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**New legal challenges post covid with specific reference
to Indian contract Act**

SAFEER AHMED

ASSISTANT PROFESSOR, PRESIDENCY COLLEGE, BANGALORE

safeerahmed@presidency.edu

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Keywords: 1) **Contract:** - Written or spoken agreement concerning any business that is intended to be enforceable by law.
2) **Covid:** - An acute respiratory illness in humans caused by Coronavirus which has become pandemic
3) **Challenges:** - A situation of being faced by something that need great mental or physical effort in order to be done successfully.

ABSTRACT

The purpose: of the paper is to analyze new legal challenges faced by judicial fraternity in the implementation of law and its execution of justice post covid . As covid has transformed priorities of humanity all over the globe, along with specific reference to the most common law practiced in commercial world which is Indian contract act.

Design /methodology: Based on the data available ,certain challenges faced by legal fraternity all over the globe was found .the inputs and information was also gathered from lawyers and judges who toil 24/7 to facilitate implementation of law precisely and constantly, further the researcher himself is a practicing advocate, who has come across different situations which were unique and oblivious.

Findings : it was found that to ease the situations of legal implementation post covid many factors which although a part of general legal requirements but consider to be less significant has raised to the occasion like never before the factors such as specific performance of contract, loose and vague drafting ,conciliation and meditation became paramount ,further factor OF FORCE MAJURE (superior force or Act of God for emerge as game changer under Indian contract act.

Limitations: The area of research was only confined to the problems faced by legal fraternity in court halls having live interaction there are various other problems like documentations and registration of cases which also need a very deep research to find root cause of problem and suggest the solution.

Further research is only limited to Indian contract Act if properly analyzed there is a scope for not

less than 10 to 12 different acts only under different commercial laws for deep study and solution exploration .

Conclusion: Information and Communication Technology (ICT) is here to stay and hence legal fraternity of lawyers, judges, registers and above all *litigants* should be prepared to accept the fact even if there is no lock down there is no chance of live court halls functioning in near future. Virtual courts are the new normal further framers of any new policy should always take video and virtual court into consideration before framing any new policy.

PURPOSE

The unprecedented disaster caused by covid to domestic and overseas business is extremely severe across the nations and the sector .The purpose of the paper is to examine the new legal challenges face by judicial fraternity in the implementation of law and execution of justice post covid which has transform the priorities of humanity all over the globe.

INTRODUCTION

Covid which is pivot of all discussions , debate ,lectures , research , analysis observation experiment virtually every aspect of our life has impacted every single soul on this globe in every possible manner physically, mentally , financially , academically ,socially and psychologically .

As covid is the cause of this research it is very important to highlight its birth development and its impact. In December 2019 there was a cluster of pneumonia case in Wuhan province of China, research proved most of the patients had visited or worked in live animal and seafood market in Wuhan city.

The research proved the disease was caused by new coronavirus or covid-19 and it started spreading to other parts of the world on 30th January 2020. The WHO World Health Organization declared it as public Health emergency of international concern.

CORONAVIRUS: - they are the large group of virus consist of genetic a material and protein spike which looks like crown. The word crown in Latin is called Corona. The word Corona is also known as Coronavirus this virus spreads by two ways...

a) By Droplets: - coughing, sneezing, or talking

b) By object: - it means the object touching by an infected person and another person touches the same object and touches their eyes, nose or mouth.

Symptoms:- symptoms can be exposed in 5 to 6 days also it has a range of 1 to 14 days the common symptoms include fever , fatigue, and respiratory symptoms are cough, sore throat, shortness of breath, some people will have skin rashes loss of smell for taste and in in some severe cases organ failure or death.

80% recover without special treatment but group at risk is people with old age, chronic respiratory diseases, diabetics or high BP cancer etc.

Prevention:-

(a) To cover mouth and nose while sneezing, laughing and talking

(b) Wash hands regularly

(c) Avoid close contact

(d) Use mask

(e) Stay indoors maximum time

However the government laid the standard operating procedure (SOP) And advise particularly with regard to lockdown, to take vaccines at the earliest.

ANALYSIS

Impact of Covid on law and Indian Contract Act

The impact of Corona virus or Covid on legal and commercial sector of India is immense, it is particularly severe on domestic and international business across all sector and countries to assist the Indian legal fraternity some of the highlight on the key legal issues are researched and solutions are found.

Covid-19 has disrupted performance under many contracts along with delay, interpretation and even cancellation. Both petitioner and defendant are trying every possible opportunity to either buy some time or totally terminate the agreement because covid has convincingly prevented them from fulfilling the promise made or they may be trying to find a escape route for their nonperformance.

