

# COVID'19 : Force Majeure & Livelihood of Migrant Workers

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## Abstract

This global pandemic has caused a downfall in the world of commercial businesses resulting a problem in the cross-border trade practices with between different companies and/or countries. All the ongoing deals or contracts have been affected due to this global pandemic, which is causing a brutal impact on the efficient working of the businesses. The paper aims to find out about the types of contracts which may or may not be eligible to opt for the Force Majeure clause for the frustration of the contract of the business affected by the Covid'19 pandemics affecting the livelihood of migrant workers.

Usually the Force Majeure clause in the frustration of the contract means that a kind of contractual provision allocating the risk if performance becomes impossible or impracticable as a result of an event or affect that the parties could not have anticipated or controlled. The novel coronavirus by its nature and effect on the economy is to be considered under the Force Majeure clause.

From a legal perspective, the question of the effects of the spread inter alia circles around how epidemic-related disruptions of production and supply chains shall be handled appropriately. So-called "Force Majeure-clauses", often being embedded in respective agreements, are of relevance in this context. This research paper will have a thorough analysis of the legal framework being applicable in the respective specific case. We are also aiming to discuss a few steps that could be taken by the parties to safeguard their positions in view of the evolving situations and safeguarding the livelihood of workers migrating from the various society in search of a life.

**Keywords:** Pandemic, Covid'19; Force Majeure, Economy, Globalisation.

## Introduction

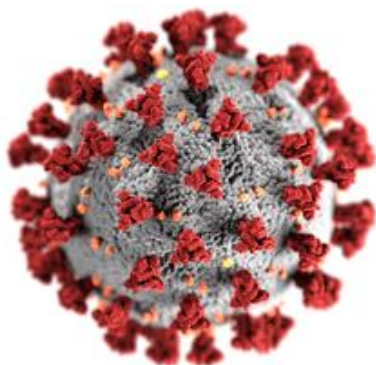
COVID-19 or Coronavirus is a communicable infection caused by a newly discovered virus that is life threatening. It is believed to have occurred in very market within which both dead and living animals are sold out within the central Chinese city of Wuhan. Markets like this pose a higher risk of viruses jumping from animals to humans because hygiene standards in these types of market are truly difficult to take care of in such market situations.

Many people are infected with this virus experienced mild to moderate respiratory illness problems such as difficulty in breathing and chest pain and can be recovered without having special treatment.

The new coronavirus pandemic can infect people of all aged groups. Elderly people with severe medical problems like cardiovascular disease and chronic respiratory illness are more likely to develop severe illness. WHO advised elder people of elderly aged to take steps to protect themselves from the virus. The organization is functioning and working closely with global experts, government and other health organisations like WHO to provide advice to various countries about preventive and precautionary measures.

The best way to prevent and reduce the transmission of the disease is being informed about the COVID-19 or coronavirus, how the disease is caused and the way it is spread. We can protect ourselves and other people from this virus by regularly washing our hands or using an alcohol based sanitizer regularly to protect yourself as well as other people from this infection by practicing social distancing.

## Anthology : The Research



We should regularly wash our hands or use an alcohol based sanitizers. At this point of time, there is no vaccines or treatment available for COVID-19 or coronavirus. Many ongoing trials are going on in various laboratories for the coronavirus vaccines. Many vaccines are being evaluated and potential treatments are taking place around the world. There are many countries which are trying to make vaccines and soon will start to test human trial of the vaccines. The United States, UK, Germany, Italy and China are some countries where trials for vaccines started taking place. Even Oxford University started trials for the coronavirus vaccine.

COVID-19 pandemic is showing no sign of decline; the vaccine is still to be found. Till now, lockdowns and social distancing remains the only way to slow down its spread. But, lockdown is also slowing and pushing down the economies of most of the countries. The global economy is facing another recession as the Coronavirus pandemic has forced corporations worldwide and businesses across the world to suspend operations.

### Impact on Economy-Force Majure

The pandemic is having a deep impact on the global economy as jobs are at higher risk because firms are looking for some reduction in the manpower. It has caused an unprecedented to collapse in economic activities over the last few days.

Sectors such as tourism, real estate, automobiles and banking seem to be having a challenging time. Among the worst hit sector is the tourism sector to get disrupted by the impact of the pandemic. Due to the lockdown, the aviation sector witnessed layoffs and pay cuts. The automobile sector in India is been forced to stop manufacturing the units which led to the sharp drop in production and sales. As most of the plants are shut, the companies have announced pay cuts.

