

New article on ‘Transnational Contracts and their Performance during the COVID-19 Crisis: Reflections from India’

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The outbreak of the COVID-19 or the coronavirus disease 2019 has severely impacted the performance of several contracts across the globe. In some situations, the outbreak may render the performance of contracts impossible as a result of governmental restrictions in the form of national lockdowns to curb its spread. Likewise, the pandemic may adversely impact the execution of the contractual obligations by dramatically affecting the price of the performance and, thus, resulting in hardship or commercial impracticability. At other times, the pandemic will be legally construed to not affect the performance of a contract. In domestic contracts, the consequences of such non-performance would depend on the principles of national law.

In comparison, agreements with a foreign element (international contracts) are likely to increase the complexity of deciding claims arising from the non-performance of contracts due to the COVID-19 outbreak. The rights and liability of the parties would chiefly depend on the law that will govern the agreement – which differs across the globe. Several contracts would include a *force majeure* clause to exonerate the parties from performance on the occurrence of an event such as a pandemic. The courts’ interpretation of such *force majeure* clauses similarly differs across the globe. The laws of some countries would excuse the parties from performing their contractual obligations even if the pandemic resulted in hardship. Others would strictly construe the terms of such clauses and would invalidate them if the occurrence of the pandemic did not make the performance impossible. The purpose of this paper is to examine the non-

performance of transnational contracts due to the COVID-19 outbreak when they are governed by Indian law. It highlights the situations when an international contract for the sale of goods or services whose performance has been allegedly hindered due to COVID-19 would a) frustrate and b) breach the agreement under Indian law. The paper provides a comparative analysis of Indian law with several jurisdictions such as France, Germany, Austria, China, the United Kingdom [UK], Australia and the United States [US] to demonstrate that the law of the former is not well-equipped to deal with complex lawsuits arising due to the non-performance of contracts as a result of the pandemic.

The article may be accessed [here](#).