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The Legal Validity of Self-Prescribed Rules of Interpretation and Construction of Contracts

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ABSTRACT

While drafting a contract, the drafter takes into account the specific requirements of the involved parties. Depending on the complexity of the contract, this means that the contract drafters often self-prescribe the rules that the contract is governed under. However, are these rules valid? What statutory rules and regulations affect such liberty of the contract drafter? Do courts – both domestic and international – pay heed to such rules, or disregard them in favour of general principles - both legal and otherwise, such as the significance of the natural meaning of the contract's language, upholding the general common-sense based practices in similar transactions, upholding public interest? This paper looks at the extent of liberty the drafters of a contract have and other choices that are available to the contract drafters when it comes to designing a tailor-made contract to fit the circumstances.

Keywords: *Contract Interpretation, Contract Law, Indian Contract Act 1872, Indian Evidence Act 1872, Contra Proferentum, sub silentio agreements.*

I. INTRODUCTION

While drafting a contract, the drafter must both be mindful of statutory regulations that may be applicable to the situation, as well as the addressing the needs of the circumstances, which consists of, among other roles, ensuring that the nature of the transaction, and the rights, representation, warranties (together with applicable indemnities), covenants etc. of each party are described in thorough detail. In order to be able to create a well drafted contract, the drafter must have an exhaustive knowledge of statutory provisions, judicial precedents and decisions, and especially common tried and tested drafting practices as well. Further, the drafter may choose to introduce rules for the interpretation within the contract itself, to avoid any ambiguity.

However, regardless of the above requisite efforts being undertaken by the drafter, the question that arises is whether the parties of a contract have the freedom to prescribe rules of interpretation and construction of the contract, and if so – the extent thereof. This paper aims to analyse the extent of freedom parties of a contract have to determine the rules of interpretation

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of their contract, independent of the normal rules of interpretation derived from statutes and judicial precedents.

II. INDIA

a. Statutory Provisions

Under the Indian laws, statutory provisions regarding interpretation of a contract are but limited, offering little beyond giving precedence to reasonableness and discouraging exploitation of any parties with lesser bargaining power than the other, which consequentially leads to ambiguity with respect to the rules of interpretation of Contracts.

The Indian Contract Act, 1872 lays down the principles of enforceability, void and voidable contracts, acceptance of proposals, consent, fraud, unlawful forms of agreements, failure to perform, breach of a contract, etc., but does not offer any provisions, directions, or recommendations with respect to the drafting and interpretation of a contract. The common opinion held by many regarding the Indian contract laws is that the statutes are stuck in time, and having had several portions removed from it and moved to other pieces of legislations has resulted in a loss of comprehensiveness of the Indian Contract Act.[2] Apart from the Indian Contract Act, other basic laws governing contracts in India can also be found in the Sale of Goods Act, 1930,[3] and the Indian Evidence Act, 1872.

Sections 91 through 97, of the Indian Evidence Act, 1872 have given several provisions that provide much needed structure statutorily to the interpretation of contracts, albeit in a limited fashion. The Indian Evidence act strictly condemns ambiguous writing in a contract, urges the drafter to use clear and unambiguous phrasing of the terms, and requires a party disputing any terms of a contract, that are drafted using plain and unambiguous language, to substantiate its claim that the phrasing of such terms is actually meant to have a more liberal or vaguer meaning.[4] Statutorily, there is quite a bit of liberty with the phrasing the terms in a contract, however if a certain obligation is applied to only one of the parties of the contract, the Indian Evidence Act requires it to be demonstrated why such obligation is not applicable to other parties of the contract.[5] Further, section 91 of Indian evidence Act says that a document is proof of itself, and no other secondary evidence is admissible in its place,[6] and as per section 92, no

[2] Jonathan Riley, *Contracting Under Indian or English Law: Part 1 – The Indian Legal Framework - Corporate/Commercial Law – India*, MONDAQ Sept 1 2008, https://www.mondaq.com/india/contracts-and-commercial-law/65442/contracting-under-indian-or-english-law-part-1-the-indian-legal-framework

[3] The Sale of Goods Act, 1930, 3, India, Section 4.

[4] Indian Evidence Act, 1872, 1, India, Section 91 through Section 97 (1872).

[5] *Id*.

[6] *Id*.