COVID-19 virus was officially declared a global pandemic by the WORLD HEALTH ORGANISATION on March 11, 2020. By seeing the effects of the virus on the global level, the Indian government declared a nationwide lockdown from 25<sup>th</sup> march. After this, the different regulatory bodies like the SEBI and RBI relaxed deadlines for compliance and requirements till June 30. Since then, effective measures have been taken by both private and public bodies to ameliorate the effects of this global pandemic. This pandemic has caused major disruptions in global businesses.

It has since caused, interruptions in the trading sector, devastated the travel and hospitality sector, imposed various challenges in completing contractual obligations, and has bombarded business and commercial activities escalating the world to a major recession.

The Indian department of expenditure released an official document on February 19, 2020 effectively classifying "covid-19" a "force majeure" event. "It ascertained the applicability of the force majeure clause in contracts wherever considered applicable, albeit in strict adherence to 'due procedure'. The memorandum holds persuasive value and is not binding on parties and will depend on how force majeure provisions are written in each contract and if such provisions provide protection to parties."

As different requirements for different situations demands different governing laws and contracts, covid-19 is unlikely to give rise to a valid force majeure defence under every contract and in every circumstance. The bottom line for any business or commerce to grow is the contracts entered into between the parties. The law of contracts lays down the reciprocal obligations of the parties.



As per Section 37 of the Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. Because of this pandemic, the situations may arise in a catena of commercial contracts wherein a party, without any fault on its part, is not able to perform its part of the contract.

Although Indian courts have not ruled directly whether an epidemic / pandemic such as COVID19 is an 'Act of God,' this argument can be supported by a Supreme Court decision in *KSRTC v. Mahadeva SheTTY 7*, which argues that the term 'Act of God' means the operation of natural forces without human intervention and that all are not 'Acts of God,'

### Causation and Mitigation

Although a pandemic such as COVID19 falls within the scope of a force majeure clause, the enforcement of contractual obligations is by itself not relief for a party. This force majeure event must have a direct impact on the non - performance of the contract and the group attempting to focus on the force majeure event also has a responsibility to reduce and/or explore alternative performance methods.

Complex problems relating to causal links might also occur in situations where the direct and

immediate cause is not the COVID19 pandemic itself, but the acts of governments in response to them, such as lockdowns, curfews, and restriction on movement of people and goods. Depending upon the language of the force majeure provision, these acts of officials may constitute a separate and independent force majeure case that excuses contract performance.

One of the reasons the Court refused to grant an injunction was the recent decision by the Bombay High Court in Standard Retail (supra) on the failure to establish direct causal links between the COVID19 pandemic and non - performance. An injunction was sought, inter alia on the grounds that the underlying contract for the sale of steel was impossible due to COVID19 pandemic and national lockdown.

However, the Court observed that selling steel was an essential service and that the execution of the contract was not compromised as there were no limits on its movement. Another example of a pandemic in which work efficiency cannot be affected is the fact that workers from a company in the service industry have to isolate themselves at home.

It can be argued, based on the nature of the company, that since employees will continue to operate from home, the delivery of services has no influence on the force majeure clause. Similarly, any loss due to economic depression or other general business conditions resulting from the COVID19 pandemic is not likely to provide an excuse for the breach of the contract based on force majeure.

The nature of the force majeure clause in the contract may also affect the extent to which the causal connection between the force majeure occurrence and the failure to perform should be omitted.

Any provision which allows an actual party to be "prevented" from fulfilling its obligations by force majeure would probably be construed to require a clearer and proximate correlation than that which demands that only the party should be "impeded" or "hindered" in fulfilling its duties.

The force majeure provision (or, where the contract contains a "Best effort" clause, then the clause) may demand that the parties undertake reasonable attempts to carry out the contract by alternative means. Eventually, even in the absence of an express clause, the group trying to rely on a force majeure in order to excuse their failure to perform its duties, while having followed necessary guidelines to help alleviate the force majeure event.

#### **How? Force Majeure Covers Pandemic**

- A. Where a pandemic is explicitly provided by the terms of the contract of force majeure event, there are two potential situations in which a force majeure clause can cover a pandemic. The pandemic integration into the force list will provide clarity as to whether the outbreak of COVID19 in a Contract will trigger a force majeure clause; or
- B. Where the force majeure clause covers extraordinary events or circumstances beyond the reasonable control of the Parties.

Such 'catch-all' wording can be invoked if the factual circumstances caused by the pandemic have been established outside the reasonable control of the party concerned. As a result, it is a fact-specific determination that the question of whether a party can be excused from a contract being declared as a pandemic due to COVID19 would be determined in accordance with the nature of its obligations read under the specific contractual conditions.

