

## **The Enforcibility of Force Majeure Clause in the Covid-19 Situation: A Comparative Analysis of the Problems and Perspectives**

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### **ABSTRACT:**

**Dealing with uncertainty and flat growth is the new business normal<sup>2</sup>**- Its more particularly seen in the commercial transactions. The contracts for services, employments, Constructions seems to be halt due to the COVID 19 impact, The Law on Force Majeure v/s the pandemic situation has made the performance impossible to certain extent affecting the market as well as financial conditions of the stakeholder.

The concept of 'Force Majeure' finds reference to various statutes in India enacted for time being in force. The concept aims to provide protection to the parties to the contract by keeping the contract alive in the instances of non-performance of the same by either of the parties due to the circumstances beyond the control of either of the parties. The origin of the concept is Roman (*vis major*), it was adopted by many civil law countries and is found in the Code Napoléon of France, 1804 wherein the term 'force majeure' originates and literally translates to 'superior force' or 'greater force'.

As per provision of Indian Contract Act, 1872<sup>3</sup>, Contract to do act afterwards becoming impossible or unlawful. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

The law has not expressly provided for the pandemic to be covered under the definition of 'Force Majeure'. However, the judicial interpretation of the said concept over the number years has enlisted a few circumstances which are considered as 'Force Majeure' circumstances including act of god, legal impossibility, etc. Difficulties have arisen in the as to what could legitimately be included in "force majeure". Judges have agreed that strikes, breakdown of machinery, which, though normally not included in "*vis major*" are included in "force majeure". An analysis shows that where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control.<sup>4</sup>

**Recently the Hon'ble Supreme Court held<sup>5</sup>: "In so far as a force majeure event occurs de hors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view".**

The current pandemic situation namely COVID – 19 is declared to be global Pandemic by the 'WHO'<sup>6</sup> and therefore it is imperative to see whether the government declared lockdown situation and the non-performance

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<sup>2</sup> Madanmohan Rao, YourStory, available at: <https://yourstory.com/2020/04/collaborating-quotes-coronavirus-india-covid-19> last seen: 13/07/2020

<sup>3</sup> Section 32 & Section 56. Agreement to do impossible act. An agreement to do an act impossible in itself is void.

<sup>4</sup> Dhanrajamal Gobindram vs Shamji Kalidas And Co., AIR 1961 SC 1285

<sup>5</sup> Energy Watchdog vs Central Electricity Regulator (2017) 14 SCC 80

<sup>6</sup> Tedros Adhanom Ghebreyesus, Director General, World Health Organization, Opening Remarks at the Media Briefing on COVID-19 (Mar. 11. 2020) available at <http://www.who.int/dg/speeches/details/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> ("We have... Made the assessment that COVID-19 can be characterized as a pandemic.")

of a contract would seek protection to the parties for non-performance of the contractual obligations. Dealing with the situation the business and commercial activities, rather everything has moved /shifted to Digital platform. This digital transformation is receiving a boost as never before diluting the impact of force majeure to certain extent.

This descriptive research has focused on the “Doctrinal” form of research. The theoretical global perspectives and the expanded scope through judicial interpretations are studied in detail. The research majorly expounds on the applicability of the ‘Force Majeure’ in multifarious aspects of law such as Insolvency proceedings, Labour & Industrial Issues, its influence on International and Domestic contracts in this current pandemic.

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## I. INTRODUCTION:

### **Force Majeure – A ‘redeemable’ clause:**

The term ‘force majeure’ has been defined in Black’s Law Dictionary, as ‘an event or effect that can be neither anticipated nor controlled.’ It is a contractual provision allocating the risk of loss if performance becomes impossible or impracticable, especially as a result of an event that the parties could not have anticipated or controlled.