Defendant may give covid as a reason for not fulfilling the terms of agreement. He may bargain price or try to negotiate some of premiere terms. Some of the unprecedented difficulties faced by the Indian courts post covid are

(i) Impact of Lockdown:-

As every sector had to follow Strict Lockdown, legal fraternity is no exception as the lockdown was declared the panic set in among each one of them. They feel their case need to be heard on priority basis. It was a big challenge to identify as which trail to be held on priority, as some of the big business deals need speedy justice and delivery of judgments.. Commercial business execution both at domestic and international level was challenge.

(ii) Fundamental and Human Rights:-

lockdown lead to a new concept called urgent issues since most of the court had very limited functioning it was the discretionary power of registrar to decide what is urgent issue which is to be heard, however there is also no definition as to what are the urgent issues which lead most of the high courts to only hear the matters of public interest litigation (PIL) concerned with covid lockdown , migrant workers struggle , issues of covid testing, which severely affected people trying to get bail and get out of jail even under trial who committed small crime had to spend a very long time in jail as their case was not under the important list of the registered to be taken on priority basis which lead to abuse of people's both human and fundamental right.

(iii) No infrastructure and guidelines:

Covid had disrupted justice delivery system as never before compulsion of social distancing and lock down have lead court to close premises for public considering all the courts were caught on wrong foot, with absolutely no technology, no process, no facility to conduct video conferencing . It was a new world which caused lot of hardship to lawyers, judges and it was particularly severe towards clients who already were under deep stress due to economic slowdown and health related stress upon that legal uncertainty. Fundamental right which is guarantee to citizens should not remain suspended for long time and speedy justice is important for commercial world.

(iv) Technology has its own set of challenges:

Although Information and Communication Technology (ICT) could be slowly and surely adapted as it is huge challenges for common man of India to learn adapts and practice it. The entire legal fraternity should be prepared to accept the fact that virtual courts are here to stay, there could be some very technical issues like E-Filing of cases, scanning documents, the factors of digitalization of records and documents applying and approving digital signature etc..

IMPACT OF COVID ON INDIAN CONTACT ACT

The parties must comply with the obligation of contract and noncompliance will lead to breach of contract which gives rise to indemnity, damages, specific performance, and injunctions.

But under what circumstances can a party be excused for nonperformance of contract and hold him not liable. Although there is no specific law on the situation.

The unprecedented situation like covid.

The two sections which can be analyzed and pleaded in the court of law are

(A) Section 32 of Indian contract Act:-

Honorable Supreme Court of India on 22nd April in the matter of national agriculture cooperative marketing federation of India v/s Alimenta S.A

Applied Section 32 of Indian contract Act which states if agreement itself provide for contingency upon happening of which contract Act cannot be carried out and provides the consequences. In case the act becomes impossible at future date and that exigency is not provided in the agreement on the happening of which exigency impossible or unlawful the promisor had no contract which he could not have prevented the contract becomes void.

(B) Section 56 Discharge of contract :-

Indian contract Act explains if an agreement contains an undertaking to perform an impossible act such an agreement is void ab initio this rule is based on

- (I) Law does not recognize what is impossible.
- (II) What is impossible does not create on obligation

According to Section 56 impossibility of performance may fall into either of the following categories

- (1) impossibility existing at the time of agreement Section 56 lays down an agreement to do an act impossible in itself is void this is known as pre contractual or initial impossibility.

The fact of impossibility maybe

- (I) Known to parties: - This is known as an absolute impossibility this agreement is void ambitious

Eg :- A undertakes to put life into a death wife of B this agreement is void

- (II) Unknown to Parties: - where at the time of making the contract both the parties are ignorant of the impossibility as in the case of destruction of subject matter to the ignorance of both parties the contract is void on the grounds of mutual mistake.

- (2) Impossibility arising subsequent to the formation of contract:-

The compact could be performed at the time when the contract was entered into it is called post contractual or supervening. Impossibility such case contract becomes void if act becomes impossible.

As Stated the various ways and means to discharge of contract the specific situations where factors of covid-19 are death is discharge big impossibility. The prime factor which could give an escape route for parties for their nonperformance of agreement in discharge of impossibility are by change of law on stepping in of a person with statutory authority"*

When subsequent to the formation of a contract change of law takes place or the government take some Power under some ordinance or special act as for Eg:-

A enters a contract with B on 1st March for supply of certain imported goods in the month of September, of same year in June by act of parliament the import of goods is band the contract is discharged.

A sold to B a specific parcel of wheat in a warehouse before the delivery was given the wheat was requisitioned by the government under statutory power the contract was discharge.

Hence very specific and accurate law is needed to protect parties from liability for its failure to perform contractual obligation

However Section 56 also provides liability for cause where the promise has agreed to do the something which he knew or with reasonable diligence might know and the promisee did not know contract to be impossible or unlawful should be compensated by the promisor.