If COVID-19 is not specified as a force majeure event or the contract itself does have an express force majeure clause, an affected party may claim relief on the grounds of frustration/ impossibility (to perform an obligation or execute work) under Section 56 of the ICA. The following points may be noted while claiming relief on account of force-majeure/frustration: -

1. An affected party must ensure compliance of procedures stated in the force-majeure clause. Most force-majeure clauses prescribe issuance of notice as a condition precedent for claiming relief. Such contractual notification requirements are usually time bound, failing which parties may be barred from claiming relief.
2. Typically, the force-majeure provisions require an affected party to show all reasonable efforts has to be taken to further avoid or mitigate the effects of the variable events.
3. The force-majeure clauses language will determine the remedies accessible to the parties. Some contracts may provide for immediate termination of the contract upon the happening of the force majeure event. Others may provide that the contract will be put on hold until the force majeure event is resolved. Some contracts may provide for limitations in time after which either party may terminate the agreement with written notice to the other (i.e. if non-performance caused by the event is prolonged or permanent). Others may require the contract to remain in effect until the force-majeure event is resolved. Some contracts will only allow for certain obligations to be suspended.
4. As a part of social distancing measures, most states in India have issued regulations invoking the Epidemic Diseases Act, 1897 severely restricting commercial activities and movement of public. The resulting disruption in workforce and materials may be interpreted as a change in law event if the contract provides for a change in law provision. The relief for change in law can extend to price adjustment or extension of time-period for completion of obligations or both
5. It will also be relevant to carefully examine the insurance policies to see if certain losses can be mitigated pursuant to such policies. This will help in formulating the overall strategy and course of action.
6. Pursuant to the standard financing documents, a force majeure event may not exclude debt servicing obligations and a borrower is expected to service the debt under the relevant financing documents.

Hence, parties may report the effects of the pandemic to the lenders and initiate discussions for rescheduling of re-payment instalments and waiver for any breach of covenants or financial ratios due to the pandemic.

7. Other contractual clauses may also be attempted to be invoked by counterparties like price adjustment clauses, material adverse change clauses, limitation, or exclusion clauses, to limit or exclude liability for non-performance. The ability to invoke such other grounds will depend on the wording of the relevant clause, and how the clause is construed by courts.
8. Counterparties may
  - (i) initiate a chance to perform the contract in a possible alternative way; a failure will safely rule out a future 'defence' with respect to an alternative method of performance,
  - (ii) Collect evidences to accord non-performance of the obligation to the sole force majeure event, in the current scenario, the pandemic,
  - (iii) Keep a strict record of the various notifications and orders by government and administrative bodies to be used as evidence during the litigation/arbitration stage,

All records with respect to unavoidable additional expenditure incurred must be maintained.

#### **Effect on The Migrant Workers: Possible Solution "Force Majeure"**

The migrant population amidst to the nationwide lockdown due to Covid'19 was forced to dislocate itself from their work place resulting in losing job and money. Worse to that with the shutdown of public transportation, hundreds to thousands of migrant workers were forced to walk thousands of miles back to their villages and small town barefoot with some dying due to road accidents or scorching heat while their journey back to home.

Though government, the local authorities and non-governmental organisations followed some safety measures such as providing food, temporary shelters, medical facilities but millions of migrant workers left stranded on the streets of the country.

As India has started pulling down the lockdown restrictions there is a need to explore both the social and economic policy. There is a need for the generation of employment opportunities that can help the migrant and informal workers from extreme poverty and hunger. In lieu of which the employers can help in protecting the rights of the migrant workers and the "Force Majeure" clause in the contract of their employers can help in overcoming of any kind of liability due on them such that they can claim their any liability or loss and renew their business and factories and can employed these migrant workers back with respectful salaries so that the migrant workers can revive their life back on the right Path.

Before the implication it should be noted for providing a possible solution to the employment of migrant workers there are Certain requirements are to be fulfilled by the employer for the frustration of a contract. The clause of Force Majeure must be added

in the contractual terms which explicitly frees any party from any kind of liability in case of such Force Majeure event. COVID-19 being a worldwide pandemic, is indeed, a Force Majeure event.

Any party which is unable to fulfil their contractual obligations must have a clause of Force Majeure in order to claim that they are free of any liability or loss that pertains to the other contracting party. If the contract bylaws fail to have a Force Majeure clause, the party will not be able to find remedy under Force Majeure. Which can result in jeopardizing the future of thousands of workers who will be migrating back after the covid'19 aftermaths to their employers for a stable occupation.

#### **Aim of the Study**

Looking forward to understand the contract law in a more refined manner. The global pandemic has drastically changed the world of commercial businesses resulting in problems effecting the cross-border trade practices with between different companies and/or countries. All the ongoing deals or contracts has been affected too, due to this global pandemic resulting in impacting the efficient working of the businesses. The article aims at to find out about the types of contracts which may or may not be eligible to opt for the Force Majeure clause for the frustration of their contract.

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