



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Law and Pandemic: Commercial Laws changed in India during Covid-19

Namisha Choudhary<sup>a</sup>

<sup>a</sup>Rajiv Gandhi National University of Law, Patiala, India

*Received* 21 July 2021; *Accepted* 10 August 2021; *Published* 13 August 2021

---

*The research study has been undertaken with the purpose to study the changes in commercial laws in India during Covid-19. The study focuses on the force majeure clause and insolvency laws. The effect of the pandemic on the law has been analysed and how legal disruption was a measure to cope up with the pandemic. The research study also sheds light on the impact of a pandemic on business and how various strategies were undertaken in order to prevent the businesses from shutting down and go down to the edge of insolvency. The research focuses on commercial laws amended because of the loss economy faced during COVID-19 in India. However, examples of the global market and other countries have also been given. COVID-19 was declared a pandemic by WHO on March 11, 2020. A number of areas were affected by the pandemic. The business was one of the areas which faced severe problems and in order to help the firms solve those problems, a way of legal disruption was adopted to change a few commercial laws which helped in preventing the business. The research deals with those changes in laws of change in the commercial sector such as Insolvency Laws and Force Majeure clause. The research has aimed to answer various questions such as the effects of a pandemic on the commercial sector, amendments in the existing laws in order to maintain a balance and provide relief to people, and other measures taken by the government of India to save the business sector to some extent from going into complete insolvency and bankruptcy.*

**Keywords:** *pandemic, commercial laws, covid-19, insolvency, bankruptcy.*

## INTRODUCTION

The world has faced various crisis since the discovery of human civilization. With the development of civilization, there have been formulations of various rules and organisations in order to keep a check on the functioning of society as a whole. Law is an integral part of society and in times of crisis, it becomes a powerful tool to handle the situation both at local and global levels. According to the Britannica Dictionary, *“Law is the discipline and profession that is concerned with the customs, practices, and rules of conduct of a community that are recognized binding by that community.”*<sup>1</sup>

The main aim of the law is to maintain a balance in society. In case of a pandemic, strong legal measures are needed in order to ensure the safety of people. A pandemic has been defined by the World Health Organization as,

*“An epidemic occurring worldwide, or over a very wide area, crossing worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people.”*<sup>2</sup>

It was in the year 2019 that the first case of the ‘Corona Virus’ was identified in Wuhan, China. In no time, the virus was spread across 180 other countries and territories.<sup>3</sup> All the countries around the world imposed travel restrictions and lockdowns after being infected with the virus. In India, the ‘Janta Curfew’ was imposed by Prime Minister Narendra Modi on March 22, 2020, to stop the spread of the virus and after a few days imposed a nation-wide 21 days lockdown which eventually was extended to months.<sup>4</sup> The nationwide lockdown took a toll on the economy. The condition only worsened due to the shutting of business at both global and local levels. In a state such as this, it is impossible to fulfill contractual obligations. Shutting down of economies has adversely affected the commercial sector due to disruptions in supply

---

<sup>1</sup> 'Law | Definition, Systems, Institutions, & Fields' (*Encyclopedia Britannica*, 2021)

<<https://www.britannica.com/topic/law>> accessed 13 July 2021

<sup>2</sup> Bharat Vasani and others, 'COVID-19: OFFICIALLY A PANDEMIC' (*India Corporate Law*, 2021)

<<https://corporate.cyrilamarchandblogs.com/2020/03/covid-19-officially-a-pandemic-faqs-coronavirus/>> accessed 13 July 2021

<sup>3</sup> World Health Organisation, 'Coronavirus Disease 2019 (COVID-19) Situation Report – 96' (*Who.int*, 2020)

<[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200425-sitrep-96-covid-19.pdf?sfvrsn=a33836bb\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200425-sitrep-96-covid-19.pdf?sfvrsn=a33836bb_2)> accessed 13 July 2021

<sup>4</sup> Vasani (n 2)

and demand chains. The warning of keeping up with social-removing because of COVID-19 adversely affected the business of the travel industry and travel related enterprises. The businesses like the travel industry and accommodation, food handling, training, design and clothing, cowhide, have all been unfavourably influenced by the COVID-19 pandemic.

The global market received several shock waves. This led to the collapse of the stock market putting investors at huge risk causing a loss of billion dollars. The pandemic isn't something typical and the world is still in its grasp with no close to the arrangement. Specifically, the economy has confronted a negative inventory stock in light of the fact that the pandemic has prompted the closing down of firms and this has upset the production network all around the world. It was anticipated by the Organization for Economic Co-activity and Development had anticipated the most generous descending development in South Korea, Australia, and Japan.<sup>5</sup> The suspension of business sectors during the lockdown unfavourably influenced the business climate. Supporting the extent of occupation and maintaining the sacredness of laws identifying with work and federal retirement aid is the first concern right now.