Historically, the term ‘force majeure’ appeared in the common law world in the 1900s and was borrowed from the Napoleonic Code, although its origins can be traced back to Roman law. The Roman law recognized that the principle of sanctity of contract can be tempered by a competing principle ‘*clausula rebus sic stantibus*<sup>7</sup>’. Under both Indian and English law, force majeure does not simply mean anything beyond the control of the parties to a contract. Its meaning and applicability, depends on the particular contract and the clauses specified thereunder which specify the anticipation of an unforeseen event and its legal protection as well as consequences.

The Indian Contract Act, 1872 which governs Indian contracts does not expressly make a provision for the clause of force majeure, the essence of this doctrine is imbibed in Section 56 of the Act, which inter-alia, provides for effect of an unforeseen event that may prevent a party from performing its obligations under an existing contract. And section 32 of the same provides for the enforcement of contracts contingent on an event happening. A force majeure clause is considered as an imperative clause which helps to alter the parties’ contractual obligations or to avoid breach of contract by excusing the party seeking to rely on it from performing its contractual obligations, following the occurrence of an exceptional event or circumstances beyond the party’s control, which is are impossible to perform.

“Force Majeure” means the occurrence of an event or circumstance that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment (“the Affected Party”) proves that such impediment is beyond its reasonable control; that it could not reasonably have been foreseen at the time of the conclusion of the contract; and that the effects of the impediment could not reasonably have been avoided or overcome by the affected party. The definition of Force Majeure provides a lower threshold for invoking the clause than impossibility of performance. This is expressed by the reference to reasonableness in conditions (a) to (c) of the clause.

### **The Alarming outbreak of Covid-19:**

With the outbreak of the unprecedented Covid-19 pandemic, the world has seen a sea change of difference in the way of living. Globally, societies as well as economies have seen a drastic effect. With the World Health Organization (WHO) declaring it to be a pandemic, governments across the world rushed to impose various restrictions by way of a complete/partial lockdown in their territories in order to control and more importantly lessen the damage being caused by it. The Government of India has also taken a series of proactive steps to uplift the disadvantaged groups as well has ensured legal securities for companies. For businesses, it essentially means that they face the apprehension of fulfilling their obligations under myriads of commercial contracts that they have ventured into. There is a pressing need for all organizations to assess their own obligations as well as also their counter- parties contractual rights, obligations, and remedies in cases where performance is delayed, or performance becomes too difficult or impossible altogether.

The looming uncertainty of the pandemic has had a huge impact on contractual relationship and has adversely affected the labour class. The labour class which contributes to a number of industries either lost their jobs or shelter, in these trying times of a pandemic. The MSME sector, which is an entrepreneur driven

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<sup>7</sup>*clausula rebus sic stantibus* - means obligations under a contract are binding only as long as matters remain the same as they were at the time of entering into the contract.

sector and hugely capital reliant sector had faced the threats of insolvency and the bankruptcy. The susceptible section of the MSME sector has been offered a lot of assistance from the Government of India in the form of business-friendly legislative amendments as well as monetary relief packages.

As a matter of fact, good Samaritans of society proactively collaborated with the government to ensure the disbursement of essential commodities to the underprivileged sections of society. Businesses of nonessential trade and commerce found it impossible or unfeasible to perform their contractual obligations, which led to an enormous increase in contract litigation. The common question that has emerged is that of whether a party can be held liable under the contract for their non-performance of contractual obligations due to lockdown and other restrictions on mobility or whether the defence of 'Force Majeure' can be made available to them, considering the special circumstance of a pandemic. This report seeks to highlight the problematic grey areas, which require an urgent, comprehensive solution in the form of a pandemic centric legislation.

### **Does the pandemic constitute a force majeure event?**

Most contracts illustrate various situations as "force majeure events". Some contracts use words like "epidemic", "Government order" and "any other situation making conduct of business impossible" as examples of force majeure situations. COVID-19 would easily qualify as a force majeure event in such cases. Hence, defining the pandemic or lockdown a blanket force majeure event can be incorrect depending on the contractual obligations and ways to perform the same and thus, may lead to disputes between contracting parties. Force majeure clauses vary. They can either be specific (a list of specific events that are treated as being force majeure, such as fire, flood, war or similar) or general (referring simply to events outside the reasonable control of a party to the contract), or a combination of both. Hence, it is of the essence to understand that can force majeure be applied in situations such as the Covid-19 pandemic

Causation is a vital element in determining force majeure. It is important to analyse the issue of causation between the COVID-19 outbreak and the disruption or delay of performance of contractual obligations.