However covid-19 will not be the escape route for parties who are looking forward to evade responsibility of contracts or agreements, as new situations call for new measures

Findings and Solutions

As Analyzed above covid-19 is unlikely to give value discharge for difference of contingency or factor of impossibility in every contract and in all circumstances in general parties must comply with obligations and noncompliance will lead to the breach of contract where the aggrieved party will claim damages, indemnity, specific performance, injunction and reputational damages.

However there is another escape route in India which was although not very commonly used in India but it is *Horses for courses* one has to rise to the occasion to find best weapon in the armory for big battle and one such weapon is factor of FORCE MAJURE.

Force majeure:- It is French phrase which means superior force a term which was *embodied* both in section 32 and Section 56 of Indian contract Act but very less implemented. It is memorandum of understanding which is read and understood by both the parties. In the event of force majeure the parties get a protection shield from performance of their obligation

Force Majeure includes act of God or nature, disaster, war, or war like situation, labor unrest strike and above all epidemic the intention of force majeure clause is to save the performing party from consequences of something over which it has no control, courts will examine in present case impact of covid-19 prevented party from performing its contractual obligation Indian courts can recognize this concept and enforce where ever appropriate.

Some of the different situation where a party can be excused for nonperformance of contract and hold him not liable is a concept of Force Majeure (superior force)

If the party is unable to perform obligation on account of superior force than the

party maybe excuse of his obligation.

- a) If the contract itself has force majeure clause
- b) Parties agree under discharge of impossibility specially factor of epidemic and pandemic the concept of force majeure can be applied to discharge of non performing party
- c) In another explanation Force Majeure mean and include impact of lightning, earthquake, tempest, cyclone, volcanic eruption, war strikes, and all other events beyond the reasonable control of and not attributed to either parties

If there is no act of God force majeure cannot be claimed and the process of drafting a contract, language becomes a paramount.

Almost all courts are closed and all courts have put forward procedure to file proceedings and apply for urgent relief but as discussed earlier Technology will have its own set of challenges with filings scanning documents and filing digitalization of records and documents digital signature etc. but no doubt it is causing out of hardship to lawyers, judges, court official particularly to *litigants* it is need for the hour and become a new normal.

Some of the practical solutions for the smooth functioning of courts are

1) To avoid vague or loose drafts:-

The parties to contract should draught of contract in a way to prevent future disagreement some of the ways to avoid ambiguity in contract are

- A) Writing of all material terms: - It is best to put all contract terms in writing
- B) Documentation: - Attach any other document to contract that could be used later to clean any disagreement.
- C) Review of terms: - Have each party to review the full and complete contract before acceptance and signature
- D) Legal advice: - Obtain professional advice to resolve ambitious terms that may cause future problem.

2) Specific performance of contract:-

Performance means doing that which is required by contract the parties are discharged by performance when the parties to the contract fulfill their obligation arising under the contract within the time and in the manner prescribed in such case the parties are discharged and the contract comes to end. Performance should be complete, precise and accordingly to the terms of the contract..

3) Option of force Majeure:-

It is an agreement were in both parties agree upon an act of God or nature which includes disaster like war or war like situation, labor unrest, strikes and above all epidemic and pandemic which gives an escape route to parties when they do not fulfill the terms of agreement and when parties out for force majeure escape liability they need to collect every document to prove that there nonperformance due to an act of God totally beyond their control and not attributed to either party ,the parties need to collect proper documents and evidence to support their claim.

4) If both parties are impacted by force majeure:-

As discussed earlier Force Majeure (superior force) is a contractual provision agreed upon between parties which can protect both parties from liabilities for their failure to perform contractual obligation. The each party to a contract should try and find it if other parties obligation is also impacted by force majeure so that both can have an out of court settlement for peace and ease.

5) Mediation and conciliation:-

An offeror and offeree share a long time relationship force majeure may be just one of the passing situation in their overall relationship it may not be commercially *prudent for them to either find an escape route in section 32 , Section 56 or even force majeure Hence bringing in a third-party who maybe another business partner or family friends or even a professional body for mediation and conciliation to negotiate with both parties and find a solution which could give win- win situation for both parties which leads to a long time business relation in years to come.

Limitations:

The area of research was only confined to the problems faced by legal fraternity in court halls having live interaction there are various other problems like documentations and registration of cases which also need a very deep research to find root cause of problem and suggest the solution.

Further research is only limited to Indian contract Act if properly analyzed there is a scope for not less than 10 to 12 different acts only under different commercial laws for deep study and solution exploration .

Conclusion:

Information and Communication Technology (ICT) is here to stay and hence legal fraternity of lawyers, judges, registers and above all *litigants* should be prepared to accept the fact even if there is no lock down there is no chance of live court halls functioning in near future. Virtual courts are the new normal further framers of any new policy should always take video and virtual court into consideration before framing any new statutory legislation

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