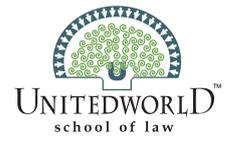


AUGUST 2020



Sitting on the roof top and musing about my future plans, the eyes gazed at amazing sight of sky, and as hand goes to find the camera for capturing the moment of miracle where the sky paints itself

- By Shreya Patel, Sem 3, Batch 2019-24, UWSL

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SELF SUFFICIENCY-GOOD OR BAD?

- By Nityanand Jha, Assistant Professor, UWSL

Becoming self-sufficient was a dream for India post-Independence and we embarked on that path until 1990 crisis. With the increase in globalization, revolution in communication and transport technologies, Nations moved their focus on becoming part of Global supply chains and in the process hoping to gain through economic prosperity for its people.

Covid 19 has disrupted the economies of all nations. Several nations have expressed anger towards china for being a source of the problem and the way of dealing with the pandemic. In addition, china has also embarked on initiating troubles with its neighbours especially India.

Modi Government has embarked on a mission for self-sufficiency through Atmanirbharta to come out of the economic crisis due to Covid Pandemic. In addition to counter china because of border conflicts, there have been calls of boycotting Chinese products and services.

But is it a good idea for India?

In order to understand, let us recollect some of the past actions taken by our earlier prime minister's for self-sufficiency.

“Jai Jawan, Jai Kisan” was a famous slogan given by our second Prime Minister Lal Bahadur Shastri to help us come out of difficult phase of Indo Pakistan war and lay a concrete foundation for food Self-sufficiency.

“Jai Jawan, Jai Kisan, Jai Vigyan” was a famous slogan given by former prime minister Atal Bihari Vajpayee to help us come out of a difficult phase of Pokhran Nuclear Test.

“Jai Jawan, Jai Kisan, Jai Vigyan, Jai Anusandhan” is a slogan given in 2019 by our current prime Minister Narendra Modi to give a major push for science and research so as to enable us to become among top three economic superpower.

Lal Bahadur Shastri had famously quoted in his maiden Independence Day speech “We can win respect of the world only if we are strong internally and can banish poverty and unemployment from our country”. This statement is valid today as well, we might have reduced poverty significantly, but unemployment is a major challenge.

The Covid pandemic has drastically increased unemployment (including partial employment). Looking to attain self-sufficiency leading to drastic improvement in employment levels is a great idea but needs to be attained without being cutout from the Global supply chains in the current economic environment.



AATMA-NIRBHAR BHARAT

CORONAVIRUS PANDEMIC: AN ACT OF GOD?

- By Ashmi P.S, Sem 3, BBA LLB, UWSL

Initially when a virus outbreak in China's Wuhan province was detected, it was announced that this virus cannot transmit from human to human contact. However, its transition from an epidemic to wreaking havoc halfway across the globe to the US, Iran, and The Middle East compelled the WHO to declare COVID-19 as a pandemic. The rest we know is history – there were lockdowns declared in many countries ultimately bringing to halt the flow of many contractual agreements, which left the parties involved in with no choice but to rely on “Act of god “as a defence, to compensate or cover for their business operations pending. Act of god mainly implies to incidents occurred without human intervention which is totally out of human control with proper preventive measures like; Tsunami, floods etc... courts in different jurisdictions apply act of god concept differently, whereas under any circumstance this chain is disrupted by the intervention of third party may lead to the defence being entirely stripped off of the party's claims. Act of god appears regularly within contracts but is not something defined under statute. Black law's Dictionary describes Act of god concept as – “comprehend all misfortunes and accidents arising from inevitable necessity which human prudence could not foresee or prevent” (Placeholder1) (Black, Act of God, 1990), Although parties won't be excused from performance, if the incident was a foreseeable risk at the time of execution ,as any agreement to perform an impossible act is considered void. Force Majeure is typically a clause of Act of god which can also be taken into consideration in cases of contracts being intervened by an unforeseeable 'superior force'. This covers mainly catastrophes, strikes, civil wars and in some rare cases epidemics and pandemics. Force Majeure finds its roots from French civil code or Code Napoleon, it excuses the parties from performing their part of contract. Intention is to save the performing parties from any consequences from anything over which he has no control of.