### **Deciding Force Majeure:**

The deciding factors considered by courts while determining whether the force majeure clause would be applicable in any case are-

- firstly, whether the concerned event qualifies as a force majeure event under the existing contract;
- secondly, whether the risk of non- performance of the contractual obligation in question was foreseeable and whether it could have been mitigated; and
- thirdly, whether under the current circumstances the performance of the contract is possibly by the parties

## **II. LITERATURE REVIEW:**

### **1. Commercial Contracts:**

Contractual jurisprudence is based upon the commandment that contractual terms are supreme and parties are free to decide the terms and contractual obligations. The parties to a contract must either perform, or offer to perform, their respective promises<sup>8</sup>. However, there are some situations in which it becomes impossible for the parties to perform such obligations. In such situations the force majeure clause comes to the rescue. The current pandemic is one such situation. Parties seeking to invoke the provision will not need to establish the event was unforeseeable, but will still need to show that steps were taken by them to mitigate the damage, and that performance of their contractual duties is truly impossible. Clauses that are silent on pandemics, epidemics, or other viral outbreaks are likely to be insufficient for a force majeure defence.

In the absence of such clause, parties will be required to examine whether the outbreak of COVID-19 or the restrictions imposed in view thereof, make it "impossible" for them to perform their obligations. If so, and depending on the facts and circumstances, such parties who are unable to perform their contractual obligations, may have no option but to invoke the doctrine of frustration (i.e. that such obligations have become impossible to perform) to defend any action initiated against them<sup>9</sup>. If the contract is frustrated, it becomes void; however, in such a case, the party who has benefitted from the contract has to restore such benefit.

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<sup>8</sup>Sec 37, Indian Contract Act, 1872.

<sup>9</sup>Aditya Mehta, Arjun Shrinivas, Sameer Bindra, India Corporate Law, A Cyril Amarchand Mangaldas Blog, available at: <https://corporate.cyrilamarchandblogs.com/2020/04/frustration-of-contract-in-the-time-of-sars-cov-2/> last seen: 10/07/2020

### **Doctrine of Frustration:**

The doctrine of frustration is invoked whenever the very foundation on which a contract is made is exhausted. The purpose of force majeure is to save the contract while cases where the purpose or the subject matter is exhausted renders a contract unenforceable thereby invoking the doctrine of frustration to consider a contract to be void. A contract can be said to be frustrated if its performance is impracticable and useless from the point of view of the object and purpose of the parties, though the performance of the contract itself is not necessary literally impossible<sup>10</sup>. Impossibility of performance may also arise where contractual obligations become incapable of performance without any default of either party, because the circumstances in which performance is called for are radically different from that undertaken by the contract<sup>11</sup>. In addition, The India Contract Act, 1872 provides that: An agreement to do an act impossible is in itself void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. <sup>12</sup> Thus, the doctrine of frustration can be invoked in such a situation. However, where a contract contains a force majeure clause, and the court finds that the force majeure clause would apply in the facts of the case, Section 56 of the Contract Act has no application<sup>13</sup>.

### **2. Real Estate:**

The lockdown has resulted in the lack of labour availability on account of mass migration, plummeting asset prices has adversely affected real estate project completion thereby depressing the purchasing power across the entire real estate sector. Real estate projects are based on timelines which are predicted beforehand keeping in mind the final outcome, and this pandemic related uncertainty has thrown this sector off its time-oriented track.

As per the Confederation of Real Estate Developers' Associations of India (CREDAI), the real estate industry has been directly affected since property buyers, due to reduced means of income, cannot fulfil their principal and interest payments to banks or and builders cannot provide timely delivery of projects to buyers.