In order to balance things in the world of commerce, the Union Government made changes to the existing laws. The laws were changed providing relaxation to people in times of crisis. Legal disruption arises in a situation when a new development requires an adjustment of existing laws because there is nothing certain in relation to the development by the prevailing or existing regimes. New legal provisions are then brought up in order to overcome the shortcomings of existing provisions. While such changes are kept to their objectives, there will be no, or restricted, lawful disturbance regardless of whether the fundamental advancement is exceptionally problematic from an overall perspective.<sup>6</sup>

---

<sup>5</sup> M Chowdhary and others, 'A case study on strategies to deal with the impacts of COVID-19 pandemic in the food and beverage industry' (*SpringerLink*, 2020) <<https://link.springer.com/article/10.1007/s12063-020-00166-9>> accessed 16 July 2021

<sup>6</sup> Christian Twigg-Flesner, 'Legal Disruption and Times of Crisis: COVID-19 and (Contract) Law' (*Oxford Law Faculty*, 2020) <<https://www.law.ox.ac.uk/business-law-blog/blog/2020/09/legal-disruption-and-times-crisis-covid-19-and-contract-law>> accessed 16 July 2021

## CHANGES IN COMMERCIAL LAWS DURING THE PANDEMIC

### Force Majeure:

Fulfillment of 'contractual obligation' has been one of the major concerns due to the arrival of Covid-19. Covid has made generally speaking remarkable unsettling influences on business exercises, and the business agitation continues. The pandemic has influenced the limit of associations all throughout the planet to keep up steady assignments and play out their different legitimate responsibilities. Possibly the associations to lighten the impact related to delayed movement and non-execution of the arrangements cover alia will make an arrangement of the move to drive Majeure proclamation contained in their arrangements. A remarkable event or circumstance outside human capacity to control, for instance, the event depicted as a showing of God, government impediments, or other amazing conditions which hinder the fulfillment of legitimately restricting responsibilities would qualify as a power Majeure event.<sup>7</sup>

A force majeure arrangement in a business course of action is an express arrangement of conditions wherein execution under the agreement will be pardoned or suspended temporarily. In a contract that contains the clause of force majeure, it would be the responsibility of the parties invoking the clause to prove that the failure in the contractual obligations is the result of the COVID-19 pandemic. For the contracts that do not have a force majeure clause, Section 56 of the Indian Contract Act sets out the provision:

*"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>8</sup>

It has been observed that Indian Courts have granted relief in cases where the contract could not be completed because of unforeseen events which led to the non-performance of the

---

<sup>7</sup> Nishant Menon and Rahil Kohli, 'Covid-19: A Force Majeure Event or Simply a Pandemic?' (*Mondaq*, 2020) <<https://www.mondaq.com/india/litigation-contracts-and-force-majeure/913944/covid-19-a-force-majeure-event-or-simply-a-pandemic>> accessed 16 July 2021

<sup>8</sup> Indian Contract Act 1872, s 56

contract. The Government of India issued a Memorandum on 13<sup>th</sup> of May, 2020 stating: *“disruption in the supply chain due to coronavirus will be covered under Force Majeure Clause”*<sup>9</sup>

It has been clarified in the memorandum that the contracts would only be covered under the Force Majeure Clause if the parties were not in default of contractual obligations as on February 19, 2020. Through another notice later, the government of India directed few other ministers to grant relief for delays in contractual obligation due to coronavirus. Thus, COVID-19 was declared a ‘Force Majeure’ event by the Government of India.

### **Insolvency Laws:**

The Insolvency and Bankruptcy Code, 2016 has been amended time and again to cope up with the economic conditions. Due to the arrival of the disastrous pandemic, the Government of India took several measures relating to the commercial laws. In relation to the Insolvency or Bankruptcy Code, the government had to make a choice between two policies. It could either suspend the Code or let it function as usual. Making the first choice would not be good for the economy as the market would fail to liquidate any unviable firms. The second policy would enable the market to liquidate any viable firm. The damage done by the first can be restored in the long run whereas the second damage would be done forever. Keeping in mind the consequences of the same, the Government of India chose the first policy, i.e., suspending a key part of the Code. It suspends initiation of insolvency proceedings against a company where any default has been arisen due to COVID-19. This provided relief to the firms in the times of COVID-19.<sup>10</sup>

- **Increase in the minimum amount for initiating CIRP:**

Part 1 of the Section 4 the code<sup>11</sup> applies to those matters where the minimum amount of default is Rs. 1 Lakh. This section gives power to the government to notify an amount that is

---

<sup>9</sup> Department of Expenditure Procurement Policy Division, *Office Memorandum* (No. F 18/4/2020-PPD)

<sup>10</sup> Dr M S Sahu ‘Insolvency Laws in times of Covid’

<<https://www.ibbi.gov.in/uploads/resources/19f5dd1867e29b404046912df2b065f8.pdf>> accessed 16 July 2021