Force Majeure mainly asks for the suspension or extension of the obligation. In cases where the performance of contract was unavoidable yet termination or extension of the contract is inevitable and essential as an unanticipated incident occurred against the possibilities of embarking or carrying on with the contract to its fulfilment and it does not include negligence or wrongdoing which specifically excluded by the clause. Black law's dictionary defines Force Majeure as,

“AN EVENT OR EFFECT THAT CAN BE NEITHER ANTICIPATED NOR CONTROLLED”

(Black, Force Majeure, 1990) .Recalling the case, *Lebeaupin v Crispin* [1920] 2 K.B. 714, 718. Here, the judge Mccardie refused the seller's claim for applying Force Majeure as mentioned under the terms of the contracts each with different canneries subjecting the breach of contract under the FM clause if the term specifies the exception(strikes , lockouts and any other interruptions out of the canner's or shipper's will be subjected to Force Majeure, and clearly it was the seller's mistake as the tins were defective and the contract was unfulfilled due to that sole reason , had they been tad bit heedful to the quality of the tins they wouldn't have had to pay the buyer his compensation of 12,500 dollars.

Considering all the information at hand the courts may look at the conduct of the parties that seeks for the plea of Force Majeure for negating its contractual obligations. If the clause is enshrined in the terms of any contract then the parties can enforce the same, but burden of proof rests on the party who invokes the clause. Aforementioned clause is discharged if, explicitly even the terms have epidemics and pandemics mentioned in it. Although typically a Force Majeure clause includes only riots, earthquakes, strikes or any other activity from a third party impeding the function of the contract of particular parties. Nature of evidence of Force Majeure is on the basis of
I) Documents relating to travel itinerary prepared prior to the incident which was hindered by the unforeseen incident ,
ii) News article on COVID
iii) Notification of government having ensured Force Majeure as a reliable clause and other related restrictions and advisories enforced by the government such as , on 10 February 2020 Ministry of Finance addresses the supple chains disrupted by the COVID19 which it has identifies as a natural calamity , be considered under Force Majeure and apply the clause wherever necessary.

In case the terms of the contract haven't mentioned anything about Force Majeure clause then 'Doctrine of Frustration' under Section 56 of the Indian Contract Act, 1872 come into force. Nevertheless, the counterparts rely on the excuse of Impossibility and impracticability of performance. This is when the contract cannot physically be performed even after having the will for it and performing the same would be not feasible given the circumstances. Considering two scenarios, where the impact of the contract falls heavily on one of the parties (impossibility) or subject matter dies and become meaningless as in case the event extends a reasonable amount of time (impracticability).

Conspiracies spiralling over China:

The growing speculation around the globe is that China kept the original nature of the corona virus to themselves trying to helm the real impact it could have if curbing the same goes out of control, such as human to human transmission of the virus. They hid the necessary facts even after being acknowledged by Dr. Li Wen Liang about the same. It is in conjecture whether Dr. Li was silenced or died, from whistle blowing the information and blowing the Chinese government's cover, China's many telecom and landline connections lost even after China seeing incredible growth on the telecom industry. This lack of transparency from China's part left the entire globe suffering from a contagious disease without a cure. US, Iran and Europe are the most affected. How the virus travelled such huge distance yet didn't permeate much parts far from Wuhan, is still debatable. Does this invoke the suspicion that China is supporting Bio-Terrorism (unsubstantiated), as much to people's surprise or coincidence, that a novel "The Eyes of Darkness" by Dean Koontz in 1981, happened to be mentioning about a contagious virus stemming from Wuhan. Or how a group of Chinese scientists were allegedly stripped of their access to Canada's National Microbiology Lab where they mostly work with deadly pathogens.