Moreover, this has also obstructed the finance related endeavours through Real Estate Investment Trusts (REITs), until new strategies are implemented. The Ministry of Finance, in on its notifications<sup>14</sup>, has advised State and Union Territories across the country to treat the pandemic as a force majeure event in an attempt to expedite. At such a time, when the parties have exhausted all measures to take control of any such event, and further obstructed them to carry on their performance, under the contract for a certain amount of time, the parties have little option but to invoke the force majeure.

The Real Estate (Regulation and Development) Act, 2016 has provided that authority has the power to extend registration for a period not extending one year in case of a force majeure event on such an application.

Section 6 of the Act has contemplated force majeure to include case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.<sup>15</sup> Generally, invocation of this clause under the Act is not automatic, but has to be applied for, in the prescribed form given in the Act.

The declaration of COVID-19 as a pandemic which is a natural calamity and hence comes within the purview of force majeure<sup>16</sup> as defined under the Act. Real Estate Regulatory Authorities of various States have taken cognizance of the severe effects of lockdown and have thus issued circulars so as to provide some relief to the industry:

**In Maharashtra<sup>17</sup>** the MahaRERA has declared the extension for the registered projects term for 3 months.<sup>18</sup> Further, the time-limits for all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which were due in March/April 2020 have been extended to 30 June 2020.

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<sup>10</sup>Satyabrata Ghose v. Mugneeram Bangur & Co. 1954 SCR 310

<sup>11</sup>Naihati Jute Mills Ltd. v. Khyaliram Jagannath (1968) 1 SCR 821

<sup>12</sup>Sec 56, Indian Contract Act, 1872.

<sup>13</sup>Supra, note 4

<sup>14</sup>Ministry of Finance, Government of India, F. No- 18/4/2020- PDD

<sup>15</sup>Sec 6, Real Estate (Regulation and Development) Act, 2016

<sup>16</sup>Ministry of Housing & Urban Affairs (Housing Section) No. O-17024/230/2018-Housing-UD/EFS-9056405, 13/05/2020 available at: <http://mohua.gov.in/> last seen: 6/7/2020

<sup>17</sup> Maharashtra Real Estate Regulatory Authority, No. MahaRERA / Secy /Order/ 26 /2020, available at: <https://maharera.mahaonline.gov.in/> accessed on 6/7/2020

<sup>18</sup> Ibid, Maha RERA vide Order No. 13/2020 has decided that for all MahaRERA registered projects where completion date, revised completion date and extended completion date expires on or after 15<sup>th</sup> of March 2020, the registration of such projects shall be extended by a further period of 3 months Suo-moto.

Similarly, the force majeure effect of the covid-19 insofar as registration and project completion period is considered in **Gujarat**<sup>19</sup>, **Madhya Pradesh**<sup>20</sup>: **Kerala**<sup>21</sup> & **Tamil Nadu**<sup>22</sup>: After the CAC advisory<sup>23</sup> the further extra period with the extension is granted.

### 3. Labour Laws:

The Government of India has issued many advisories by virtue of the powers given to it by the Disaster Management Act, 2005. In India the legislations dealing with the rights and liabilities of labours are governed by The Industrial Disputes Act, 1947 and in State of Maharashtra under the Maharashtra Recognition of Trade Unions and Prevention Unfair Labour Practices Act, 1971 etc.

The provisions of this Act (DMA'2005) being an Act for exceptional situations, it underrates any other Act.<sup>24</sup> Under the DMA'2005 the Central Government is well empowered to issue advisories in the public interest, as the Government is aware of the trepidation, the employees may suffer.

The question of binding force of the advisories, as well as the directives, to bind the citizens of India which includes the employers, as well as the employees is set at rest by the judgement of the Divisional Bench of the Hon'ble Supreme Court<sup>25</sup>, have made it abundantly clear that, "Disobedience to an order promulgated by the Government would result in punishment under 188 of the Indian Penal Code.

