

ACT OF GOD IN INDIA- COLONIALITY, SCIENCE AND LAW

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The authors argue that the defence of the ‘act of god’ has become redundant in India in the wake of climate change. The defence of ‘act of god’ is of colonial origin, where it was and still is used to include a wide variety of events and incidents. It is used to establish a distinction between ‘natural’ and ‘man-made’ events in law. It can be traced to theological origins rather than scientific origins, thus limiting the application of this doctrine in the 21st century. When the British colonised India, they left traces of their colonial practice. The understanding of the ‘act of god’ in the legal diaspora still lingers, defining our realities for natural and man-made occurrences of events. The 21st century, with emerging science and changing geographies, has tipped the general understanding of ‘natural’ and ‘man-made’, thus requiring us to question the existence of the defence and its relevance. With climate change and COVID-19, science has been defining the legal realities of the 21st century, making the defence of ‘act of god’ seem redundant.

I. INTRODUCTION

In the wake of climate change, scholars have argued that the defence of ‘act of god’ has lost its relevance.¹ The science of climate change evolved slowly in the 20th century, only becoming relevant after the 1980s when the Intergovernmental Panel on Climate Change (‘IPCC’) was established as a body that brings out not only scientifically accepted but also politically consensual science on climate change.² With the release of the sixth assessment report by IPCC, rising global temperatures seem inevitable and are likely to also contribute to an increase in

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¹ Kenneth Kristl, ‘Diminishing the Divine: Climate Change and the Act of God Defense’ (2010) 15 *Widener LR* 325 <<https://ssrn.com/abstract=1375115>> accessed 26 May 2024.

² Silke Beck & Martin Mahony, ‘The IPCC and the New Map of Science and Politics’ (2018) 9(6) *WIREs Climate Change* <<https://wires.onlinelibrary.wiley.com/doi/epdf/10.1002/wcc.547>> accessed 26 May 2024.

extreme weather events, disasters, etc., which can be witnessed from the present unpredictable weather and global warming.³

Mr. Peter D. Burdon, in his recently published article, argues that while we are living in the 'Anthropocene' - the age of man, "*earth systems science undermines many versions of ecological integrity found in legislation around the world.*"⁴ Scientists agree that two points in history can be said to mark the beginning of the age of man.⁵ The first such point would be in the year 1610, which is known to mark the emergence of the modern colonial world, the rise in atmospheric carbon dioxide and the cross-continental movement of plant and animal life.⁶ The second point would be in the year 1964, which marks a significant increase in human numbers, an era of industrialisation, a shift in natural processes and development and ignorance of pollutants.⁷ This implies that humans took over the earth's processes and went beyond, taking over by accelerating these processes. An example to reflect the same would be that earlier butterflies and bees were responsible for pollination that occurred at a pace which did not have long-term negative repercussions; however, now human-led cross-pollination and fertilisation have both positive and negative effects. These scientific assertions have led us to conclude that human interference is guiding the Earth's processes more than ever.

With this background, the authors analyse the historical origins and current application of the 'act of god' in India. The paper begins with the origins of the 'act of god' under the British-Christian rulers, who promulgated this as a theological doctrine. The second part of the paper discusses what has changed in the world since the theological inception of the doctrine till today, i.e., the 21st century. This part of the paper lays out how humans and science have guided the development of laws, especially in the context of disasters, natural hazards and related environmental phenomena. The third part of the paper then lays out the colonial origins of the doctrine of 'act of god' in India, especially the way it exists today. The part further benefits from a critical analysis of the Indian legislature and the current judicial understanding of the 'Act of God'. The final part of the paper concludes that the current understanding of the 'act of god' has become redundant, especially in the context of climate change and the Anthropocene that we are living in.

³ Intergovernmental Panel on Climate Change (IPCC) 2023, 'Summary for Policymakers' in Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (H. Lee and J. Romero eds) (IPCC, Geneva, Switzerland 2023) 1-34, 4 <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf> accessed 26 May 2024.

⁴ Peter D Burdon, 'Ecological Law in the Anthropocene' (2020) 11(1-2) Transnational Legal Theory 33-46 <<https://doi.org/10.1080/20414005.2020.1748483>> accessed 26 May 2024.

⁵ Anna Grear, 'Legal Imaginaries and the Anthropocene: 'Of' and 'For' (2020) 31 Law and Critique 351-366 <<https://doi.org/10.1007/s10978-020-09275-7>> accessed 26 May 2024.