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oral evidence is admissible when the terms of a contract are proved through the document, except where a fact is proved to invalidate the document, any separate oral agreements, any common usage or customs usually annexed to the contract, or any fact proving the manner of the language.[7]

Thus, it may be inferred that the Indian law requires contracts to follow certain basic legal principles such as consent and enforceability, and encourages clear, unambiguous language for the contracts. The law has otherwise given a lot of liberties as to the drafting itself enabling it to be tailor-made for each scenario.

b. Judicial precedents

As has been observed above, Indian law is limited in the statutory provisions with respect to interpretation of contracts. However, this does not imply an absence of rules and regulations as India follows the common law system, which gives the legal system the opportunity to address the statutory gaps, and look at a number of situations and tend to the same on a case-to-case basis, rather than having a generic set of rules that are blindly applied to varying situations.

The Supreme Court of India in *Chunchun Jha v. Ebadat Ali* held that prior to understanding a contract, the intent behind a contract is to be gathered, and only in lieu of express and clear terms, evidence is permissible to clear the ambiguity of the terms.[8] Further, it was held that in the event the terms are in fact express and clear, no evidence to substantiate the intent of the parties may be acceptable. This holding echoes the provisions under the Indian Evidence Act elaborated above.

This portion of the judgement was referred and conformed to in *Pradeep Kumar vs Mahaveer Pershad and Ors*. by the Andhra Pradesh High Court, where the interpretation of an instrument came into question.[9] In *Venkata Subba Rao v. Krishnamurthy* too, the Andhra Pradesh High Court held that unambiguous words of an instrument must be given their full effect regardless of the intention of the parties and then proceeded to apply the Maxim '*falsa demonstratio non nocet cum de corpore constat'* meaning a false description does not vitiate a document, as long as the intent is clear. It is not necessary for an instrument do become inoperative due to inaccuracies, rather only those portions of the instrument will be rejected and the accurate rest remains operative.[10]

However, in contrast to the above, in the Supreme Court of India case *Nabha Power Limited v.*

[7] *Id*.
[8] Chunchun Jha v. Ebadat Ali, (1954) AIR 345.
[9] Pradeep Kumar vs Mahaveer Pershad and Ors, (2003) AIR AP 107.
[10] Venkata Subba Rao v. Krishnamurthy (1958) AIR AP 447.

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Punjab State Power, wherein the interpretation of a contract came into question, the bench cautioned commercial courts that they should not look into the implied terms of a contract as contracts these days are created with high technical expertise and it is therefore best to interpret the contract just as it reads.[11] This is a very useful precedent for those who wish to have greater control over how a contract is to be interpreted. As long as the contract is drafted using clear, unambiguous language, the parties can ensure guide the interpretation of the contract.

Further nuance has been introduced to the subject by the Supreme Court of India when it held in the matter of *Bharat Petroleum Corporation Ltd vs. The Great Eastern Shipping Co. Ltd* that silence coupled with the conduct of the offeree was interpreted to constitute an agreement *sub silentio*, i.e., an agreement that was implied but not stated expressly.[12] Similarly, the Supreme Court of India subsequent conduct of parties was considered while interpreting the language of a contract in the matters of *Godhra Electricity Co. Ltd. And Anr vs The State of Gujarat and Anr,*[13] and *Mukul Sharma vs Orion India (P.) Ltd.*[14]

The doctrine of *Contra Proferentum* the which says that in case of ambiguity, the language is to be interpreted against the party if the contract that drafted it, or insisted upon including it, was relied upon in the matter of *Economic Transport Organisation vs M/S Charan Spinning Mills*, and it was held that,

"A document should be transaction specific, or in the least, an effort should be made to delete or exclude inapplicable or irrelevant clauses".[15]

While the hon'ble bench did not fail to recognise the necessity of using standard forms in a situation involving a large number of documents being used by employees who are not necessarily conversant with the nuances of drafting, and it is not practical to therefore expect that deletions would be made for each instance of a document being signed, which results in that the documents executed in standard forms having several irrelevant clauses, it opined however that the bench opined that businesses should implement modern technology (computerisation) and have larger legal departments in order to enable insurance companies, banks, and financial institutions to improve their documentation processes and avoid redundancy, vague references pasting or annexing of slips.[16] The disputes and litigations surrounding a contract can be significantly reduced if documents are clear, specific, and self-

[11] Nabha Power Limited v. Punjab State Power, MANU/SC/1291/2017.
[12] Bharat Petroleum Corporation Ltd vs. The Great Eastern Shipping Co. Ltd., MANU/SC/8036/2007.
[13] Godhra Electricity Co. Ltd. And Anr vs The State of Gujarat and Anr (1975) 1 SCC 199.
[14] Mukul Sharma vs Orion India (P.) Ltd., MANU/SC/0597/2016.
[15] Economic Transport Organisation vs M/S Charan Spinning Mills, MANU/SC/0113/2010.
[16] *Id.*

contained.[17] This judgement discourages a drafter from drafting a contract based off of a template without any modifications made to it keeping in mind the particular transaction that was being made as it can often be very dangerous apart from the problem of irrelevant clauses being dumped together but the important ones and thus, intricately drafted, tailor-made contracts are being encouraged.