An advisory which is in the nature of an order made by the public authority attracts section 188 of the Indian Penal Code<sup>26</sup>. Besides the Indian Penal Code even the Disaster Management Act, 2005<sup>27</sup> also makes the independent provisions regarding the offences by companies.

### 4. Insolvency and Bankruptcy Law:

The growing problems of the pandemic have reached far-off and wide. It also has an effect over insolvency laws. The Government of India has issued a number of ordinances and notifications to relieve the parties from the gruelling problems of insolvency, especially in the current times. The government has undertaken numerous measures.

- The Increased threshold for judicial convenience by the notification issued<sup>28</sup> came as an immediate attempt of relief for the chilling effect on the Indian economy caused due to the COVID-19 outbreak. By virtue

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<sup>19</sup>By Order dated 13<sup>th</sup> April 2020, the Gujarat Real Estate Regulatory Authority has permitted promoters of projects having their project completion dates between 1<sup>st</sup> April 2020 and 31<sup>st</sup> March 2021 to apply for a one-time extension. Timelines for submission of quarterly project reports and project end compliance have also been extended till 7<sup>th</sup> March 2020. See Gujarat Real Estate Regulatory Authority, no:GujRERA/Order-35, 16/05/2020, available at: <https://gujrera.gujarat.gov.in/> last seen: 6/07/2020

<sup>20</sup> For all registered projects where the completion, revised completion or extended date is 15<sup>th</sup> March, 2020, the period of validity for registrations be automatically extended by six months.

- Where applications are made for extension where the registration is lapsed prior to 15<sup>th</sup> March and those who have not yet applied for extension of registration prior to 15<sup>th</sup> March shall also be considered for extension for a period of 6 months in addition to the extension period that would normally be granted on processing the application. See Madhya Pradesh Estate Regulatory Authority No-2956/project/secy/2020, available at: <http://www.rera.mp.gov.in/> accessed on 06/07/2020

<sup>21</sup>The authority has resolved the following

1. For all registered real estate projects for which the date of completion expires on or after 25<sup>th</sup> March 2020, the date shall automatically be extended further by 6 months, fresh certificates will also be issued subsequently.

2. For all ongoing real estate projects for which certificates of registration for real estate project are yet to be issued, but the date of completion committed to the allottees is on or after 25<sup>th</sup> March 2020, the date of registration and date of completion shall also be extended further by 6 months. See Kerala Real Estate Regulatory Authority, no- K-RERA/T3102/2020, available at: <https://rera.kerala.gov.in/node/90> last seen: 6/07/2020

<sup>22</sup> Stated that registrations valid as on 01/02/2020 are extended automatically up to 30/06/2020 in a view of covid-19 pandemic and consequential force majeure i.e. completion period of all registered projects is extended by 5 months.

See. Tamil Nadu Estate Regulatory Authority, available at: <https://www.rera.tn.gov.in/> last seen: 6/07/2020

<sup>23</sup> the circular dated 22/05/2020 Extended the period with extra one month over 5 months i.e. now total extension period is 6 months.

<sup>24</sup> section 72 of the DMA'2005

<sup>25</sup> Writ Petition No 468 of 2020, Between, Alakh Alok Srivastava Vs Union of India, on 31 March 2020, a division bench consisting of Hon'ble Chief Justice Sharad Bobade as well as Hon'ble Justice Nageshwar Rao,

<sup>26</sup> Section 188, Indian Penal Code, 1860.

<sup>27</sup> Section 58 of the Disaster Management Act 2005

of proviso to Section 4<sup>29</sup> of the Code, the default threshold is increased multi-fold from INR 1,00,000 to INR 1,00,00,000.