⁶ *ibid.*

⁷ *ibid.*

II. HOW DID THE DEFENCE OF ‘ACT OF GOD’ BECOME A WELL-FORMULATED LAW?

The understanding of the term ‘act of god’ developed in India and around the world during the era of British colonisation and after independence from colonisation until the 20th century. In the 20th century, the United States Legislative Assembly used terms like ‘economic act of god’ and the act of god like an earthquake,⁸ majorly contextualising and equating the understanding of act of god with unforeseeable events.⁹ However, before the British imposed this doctrine, they looked at it as a theological defence. However, with advancements in science, the doctrine started to gain a basis in scientific literature, too. This section draws from the theological and scientific basis of the origin and development of this doctrine.

A. THEOLOGICAL ROOTS OF THE ‘ACT OF GOD’

The general understanding is that the concept of ‘act of god’ can be traced to the Roman Empire, where the doctrine was known through vis major and existed alongside force majeure.¹⁰ It was initially linked to the ‘will of god’ and what god intended to put out.¹¹ It was widely used by Christian colonisers in their colonies. For example, the Spanish Christian colonisers used the will of god and acts of god sporadically in the Philippines.¹² In his work, Camba highlights linkages between religion, disaster, and Colonial Power in the Spanish Philippines in the sixteenth to seventeenth centuries when the Philippines was colonised and ruled by the Spanish Christians.¹³ He indicated that disasters on non-Christians were linked with God’s will in order to punish those who do not embrace Christianity as a religion.¹⁴ The colonisers used the understanding of the act of god to also not provide benefits to the vulnerable communities in cases of disasters. The Spanish Christians used it to defend the coloniser’s unwillingness to help or assist the non-Christians during the crisis. In 1968, Gordon Kaufman dis-

⁸ U.S. Congress, Legislative History of the Trade and International Economic Policy Reform Act of 1987, 100th Congress, Veto of H.R. 3 (1987).

⁹ 5 Legislative History of the Omnibus Trade and Competitiveness Act of 1988 P.L. 100-418 1 (1988); Bernard D. Reams and Mary Ann Nelson, ‘Trade Reform Legislation 1988: A Legislative History of the Omnibus Trade and Competitive-ness Act of 1988’ (1991) 4 Pub. L. No. 100-418 1 (USA).

¹⁰ Hermann Loimer, Mag Dr Iur and Michael Guarnieri, ‘Accidents and Act of God: A History of the terms’ (January 1996) 86(1) American Journal of Public Health 101-107 <<https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.86.1.101>> accessed 26 May 2024.

¹¹ *ibid.*

¹² A A Camba, ‘Religion, Disaster, and Colonial Power in the Spanish Philippines in the Sixteenth to Seventeenth Centuries’ (2012) 6(2) Journal for the Study of Religion, Nature & Culture 215-232 <10.1558/jsrnc.v6i2.215> accessed 26 May 2024.

¹³ *ibid.*

¹⁴ *ibid.*

cussed the biblical and theological understanding of the legal concept of ‘act of god.’¹⁵ In the theological review article, the author defined the ‘act of god’ as ‘an event which did not simply “happen”, but which was what it was because God did it.’¹⁶

Post the Industrial Revolution, the industrialists started blaming humans or workers for their industrial accidents instead of divinity or god.¹⁷ This implies that the Industrial Revolution marked human interference in systems more evidently, leading to a shift from attributing accidents from god to humans.¹⁸ One other probable reason for blaming humans or workers for the accidents in the industries can be linked to an industrial unwillingness to take the blame for any accident or unwillingness to compensate for the damages of the accident and find other entities that can then compensate for accidents or disasters. Our planet generally has been undergoing changes at a known speed and in a known way; however, these changes have been accelerated due to human interferences and actions, reducing divinity-related uncertainties and increasing human activity-related certainty.¹⁹ Human activities are always considered to be part of the Earth’s natural system. However, they have become more dominant in the twenty-first century than at any other time in the geological age of the Earth.²⁰

B. THE SCIENCE OF THE 21ST CENTURY

To this day, there is enough science and technology that has allowed us to develop this understanding that storms, lightning, and tempests can happen by an act of man, too, and should not be attributable to natural causes only.²¹ The activities of humans have been aggravating natural hazards and adverse effects of climatic phenomena.²² In fact, as Dellinger points out, ‘extreme weather has become the new normal.’²³ The same ‘act of god’ was unpredictable in earlier centuries,²⁴

¹⁵ G.D. Kaufman, ‘On the meaning of “Act of God”’ (1968) 61(2) *Harvard Theological Review* 175-201.

¹⁶ *ibid.*

¹⁷ Loimer (n 11.).

¹⁸ *ibid.*

¹⁹ Will Steffen, Johan Rockstrom and Robert Costanza, ‘How Defining Planetary Boundaries Can Transform Our Approach to Growth’ (2011) 2(3) *Solutions: For A Sustainable & Desirable Future* 59-65 <<https://thesolutionsjournal.com/how-defining-planetary-boundaries-can-transform-our-approach-to-growth/>> accessed 26 May 2024.