An aspect that significantly guides the interpretation of a contract is of specifying the governing law of the contract. In *British India Steam Navigation Co. Ltd v. Shanmughavilas Cashew Industries*, the Supreme Court of India had ruled that electing unconnected law as the governing law for a contract may lead to absurdity, therefore choice of law should not be against public policy.[18] However, recently in *NTPC v. Singer Co.*, the Supreme Court of India has taken a liberal approach in the matter of choice of governing law for a contract by its parties.[19] As per this ruling, the parties are allowed to elect their governing law without any geographical connection with the location of performance of the obligations under the contract, and may choose separate governing law for different parts of the contract.[20] Similarly, while choosing exclusive jurisdiction, the Supreme Court of India has ruled in *Hakam Singh v. Gammon (India) Ltd*. that the choice of forum is limited to the forums otherwise having jurisdiction.[21]

III. GLOBAL STATUTES AND CASE LAWS

a. International Laws

Statutory ambiguity surrounding interpretation of contracts is not unique to India. Contract law of most common law countries follow this trend, likely owing to the system of following judicial precedents caters better to the legal issues with respect to contracts, considering how vast the field truly really is. Different nations have chosen to codify the tenets of interpretation of a contract with different principles and in varying degrees.

For instance, despite the strong significance of the common law system of judicial precedents in the English legal system, The UK has comprehensively codified its contract law through several legislations. The Supply of Goods and Services Act 1982 requires the parties of a contract to have an intention to attach legal consequences to a contract for its enforceability, contrary to the Indian laws where it is presumed that there is an inherent intention to create legal relations when the agreement in question is being entered into by the parties for a consideration

[17] *Id*.
[18] British India Steam Navigation Co. Ltd v. Shanmughavilas Cashew Industries (1990) 3 SCC 481.
[19] NTPC v. Singer Co (1992) 3 SCC 551.
[20] *Id.*
[21] Hakam Singh v. Gammon (India) Ltd. (1971) 3 SCR 314.

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– where such consideration is an essential element to determine whether an agreement is a legally binding contract or not.[22] For interpretation of consumer contracts, the Unfair Terms in Consumer Contracts Regulations 1999 Act provides for the *Contra Proferentem* rule (the interpretation against the drafter).[23] The Unfair Contract Terms Act 1977 insists upon reasonableness of the language used in a contract, particularly towards negligence, liability, indemnity and misrepresentation.[24]

Similarly, the Uniform Commercial Code of USA (the "**UCC**") clarifies its condemnation of unconscionable contracts unless the parties substantiate the commercial setting and purpose.[25] UCC also provides that merchantability of goods in a contract for sale is a necessarily implicit feature of it.[26] Under UCC, limitations of any warranty provided in a contract are subject to reasonability, and requires the limitation of warranty/liability to be in conspicuous language to avoid any doubt, miscommunication, fraudulent language etc. that may be used to the detriment of a party.[27] UCC is otherwise similar in its provisions. UCC also requires similar explicit and clear language for limitations to the remedies available to the buyer in a contract.[28] UCC is otherwise similar in its provisions to that of UK and other common law countries. Under the Restatement (Second) of Contracts, undocumented oral agreements between the parties prior to the execution of a contract is not admissible as evidence against the natural interpretation of an unambiguous contract.[29] American contract law also provides for a 'good faith law', wherein the implied terms in a contract, where at the time of interpreting contracts, the courts can incorporate a term that it deems missing from standard practices in the concerned trade usage or course of dealing.[30]

Nations that do not follow common law system of judicial precedents, such as countries like China and UAE have some basic tenets of contract interpretation codified. The Contract Law of People's Republic of China relies on the common understanding of the terms of the contract. Where there are two or more kinds of interpretation, an interpretation unfavourable to the party supplying the standard terms shall prevail,[31] and inconsistencies due to executing a contract in