<sup>11</sup> Insolvency and Bankruptcy Code 2016, s 4

higher than the outer limit of Rs. 1 Crore.<sup>12</sup> Regulating its power as given in the section, the government of India issued a notice and increased the minimum amount for filing an application of CIRP from Rs.1 lakh to Rs. 1 crore.<sup>13</sup>

- **CIRP Regulations Amended due to COVID-19:**

A new section, i.e., Section 40 C was inserted in the Insolvency and Bankruptcy Code, 2016 on March 29, 2020. Through the insertion of this section, the period of lockdown as notified by the government was excluded from the computation of timelines for the completion of activities under CIRP. The timeline related to filling of various forms by the insolvency professional was extended to October 30, 2020, and any penalty in relation to this would only arise after October 30, 2020. The Board has taken several others measures to resolve the procedural issues.<sup>14</sup>

- **Liquidation Regulations Amended:**

Regulation 47 A has been introduced to the Insolvency and Bankruptcy Code, 2016. This is quite similar to Regulation 40 C. Regulation 47 A excludes the period of lockdown imposed by the Central Government due to COVID-19 from being counted for the purpose of task completion in matters relating to the liquidation process.

- **Insolvency and Bankruptcy Board of India Regulations,2020 Amended:**

According to Regulation 7(20(ca) of Insolvency and Bankruptcy Board of India Regulations 2020, any insolvency professional who is registered under the IBBI is required to pay 0.25% of the fees he earns professionally for the services rendered by IBBI on or before 30<sup>th</sup> April of each year. Due to COVID-19, a provision was inserted which extended the fee payment date from 30<sup>th</sup> April to 30<sup>th</sup> June 2020.

---

<sup>12</sup> Advocate K Vaitheswaran and Advocate Yeswantharam CJ, 'Increase in IBC Default Threshold' (*LawStreetIndia*, 2020) <<http://www.lawstreetindia.com/experts/column?sid=480>> accessed 17 July 2021

<sup>13</sup> Kumar Saurabh Singh and others, 'Covid-19: Relaxations under Insolvency Laws' (*Mondaq*, 2020) <<https://www.mondaq.com/india/operational-impacts-and-strategy/929810/covid-19-relaxations-under-indian-insolvency-laws>> accessed 17 July 2021

<sup>14</sup> *Ibid*

## CONCLUSION

From the discussion carried out in this article, it can be clearly stated that the economy suffered major losses due to Corona Virus. The business sector faced a downfall because of the global shutdown of the economy and travel restrictions. The pandemic disrupted the supply chain pushing the business cycle towards repression. The stock investors and companies (small, medium, or large) were put at risk of insolvency and bankruptcy. The non-fulfillment of contractual obligations was also a major concern as it would eventually lead to losses.

However, the findings of this study have clearly shown that the Government of India exercised its power and amended The Insolvency and Bankruptcy Code, 2016 providing relief to a million stakeholders. The step was taken by the government to declare 'COVID-19' as a 'Force Majeure' event that provided relief from non-fulfillment of contractual obligations. It has been observed that due to the pandemic's adverse effect on the business sector, it was necessary to change the laws in the areas of business. This was done in order to provide relief to people in these tough times. There were relaxations in tax payment, Ministry of Consumer Affairs also took some majors to provide relief to people. Further, minor amendments according to the circumstances were made in commercial laws other than Insolvency & Bankruptcy Code, 2016 and Force Majeure Clause.

## SUGGESTIONS

In view of the crisis that the world has faced, the state shall keep in mind the flexibility of laws and in the case of commercial contracts these things should be taken care of:

- Re-survey and audit the agreement where the power majeure provision exists and examine the important components and episodes referenced to start the 'rule to pardon'.
- Guarantee 'all' or 'any' notice system as endorsed in the states of the agreement. Consent carefully with the ordinary 'notice' conventions.
- Commonly (alongside different gatherings to the agreement) break down the effect of the episode of COVID-19 on the agreement and its presentation.

- Start an opportunity to play out the agreement in a potential elective manner; a disappointment will securely preclude a future 'guard' as for an elective technique for execution.
- Gather confirmations to accord non-execution of the commitment to the sole power majeure occasion, in the current situation, the pandemic.
- Keep an exacting record of the different warnings and requests by government and authoritative bodies. The equivalent might be proven during the suit/discretion stage.
- The country has recently faced the second wave of COVID-19 and the experts have predicted a third wave too. With the arrival of vaccines and administration of doses to a vast majority of people, the situation will hopefully be in complete control soon.
- It should be kept in mind that the damage done to business is not completely accessed due to various reasons. However, relief can be provided to people by making amendments to existing laws.
- Law has always proved to be a powerful tool in times of crisis. With this study, we have seen how law can be effectively amended to provide relief to people in times of a pandemic.