²⁰ Stephen F Foley and others, ‘The Palaeoanthropocene – The Beginnings of Anthropogenic Environmental Change’ (November 2013) 3 *Anthropocene* 83-88 <<https://www.sciencedirect.com/science/article/abs/pii/S2213305413000404>> accessed 26 May 2024.

²¹ Graham G Dodds, ‘“This Was No Act of God:” Disaster, Causality, and Politics’ (2015) 6 *Risks, Hazards & Crisis in Public Policy* 44-68 <<https://onlinelibrary.wiley.com/doi/epdf/10.1002/rhc3.12074>> accessed 08 June 2024.

²² *ibid.*

²³ Myanna Dellinger, ‘An “Act of God” —Rethinking Contractual Impracticability in an Era of Anthropogenic Climate Change’ (2016) 67 *Hastings LJ* 1551.

²⁴ *ibid.*

but today, due to developments in science, technologies and early warning systems concerning disasters, most extreme weather events can be predicted due to their patterns. The Intergovernmental Panel on Climate Change ('IPCC') has clarified the science in its report, which states human activity has led to an increase in greenhouse gas emissions since the pre-industrial times, which is exacerbated by economic reasons and population growth.²⁵ Today, climate change is widely known as the reason for extreme weather events and disasters.²⁶ Additionally, there are 8 billion people in the 21st century which means that there are more people than ever who are affected by disasters, making disasters very expensive.²⁷ Since the late 20th century, the relationship between science and law has become increasingly visible and recognised more often. Loimer acknowledged that legal authorities frequently note that science and the law take widely different views of similar facts. Science argues for rigorous studies to prove cause and effect, whereas the courts are ready and willing to compensate plaintiffs with much lower standards of proof.²⁸

Many scholars still do not agree with the discernment that there is nothing like natural disasters or acts of god in the context of disasters in the world today, as if all disasters are 'anthropogenic'; the recent Turkey-Syrian Earthquake cannot be explained away. The experts at Washington University have released the following initial assessment of the Turkey-Syrian Earthquake:

*"This region along the East Anatolian Fault has a well-known history of seismic activity, and it had been identified by Turkish emergency management as a place of high seismic hazard," Tobin said. "However, its known history does not include earthquakes of magnitude seven or above since seismometers existed to measure them, though historical records indicate earthquakes of up to magnitude 7.4 have occurred. The scale and size of this magnitude 7.8 quake and the one that followed are both larger than what was most likely anticipated. The fact that there was a second large and damaging quake, the magnitude, 7.5 that occurred about nine hours later, is not unprecedented globally, but is very uncommon, especially at this size."*²⁹

²⁵ IPCC 2013, 'Climate Change 2013: The Physical Science Basis' Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (TF Stocker and others eds) (Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA) 1535 <https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_all_final.pdf> accessed 26 May 2024.

²⁶ Dellinger (n 24).

²⁷ NASA, 'The "Nature" of the Problem: Population and Natural Disasters' (*NASA Earth Observatory*, 30 March 2005) <https://earthobservatory.nasa.gov/features/RisingCost/rising_cost2.php> accessed 26 May 2024.

²⁸ Loimer (n 11).

²⁹ UW News Staff, 'UW Experts Discuss the Earthquake in Turkey and Syria' (*University of Washington*, 9 February 2023) <<https://www.washington.edu/news/2023/02/09/>

The Turkey-Syrian Earthquake might not have been a disaster if human settlements in the area had been almost negligible. The United Nations report concerning disasters has claimed that disasters are all man-made in their form because the elements of disasters are linked with damage to human life, property, and infrastructure and rarely with damages to imply other living organisms like plants or animals. A storm of high intensity in Antarctica will not be a disaster. However, a storm of similar intensity in the Arctic can be characterised as a disaster because of damage to humans and things important to humans. Any event that challenges the capacity of humans to cope with the adverse effects of that event³⁰ is called a disaster, regardless of elements of divinity or humans within it.

C. INITIAL VIEW OF COURTS ON 'ACT OF GOD'

The Courts initially produced different and contrarian views depicting the meaning of the term act of god. The phrase 'act of god' dates at least to the sixteenth-century case, *Wolfe v Shelley*, which found that the death of a party to the contract made performance impossible due to an 'act of god'.³¹ As the law concerning the 'act of god' developed, there were times when the English Courts refused to accept claims concerning the 'act of god',³² and defined the 'act of god' as 'an extraordinary event that could have been neither predicted nor prevented'.³³ The term 'act of god' brings out the divinity or naturality attached to an act over which there is no control or contribution of humans.³⁴ The narrative that crisis and disasters are 'act of god' with no or little role of human agency is an effective tool of creating moral judgements,³⁵ that may be completely disconnected from causation by humans. Additionally, the understanding that disasters are naturally an 'act of god' and that humans have no role in such natural disasters has the consequence of people not expecting or demanding affirmative state action for protection from disasters.³⁶ For example, in the Philippines, the continuous assertion that those who do not follow the Christian god are suffering and being punished through acts of gods and disasters was a narrative that prevented the

uw-experts-discuss-the-earthquake-in-turkey-and-syria/#:~:text=The%20scale%20and%20size%20of,uncommon%2C%20especially%20at%20this%20size.> accessed 26 May 2024.