[22] The Supply of Goods and Services Act 1982, 29 United Kingdom; M P Chandrika, *A Comparative Analysis of UK and Indian Provision Relating to Intention under Law of Contract*, 3 INTERNATIONAL JOURNAL OF LAW AND LEGAL JURISPRUDENCE STUDIES, 2348 (2016)
[23] The Unfair Terms in Consumer Contracts Regulations 1999, 2083 United Kingdom.
[24] Unfair Contract Terms Act 1977, 50 United Kingdom.
[25], The Uniform Commercial Code 1962, 174 U.S.C. § 2-302.
[26] The Uniform Commercial Code 1962, 174 U.S.C. § 2-314.
[27] The Uniform Commercial Code 1962, 174 U.S.C. § 2-316.
[28] The Uniform Commercial Code 1962, 174 U.S.C. § 2-719.
[29] Restatement (Second) of Contracts 1981, 1 U.S.C, §§213..
[30] Restatement (Second) of Contracts 1981, 1 U.S.C, §§223; The Uniform Commercial Code 1962, 174 U.S.C. §§2-314; The Uniform Commercial Code 1962, 174 U.S.C. § 2-208
[31] The Contract Law of the People's Republic of China 1999, 15, China, Article 41.

multiple languages are interpreted in the light of the purpose of the contract.[32] On the other hand, UAE law gives precedence to the intent of both the parties together to the contract, rather than the relying on the literal word of it.[33] Further, UAE law says that the parties of a contract are not only responsible to follow the terms of the contract, but to also ensure the necessary requirements for the contract, in accordance with laws and customs.[34]

b. International Judicial Decisions

In the United Kingdom, various case laws build upon the statutory framework, and lay down more specific and nuanced guidelines for the interpretation of contracts. In *Investors Compensation Scheme Ltd v West Bromwich Building Society,* Lord Hoffmann that set out interpretation principles such as considering what a reasonable person's background knowledge would have understood, background facts that could change the language's meaning, contextual meaning of words, all the while completely ignoring linguistic mistakes.[35] In the cases of *Chartbrook Ltd v Persimmon Homes Ltd,*[36] and in *Proforce Recruit Ltd vs. The Rugby Group Ltd.,*[37] the courts overturned the rule in *Prenn v Simmonds*[38] that pre-contractual negotiations are not admissible as evidence, and held that they are in fact admissible to determine the context and circumstances in which the draft was made, such as to determine the parties understanding of unique jargon and terminology. In *Arnold v Britton & Ors,* the UK Supreme Court of India said that courts must not depart form natural meaning in case of unclear language, but this rule cannot be followed to the extent that it amounts to exploitation of bad drafting.[39] In *Rainy Sky SA v Kookmin Bank,* the UK Supreme Court supported the principle of making a plain interpretation of contracts in the absence of any ambiguity adhered to in *Cooperative Wholesale Society Ltd. v National Westminster Bank plc*,[40] and recommended using "business common sense" in presence of ambiguity of interpretation.[41] Recently in *Wood v Capita Insurance Services Limited,* the UK Supreme Court has held that the court must at first ascertain the objective meaning of the contract, and ensure that ambiguity indeed appears in its interpretation, and only then weigh in the circumstances surrounding the same for the purpose of

[32] The Contract Law of the People's Republic of China 1999, 15, China, Article 125.
[33] The Civil Code of UAE 1985, 5, United Arab Emirates, Article 258 (1).
[34] The Civil Code of UAE, Article 246 (2).
[35] Investors Compensation Scheme Ltd v West Bromwich Building Society (1997) 28 UKHL.
[36] Chartbrook Ltd v Persimmon Homes Ltd (2009) 38 UKHL.
[37] Proforce Recruit Ltd vs. The Rugby Group Ltd. (2006) 69 EWCA Civ.
[38] Prenn v Simmonds (1971) 1381 (1) W.L.R. HL.
[39] Arnold v Britton & Ors (2015) 36 UKSC.
[40] Cooperative Wholesale Society Ltd. v National Westminster Bank plc (1995) 97 (1) EGLR.
[41] Rainy Sky SA v Kookmin Bank (2011) UKSC 50 .

