under circumstances, which makes it difficult or costly or more onerous or more burdensome ) is also given a due regard, under the clause of ‘Hardship’ and as referred to, by the expression ‘Impossibility’ and ‘Frustration’ under the Indian Legal System. The test of “Reasonability of Time” would be the main factor in establishing the conditions or circumstances as “Impracticable” (short of impossible) in the performance of the contract.
REFERENCES

2 Taylor v Caldwell, (1863) 3 B & S 826.
3 Professor I. C. Saxena, Annual survey of Indian Volume XVII 1982. The Indian Law Institute, New Delhi. 1982 P. 57