

‘ACT OF GOD’ / ‘FORCE MAJEURE’ OR ‘ACT OF HUMANS’

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"This year we are facing an extraordinary situation that even below 10 per cent approximate estimation you are facing an 'Act of God' which might even result in a contraction of the economy,"

-Finance Minister Nirmala Sitharaman

The above statement by Finance Minister Nirmala Sitharaman at the recent GST Council meeting was opposed by many politicians, polymaths and pioneers. The first of such censure came from West Bengal finance minister Dr Amit Mitra who said, *"In 2016, GDP was 8 per cent before demonetization and in 2019-20, just before Covid-19 it fell to 4.2 per cent, almost a 4 per cent decline. Quarterly growth (Jan-March) has seen a record fall to 3.1 per cent, the lowest in 11 years. Fixed investment growth rate is negative. Was all this Act of God or was someone playing God?"ⁱⁱ*

All this started at 41st meeting of the GST (Goods and Services Tax) Council, where an indication of the extent of the economic destruction wreaked was revealed. In the said meeting Calling the pandemic as an “Act of God”, Union finance minister Nirmala Sitharaman revealed that the Centre would not be able to get somewhere with the shortfall. Generally, the ‘Act of God’ or “Force Majeure” is a clause used in private contracts to insure one or both parties from carrying out the terms of the contract due to events beyond their control.

It is perturbing that the Centre conceives of itself as a private player in a market economy, when what is immediately awaited is for it to overstep this role. It is more worrying because

it leads to a pertinent question; is the “*force majeure*” claim of the Centre, is implicitly indicating that events are out of its control.

Next condemnation came from CPI General Secretary D. Raja who said, “*The Finance Minister’s averment that the pandemic is an ‘act of god’ and therefore, the central government is not liable to pay the compensation is blatantly incorrect and unethical,*”ⁱⁱ *Black’s Law Dictionary* defines an “*act of God*” as “[a]n overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado.” Making up one’s mind whether to brand a pandemic or viral outbreak as an act of God or failure of Man could depend on what other misfortunes the parties imagined would excuse obligations under the contract. In any event, it will depend on the details of the contract language, the circumstances of non-performance, and the degree of preventability. As to obvious legal outcomes? God only knows.

Making a wisecrack at the remarks of the current Finance Minister; ex Finance Minister Chidambaram said, “*If the pandemic is an ‘Act of God’, how do we describe the mismanagement of the economy during 2017-18, 2018-19 and 2019-20. Before the pandemic struck India?*” he continued, “*Will the FM as the Messenger of God please answer?*”

Here arises a pertinent question which needs to be answered by the current Government which needs to clear its position on whether the relevant non-performance has arisen because of the pandemic itself or a human intervention in response to it. Nevertheless, when smearing this to an explicit contract, it also needs to be prudently considered whether the event itself caused the non-performance or delay, or whether this may have befallen as a result of a human response to the ‘act of God’

The current scenario reminds me the words of Ricoeur who says,ⁱⁱⁱ “*Myth will here be taken to mean what the history of religions now finds in it: not a false explanation by means of images and fables, but a traditional narration which relates to events that happened at the beginning of time and which has the purpose of providing grounds for the ritual actions of men of today*

and, in a general manner, establishing all the forms of action and thought by which man understands himself in the world’.

Whether a particular casualty is an act of God is a mixed question of law and fact. ‘The defining and limitation of the term, its several characteristics, its possibilities as establishing and controlling exemption from liability, are questions of law for the court; but the existence or non-existence of the facts on which it is predicated is a question for the jury.’^{iv} If performance of the terms of a contract becomes impossible as a result of an act of God, such impossibility shall excuse non-performance, except where, by proper prudence, such impossibility might have been avoided by the promisor.^v Under some clauses, government rules which prevent a party from completing the contract may constitute grounds for a party’s legal non-performance of the agreement. So, this is one situation in which you can legitimately blame the government.^{vi}

BJP Rajya Sabha MP Subramanian Swamy has a question for Sitharaman about God. *He tweeted, “I am reliably informed that FM N. Sitharaman told a meeting that COVID-19 is an act of God!! I will post the video soon. Was the decline in annual growth rate in GDP from 8 % in FY 15 to (1st Qtr 2020) 3.1 % pre-COVID, also an act of God?”*^{vii}

To conclude, the obligation returns if a party proves the fact of human intervention to the cause of event, which looks like act of God. For instance, if geothermal injections of water have provoked an earthquake, it cannot be considered as act of God. This happened in Basel, Switzerland in 2003. Similarly, mud volcano was caused in Java in 2008 by undue drillings. These examples show how the legal status of *vis major* would change and invite liabilities.^{viii} Whether it is an act of Man or God, this virus and its impact would transform the future of our world, in impending days it impacts on global economy.

ENDNOTES

ⁱ Available at <https://www.indiatoday.in/india/story/was-demonetization-an-act-of-god-bengal-finance-minister-s-jibe-at-sitharaman-1716816-2020-08-30> accessed on 9th Sept 2020.

ⁱⁱ Available at <https://www.thehindu.com/news/national/left-parties-slam-nirmala-sitharaman-for-act-of-god-comment/article32467078.ece> accessed on 9th Sept 2020.

ⁱⁱⁱ *The Symbolism of Evil*. Harper and Row, New York. P. 5

^{iv} *Goble v. Louisville & Nashville Railroad Company*, 187 Ga. 243, 251 (1938)

^v Section 13-4-21 of the Georgia Code

^{vi} Available at https://www.capjournal.com/opinions/columnist/are-acts-of-god-acts-of-man/article_82593faa-8bc9-11e8-9029-ffae74e6288b.html accessed on 9th Sept 2020.

^{vii} Available at <https://theprint.in/trauling-twitter/swamys-question-on-sitharamans-act-of-god-anurag-kashyap-offers-proof-to-times-now/491059/> accessed on 9th Sept 2020.

^{viii} Available at <https://thefederal.com/analysis/act-of-god-invoking-force-majeure-in-the-time-of-coronavirus/> accessed on 9th Sept 2020.