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interpretation.[42]

In the United States, the judiciary has upheld principles of contract law that were either later codified (such as in the case of the good faith law[43]), or were further sophisticated to fit various circumstances after the codification. US Courts give precedence to the expressed intent of the parties.[44] In *Mosaid Technologies Inc. v. LSI Corp.*, it was held that the contract must be interpreted keeping in mind the circumstances under which the contract was drafted.[45] The US courts have even laid down precedents giving prominence to the commercial reasonableness of a contract in *ERC 16W Ltd. Partnership v Xanadu Mezz Holdings LLC*.[46] With regards to deciding upon interpretation in the event of ambiguity, the US judiciary has laid down principles based on which the courts must determine whether the ambiguity in question does in fact existent, and is not just a case of parties disputing the interpretation of a contract in *Reyes v. Metromedia Software, Inc.*[47] and recommends that the courts must not accept any evidence for the parties' intent when the language is unambiguous *in GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P*.[48] The US contract laws do not allow for an interpretation that would be unconscionable, as has been observed above. The US courts have upheld this principle, for instance in *Darnaer Motor Sales v. Universal Underwriters Ins. Co,*[49] and *Moscatiello v. Pittsburgh Contractors Equip. Co*.[50] A significant contributor to the principle of implied terms is the Spearin doctrine, laid down in *United States v. Spearin*, wherein the Supreme Court held that when a party agrees to perform an action which is not impossible, it is its responsibility to not have a presumption of superior knowledge on part of the other party, and to accurately provide the correct specifications, based on which they can perform their part of the obligations, as not providing all information necessary amounts to misrepresentation.[51]

c. International Conventions and Organisations

The International Convention on Contracts for the International Sale of Goods ("**CISG**") has

[42] Wood v Capita Insurance Services Limited (2017) UKSC 24.
[43] Wood v. Lucy, Lady Duff-Gordon, 118 NE 214 (1917).
[44] Official Committee of Unsecured Creditors of Motors Liquidation Co v. United States Department of the Treasury & Export Development Canada (In re Motors Liquidation Co.), 460 B.R. 603; Master Consulting, P.A. v Viola Park Realty LLC, 936 N.Y.S.2d 693; Hillside Metro Associates, LLC v. JPMorgan Chase Bank, 747 F.3d 44 (2d Cir. 2014).
[45] Mosaid Technologies Inc. v. Lsi Corp., 629 F. App'x 206 (3d Cir. 2015); Banco Espírito Santo, S.A. v. Concessionária Do Rodoanel Oeste S.A., 100 A.D.3d 100, 951 N.Y.S.2d 19, 2012 N.Y. Slip Op. 6186 (N.Y. App. Div. 2012).
[46] ERC 16W Ltd. Partnership v. Xanadu Mezz Holdings LLC, 133 A.D.3d 444, 18 N.Y.S.3d 853, 2015 N.Y. Slip Op. 8094 (N.Y. App. Div. 2015).
[47] Reyes v. Metromedia Software, Inc., 840 F. Supp. 2d 752 (S.D.N.Y. 2012).
[48] GMG Capital Invs. LLC v. Athenian Venture Partners I, L.P., 36 A.3d 776 (Del. 2012).
[49] Darner Motor Sales v. Universal Underwriters, 140 Ariz. 383, 682 P.2d 388 (Ariz. 1984).
[50] Moscatiello v. Pittsburgh Contr. Equip, 407 Pa. Super. 363, 595 A.2d 1190 (Pa. Super. Ct. 1991).
[51] United States v. Spearin, 248 U.S. 132, 39 S. Ct. 59, 63 L. Ed. 166 (1918).

laid down a few rules of interpretation for international contracts, such as mandating prominence of intent, contextual approach, and other important principles.[52] CISG is applicable to 94 countries, however India, United Kingdom, Brazil, South Africa etc. are not members to this convention.[53] Supplementing the CISG rules of Interpretation, the International Institute for the Unification of Private Law (UNIDROIT) has developed a set of "soft laws" in the form of UNIDROIT Principles of International Commercial Contracts ("**UPICC**").[54] UPICC is a set of non-binding rules related to contract law specially aimed to aide international commercial transactions.[55] The UPICC rules are not mandatory, and the parties of a contract must choose to be governed by it.[56] Unlike the rules under CISG, UPICC is not confined to contracts of sale and may be chosen to govern all kinds of contracts.[57] India, United Kingdom, Brazil and South Africa are members of UNIDROIT, along with several other major countries totalling to 63 countries.[58]

International Chamber of Commerce, an institute that provides global solutions to corporations around the globe, provides essential terms for sale of goods contracts which are called the "INCOTERMS".[59] Many businesses prefer to incorporate chosen clauses from the Incoterms by reference in the contracts for the sake of unambiguity in the interpretation of their contracts. Federation of Oils, Seeds and Fats Associations ("**FOSFA**") is an international trade organisation that facilitates and supports the global trading provides contracts to its members for free and for a fee to non-members, as well as arbitration services.[60] Companies may choose to use the trade contracts of FOSFA as templates for their commercial transactions. UPICC, Incoterms and FOSFA can prove to be particularly useful for international transactions, as they would aide in preventing ambiguity and misunderstanding stemming from language barriers and customary differences, especially among countries where English language is not widely spoken.