How the entire world is under forced lockdown whereas China seems to be on a strong footing with functioning stock market when the world market is crashing



Many sceptics have a hard time believing China's wet markets are a probable and more realistic cause for the spread of the virus. Both the 2003 SARS (Severe Acute Respiratory Syndrome) epidemic and the current one can be traced to China's "wet markets". Until late December 2019, everyone affected by the virus had some link to Wuhan's Huanan Market. Keeping animals in a closed space for prolonged proximity may have enabled the rapid mutation to happen. More precisely, in such an environment, a coronavirus long present in some animals underwent mutation forcing it to change from nonhuman host to nonhuman host, and ultimately gained the ability to adapt to the human host. Journalist Jason Beaubien recently reported: "Live fish in open tubs splash water all over the floor. The countertops of the stalls are red with blood as fish are gutted and filleted right in front of the customers' eyes. Live turtles and crustaceans climb over each other in boxes. Melting ice adds to the slush on the floor. There's lots of water, blood, fish scales, and chicken guts." (Cavalieri, 2020) Wet markets, indeed. It is also believed with proof of videos and reports that the Chinese hid the coronavirus facts from the USA and the world till the US-China trade deal was signed. Above all, China's 5G connections are also dubitable for questioning that why China turned on some of its 5G networks. To speak about speculations China can figuratively drown itself in them.

Considering the aforesaid information about the virus that wreaked havoc and continue to do so in an alarming rate seems to hinder not only the normal lifestyle of the people but also contracts and span of businesses, while some can be amiably solved and sorted, others are highly under pressure of this formidable force and demand litigation. Whether China is the culprit behind the spread of the virus is an indubitable and highly ambiguous question. Whereas, the spread of virus certainly disrupted the functioning of society also looking on the bright side our earth is healing with harming human activities at halt.

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A TRUE HERO

- By Nishtha Agrawal, Assistant Professor, UWSL

What makes a man a hero?
I've often thought this through.
It's someone who is macho?
It's someone who is true?

No, that is not a hero.
He's just a simple man.
Always there when things go wrong
and who does the best he can.

He lends a strong shoulder
To ease the flow of tears
He holds high the lantern
To drive away your fears.

His smile was just enough
To give encouragement.
His frown more than adequate
To make one soon relent.

When some had need of guidance
His ears he'd freely lend
Advice came in abundance
You chose, not him could you offend.

He had no need of medals
Or glory this is true.
That's why, dear Grandpa
Our hero has to be you.



DELEGATED LEGISLATION IN INDIA

- By Dr. Sanjay Kumar Pandey, Associate Professor & Director CCJR, UWSL

Delegated legislation in India is generally expressed as statutory rules and orders, but expressions like ‘regulations’, ‘notifications’, ‘bye-laws’, ‘schemes’, ‘directions’ etc. are also employed in the same context. A great deal of legislation takes place outside the legislature i.e., in government departments. There is no such general power granted to the executive to make law. It only supplements the law under the authority of the legislature. This type of activity has been described as delegated legislation. The question that arises in the study of delegated legislation is whether a legislature can delegate its law-making power to other agencies. In order to examine this question properly a reference to the provisions of the Indian Constitution becomes necessary. Article 245 and 246 provide that the legislative power shall be discharged by the Parliament and the State Legislatures. There is nothing in the Constitution whereby it can be inferred that the Legislature cannot delegate its legislative power to anybody else. But it does not mean that power of legislation includes the power of delegation. In the Constitution itself we find several provisions where the Executive heads, i.e. the President and the Governors of the different States have been empowered to make laws under certain conditions, for instance, when the Parliament or State Legislatures are not in sessions. During the President’s rule in any State the Executive has been authorised to make laws for the State. It is clear from these provisions that it was not the intention of Constitution-makers that the legislative functions should be carried out by the Legislatures only. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the Constitution. Secondly, Article 13(3) of the Constitution of India lays down that “law” includes any ordinances, order, bye-law, rule, regulation, notification etc.