- Force Majeure has been judicially recognised as an exception: In Navin Raheja case<sup>30</sup> concerning the appeal by a real estate company assailing the application made by allottees (financial creditors) under Section 7 of the IBC<sup>31</sup>, the NCLAT allowed the defence of force majeure and held that; “If the delay is not due to the ‘Corporate Debtor’ but force majeure, as noticed above, it cannot be alleged that the ‘Corporate Debtor’ defaulted in delivering the possession”. This is the single case wherein the NCLAT allowed the defence of force majeure against a financial creditor, the same may not be followed in other cases by financial creditors because of the previous judgements passed by the NCLAT.

- The revamped pandemic model :In the light of the anticipated economic slowdown, by virtue of the ordinance<sup>32</sup>, sections 7, 9 and 10 of IBC have been suspended for six months and if the lockdown continues beyond April 30, 2020 which may be extended for another six months if needed. RBI on its part mandated banks to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020<sup>33</sup> has brought down Liquidity coverage ratios from 100% to 80%<sup>34</sup> and also increased the group exposure limit of banks from 25 per cent to 30 per cent of eligible capital base<sup>35</sup>.

#### ➤ RESEARCH METHODOLOGY:

The research conducted is primarily doctrinal one. It’s a qualitative and descriptive nature. The Interview method has been adopted to support the doctrinal research on the impact of Force Majeure under the COVID-19 Pandemic Crisis.

- **Collection of Data:**

For a doctrinal research the primary sources and secondary sources are used to collect the data. The history & origin of the ‘Force Majeure’ clause along with its applicability of the said clause internationally and domestically was researched on. Various international, central and states statutes were scrutinized, state legislatures were looked upon and a comparative analysis of the International conventions has been made.

- **Precedents and Judgments of Courts:**

Various precedents of the Hon’ble Supreme Court & Hon’ble High Courts were researched & analyzed and the global perspectives were referred to.

Precedents explaining the applicability of the ‘Force Majeure’ clause in various situations with regards to performance of contract, insolvency proceedings, international and domestic agreements were studied in brief.

- **Comparative analysis of International Conventions & National Statutes**

A superlative research was carried out, comparing the justice delivery mechanisms of other countries around the world and the rules and statutes they have drafted to overcome the hardships of this pandemic in multifarious countries the adoption/installation of such mechanisms have also been mulled about in this particular research.

- **Interview Method**

Based on the following research conducted, data analyzed and statutes looked upon, a reference questions were created and the interview method of research was adopted to interview few of the research scholars and eminent practicing advocates of the said field of Contract Law, Insolvency, Labour & Industrial issues etc.

Due to various difficulties the intended interviews could not be substantially conducted, we couldn’t reach them in person to interact but have received a bit of their response.

- **Scope for the further Research**

The scope of this descriptive research is limited to specified areas: Contract Law, Labour Law, Real Estate Law, Insolvency Law cases as these are the prime areas apprehended to be affected by the pandemic situation impact of Force Majeure. Thus, the research deal with only specified aspects and it’s not exhaustive.

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<sup>28</sup>Ministry of Finance, Govt of India, F. No. 30/90/2020-Insolvency, dated-24/03/2020

<sup>29</sup>Sec 4, Insolvency and Bankruptcy Code, 2016

<sup>30</sup>Navin Raheja v. Shipla Jain , Company Appeal (AT) (Insolvency) No. 864 of 2019

<sup>31</sup>Sec 7, Insolvency and Bankruptcy Code, 2016

<sup>32</sup>Sec 10A, The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

<sup>33</sup>Reserve Bank of India, DOR.No.BP.BC.47/21.04.048/2019-20, dated- 27/03/2020

<sup>34</sup> Governor’s Statement, Reserve bank of India dated: 17/04/2020 available at:[https://www.rbi.org.in/Scripts/bs\\_viewcontent.aspx?Id=3853](https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3853) last seen: 14/07/2020

<sup>35</sup>Governors Statement, Reserve Bank of India, dated: 22/05/2020 available at: [https://www.rbi.org.in/Scripts/bs\\_viewcontent.aspx?Id=3859](https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3859) last seen: 14/07/2020

The research can be added with the non-doctrinal research to make it more effective. The economic aspects and the policy aspects can develop the research further.