IV. CONCLUSION

a. Implications

[52] *International Sale of Goods (CISG) and Related Transactions Commission on International Trade Law*, UNITED NATIONS, https://uncitral.un.org/en/texts/salegoods.
[53] *Id.*
[54] *International Institute for the Unification of Private Law* UNIDROIT (October 21, 2022) https://www.unidroit.org/.
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *International Chamber of Commerce*, ICC (November 7, 2022), https://iccwbo.org.
[60] *Our Services: Oils: Seeds: Fats*, FOSFA INTERNATIONAL, https://www.fosfa.org/our-services.

The Indian framework of law and judiciary expect unambiguous and crisp language in contracts, without heavy reliance on templates that may bring unnecessary provisions into a contract. Provided the drafter is not including in the contract anything that can be considered ultra vires to Indian law, the extent of control over determining the rules of interpretation of a contract on part of the drafter is dependent on the clarity of a document, as the courts do not tend to apply extraordinary interpretations to unambiguous language, and the statutes support the same. The drafter must therefore make sure that the contract is drafted with clarity, so that they can clarify the meaning and interpretation rules upfront. However, the downside to this is that once a meaning is set out in plain language, such meaning cannot be unreasonably changed, and evidence for such interpretation will not be admissible in the court of law. On the other hand, it can also be detrimental to over complicate the contract, as although unambiguous language can be given evidence of interpretation for, it may go either in favour of or against the drafter, as the Indian courts have set the precedent of *contra proferentum*. Parties of a contract also have the ability to influence the interpretation of a contract through subsequent conduct and even silence, but implied contractual terms have been discouraged by Supreme Court of India. Where the Indian framework has been very specific in restricting freedom is in choosing governing law and jurisdiction. In practice, it is advisable that this limited liberty is exercised prudently after carefully examining the various available options and determining the best suited law and jurisdiction. Further, depending on the chosen governing law, the drafter must ensure that the contract is fully in compliance with the statutory obligations of such elected governing law. Inefficiencies, not only in drafting but also in interpretation by the courts, can be detrimental to the parties of the contract at the time of enforcement. Therefore, it becomes all the more important for the parties of a contract to carefully choose words and draft a watertight contract to ensure that the key aspects of the transaction such as intent and nature of the transaction, covenants, and safeguards, are extensively covered.

While dealing with international commercial contracts, it is crucial to come to an agreement between the parties as to the choice of law and jurisdiction, as well as the extent of the legality such choice as per the applicable laws. When choosing these laws, thorough examination of the governing law is required to assess the consequences in the event of a dispute. For instance, in US and UK, in spite of the comfort of common law system, several statutory provisions have been made outlining the rules of interpretation of a contract. Several parallels can be drawn between these rules, and the Indian laws and Indian court rulings as well as those of other countries. However, one must mind the overt and subtle differences while entering into such international transactions. The parties might find invoking rules such as UPICC, FOSFA and

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Incoterms to be very useful in order to prevent ambiguity.

b. Further Observations

Keeping in mind the laws and judicial precedents that have been examined above, it can be inferred that statutory codification of contract interpretation barely includes detailed and nuanced provisions, in most nations – big and small. While nations that adhere to the common law system benefit from case laws that add upon the statutes and provide much needed nuance to them, major common law countries have benefited from legislating statutory rules of contract interpretation. However, while having the benefit of the common law principles being applicable to the Indian scenario, India is tackling the lack of statutory provisions and insufficiency and obsolescence of case laws. Moreover, the World bank has ranked India at no. 164, out of 190 countries on the efficiency of contract enforcement.[61] This statistic represents how timely justice is seldom seen in the handling of civil cases in India, setting contracting parties up for failure. It is imperative to have a higher power in commercial transactions to deter foul play and exploitation. This can have, and has had, a negative impact on the ease of doing business in India, and thus its economy. India will greatly benefit from efficient and fast paced resolution of contract cases.

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[61] *Bank the W (Enforcing contracts - doing business* - WORLD BANK GROUP (July 1, 2021), https://archive.doingbusiness.org/en/data/exploretopics/enforcing-contracts.