which if found in violation of fundamental rights would be void. It is well settled that the rules, regulations, bye-laws etc. are not made by the legislature but by the agencies other than the legislature, namely, the Executive and local bodies, under the delegated authority. It thus makes clear that our Constitution indirectly envisages the delegation of legislative functions to the executive to a limited extent. Besides, there are a number of judicial pronouncements by the Courts where they have justified delegated legislation. In *re Delhi Laws Act Case*, AIR 1951 SC 332, the Supreme Court observed that the complexities of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and give wide powers to various authorities on suitable occasions. Delegated legislation has become a present day necessity, and it has come to stay-it is both inevitable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the legislative details and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state broad principles and leave the details to be worked out by those who are more familiar with the subject. Again when complex schemes of reforms are to be subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is made. Now it is well settled principle that the legislatures can delegate their powers to the executive without violating any provisions of the constitution.



IMPACT OF COVID-19 ON REAL ESTATE

- By Arti Modi, Batch 2019-24, UWSL

The COVID-19 pandemic is now a truly global phenomenon with 2.6 billion people (a third of the world's population) now living under some sort of lockdown quarantine. The short-term human and economic impact is undeniable as people stay home, offices and shops close, and production stalls. Once the risk to human life has reduced and steps are taken back toward a fully productive economy, it is worth spending some time envisaging what this 'new normal' might look like. China is offering us some visibility on what this might be.

The current lockdown has brought the industry to a standstill position and the recovery curve will depend on the fiscal stimulus rolled out by the government. The ongoing Covid-19 outbreak and its impact on economy have pushed sentiment in real estate to its all-time lowest level in the quarter ended March. Both residential and commercial real estate sectors are expected to be hit in term of launches, sales and prices, showed a knight frank India survey. The residential sector which already had concerns of weak demand will find it difficult to launch new projects and complete the ongoing ones due to construction halts and labour shortage.

The level of uncertainty in the economy is currently at an all-time high with the trajectory of the recovery difficult to forecast. Although there has been no global joined-up policy response, individual countries have taken major steps to try to cushion their people and economies through this difficult period. We look to the economic outlook and policy steps, but would advise against putting too much weight on a specific-point forecast until the future pathway becomes clearer.

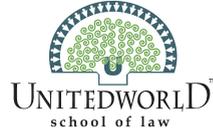


India, where the economic growth is already set to slow down to a record 11-year-low, a prolonged lockdown, which started from March 25, 2020 and has been extended till May 30, 2020, would further worsen the situation in Asia's third-largest economy. Note here that the lockdown in India is now in its fourth phase amid a dramatic rise in the number of infections. As on May 25, nearly 1.40 lakh Coronavirus infections were reported in India.

While the short-term negative impact of the pandemic on sales and launches cannot be negated, we expect the various support measures announced by the government and the RBI to yield positive results in the medium-term. Also, the lockdown is likely to bring about a major change in consumer behaviour, going forward. There already are early indications of this. While physical site visits to properties have stopped completely, online searches, as well as online bookings of apartments continue to take place. The adoption of digital platforms is likely to go up in the coming months. Much like mobile phone manufacturers that launch new products on a digital platform before a launch on traditional offline channels, we believe several real estate firms, particularly the reputed names, will adopt a similar strategy in the coming weeks and beyond. While, there will be a big question mark on the survival of the less renowned entities will arise because they have yet to prove their metal and establish trust amongst the buyers.

In the current age of economic crisis, where people are fired from their jobs and startups are losing their confidence in continuing business due to fear of meeting with the expenses, more chances of ongoing booking cancellations or late payment fashion will arise which will be massacre for the ongoing real estate projects. The developers in the same scenario will find it difficult to complete the project due to lack of funds which will compel them to either obtain more and more financial facilities or to release their units for cheaper rates which will turn into a demotivating game for the small players, whereas it will turn into a paradise for the opportunist community who are having enough cash in hands.

There is a well established rule of economy that a business man never gives up putting efforts and will never prefer to see his boat sinking at the bank of river. Considering this rule absolute a standstill hope will always be there that likewise every segment, the Real Estate segment will also maintain its glory with a fantastic come back.



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