### **III. FINDINGS AND CONCLUSION:**

Based on the doctrinal research made and interactions as well as attempted interviews sharing innovative insights the research concludes as follows-

In General the 'Force Majeure Clause' should not apply to COVID-19 as it is not an 'Act of God' but a man-made crisis. COVID-19 should instead cause a relook on the "Doctrine of Sovereignty" This crisis is not of a permanent nature, albeit a concrete solution is not yet available, it will be in the future.

In addition, it does not create impossibility as India had enough advance notice, taking the example of China, Italy and Spain. If the word pandemic or anything equivalent is mentioned in a contract and specifically agreed to by the parties as a force majeure, then it can be invoked. It should not be used to exploit the opposite party or be a catch-all residuary wording.

In the event that the force majeure clause needs to be applied, then the objective really needs to be that the deliverables of Contract or Industrial Disputes is so managed that both parties are held accountable for their deliverables. The disease should be considered as an opportunity rather than a calamity.

#### **The 'New' way forward:**

The aftermath of this pandemic, is going to establish a "new normal" for societies nationally as well as internationally. The manner and mechanisms of businesses is bound to change drastically. New and improved methods will be implemented.

In the future, manufacturing could move to India. India is seen very high on its business ethics, especially after we were willing to share our vast inventories on chloroquine. Today, 80% of Fortune 500 companies are already doing business in India, and they just need to ramp up their operations, which is relatively easy in India, given our massive pool of human resources. However, Govt needs to work on the demand side of the equation, as the supply side has been addressed.

At this stage, businesses should consider a long-term solution to any issues they are experiencing, so that they can survive and/or evolve from this situation with minimal disruption and loss (so far as possible).

The need to maintain long standing business relationships is also to be considered. This will prevent customers or suppliers becoming alienated, with support that is provided now, this will further help accelerating the normalization process.

Considering the legal aspects there is a pressing need for a comprehensive and exhaustive legislation that deals with all the key grey areas of concerns and provides for a holistic solution and it is stated that the available law is inadequate to answer the need of the pandemic times.

Considering the Judicial Law, and the pro-public interest approach of the advisories, Legislative activism to make a Temporary Law with special provision for the areas protecting individual interest and progressing the business vision is highly recommended. Based on this research a bill suggesting enactments/amendments to the existing enactments would be drafted.

With the general observation made the specific suggestions are made as follows :

As regards Industrial Disputes - The review of current processes to create the new normal. Identify latent productivity gains, efficiencies, etc. Work on reducing waste, and improving Quality. The cost savings and increased quality can be used to charge a premium on pricing, to improve profitability OR, hold the prices and improve the market share. All these reform needs a cogent support of Legal framework.

As regards Retrenchments, layoffs, closures - The extra staff can be used to stimulate the industry to make extra efforts for the intended growth. This would mean investing in sales and marketing staff, tools, Management Information Systems, and throw anything and everything. Explore new markets, new products, and new pricing models. This necessarily requires the pro-business policy and technology based advanced Law.

As regards Contracts: Focusing on the basic object of performance of Contracts, the negotiations are to be deployed as an alternative to litigation. A transparent way of deal and convenient, flexible working must be supported between both parties, with an in-built quid pro-quo. New ways of relationship with automations and project management platforms must be endeavoured through contracts.

Every business has a built-in resiliency and a business continuity plan, which needs to be invoked and then, executed to the plan. New strategies need to be developed so that, e.g. running businesses online, in places where the tenant may be prohibited by Govt Agencies from doing business from the rented premises.

As said rightly Law governs society and society demands a Law according to the changing circumstances, the current pandemic concerns need the effective Legal response. This is a high time to have an efficient 'Law' responding the current concern in the interest of ALL.

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Dr. Madhushree Mandar Joshi. “The Enforciability of Force Majeure Clause in the Covid-19 Situation: A Comparative Analysis of the Problems and Perspectives.” *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(05), 2021, pp. 01-08.