³⁰ United Nations Office for Disaster Risk Reduction (UNDRR), 'Disaster' in Sendai Framework Terminology on Disaster Risk Reduction 2015-2030 < <https://www.undrr.org/terminology/disaster#:~:text=A%20serious%20disruption%20of%20the,and%20environmental%20losses%20and%20impacts.>> accessed 30 May 2024.

³¹ David A. Smith, 'Was There a Rule in Shelley's Case?' (2009) 30(1) The Journal of Legal History 53-70 <10.1080/01440360902765449> accessed 26 May 2024.

³² *Halsbury's Laws of England* vol 9 (4th edn, 1974), 323-324.

³³ CG Hall, 'An Unsearchable Providence: The Lawyer's Concept of Act of God' (1993) 13 Oxford J Leg Stud 227-248.

³⁴ Kaufman (n 16).

³⁵ Z T Kamwendo, 'Resistance to Narratives of the Covid-19 Pandemic as an Act of God' (2021) 56(4) Zygon 1110-1129 <<https://doi.org/10.1111/zygo.12732>> accessed on 26 May 2024.

³⁶ EW Lutzer, *An Act of God?: Answers to Tough Questions about God's Role in Natural Disasters* (Tyndale House Publishers, Inc. 2011).

people from demanding affirmative state action.³⁷ Dodds contends in his article that humans hold causality, god, religion, nature, science, humanity and politics responsible for disasters, and this understanding is evolving, making the premise of ‘act of god’ increasingly archaic and irrelevant in modern jurisprudence.³⁸

The advent of the 19th century marked the development of the concept of the ‘act of god’ largely through judicial decisions. Its traces can be found in the legal maxim ‘*actus dei nemini facit injuriam*’, which simply means ‘an act of god causes legal injury to no one’.³⁹ In *Forward v Pittard*,⁴⁰ Lord Mansfield observed that,

“Now, what is an act of God? I consider it to mean something in opposition to the act of man: for everything is the act of god that happens by his permission; everything by his knowledge..... act as could not happen by the intervention of man, as storms, lightning and tempest.”⁴¹

Lord Mansfield further observed that “By the act of God is meant a natural, not merely an inevitable accident.”⁴² Hence, the best suitable example from Lord Mansfield’s point of view would be that, on a stormy day, the wind drove one vessel against another without any negligence of the captains of either vessel, that would qualify as an act of God since it was an accident arising from natural causes.⁴³ In *Amies v Stevens*, the defendant’s boat loaded with the plaintiff’s goods, in coming through a bridge, was driven by a sudden gust of wind against it and sunk in consequence of a shock, which a stronger vessel might have sustained without sinking. The Judge observed that the ‘defendant was not answerable, the damage being occasioned by the act of god.’⁴⁴

In Abbot on Shipping ‘The expression “act of god” denotes natural accidents, such as lightning, earthquake, and tempest, and not accidents arising from the negligence of man.’ In *Colt v M’ Mechen*, where a vessel was beating up the Hudson against a light and variable wind, and being near shore and while

³⁷ United Nations Office for Disaster Risk Reduction (UNDRR), ‘Disaster’ in Sendai Framework Terminology on Disaster Risk Reduction 2015-2030 < <https://www.undrr.org/terminology/disaster#:~:text=A%20serious%20disruption%20of%20the,environmental%20losses%20and%20impacts.>> accessed 30 May 2024; See United Nations Office for Outer Space Affairs, ‘Disaster Management’ <<https://www.unoosa.org/oosa/en/ourwork/topics/disaster-management.html>> accessed 30 May 2024.

³⁸ G G Dodds, ‘This was no Act of God: Disaster, Causality, and Politics’ (2015) 6(1) Risk, Hazards & Crisis in Public Policy 44-68 <https://www.researchgate.net/publication/281145674_This_Was_No_Act_of_God_Disaster_Causality_and_Politics> accessed 26 May 2024.

³⁹ Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edn, 1990) 36.

⁴⁰ *Forward v Pittard* (1785) 1 TR 27 (KB).

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *Amies v Stevens* (1718) 1 Stra 127.

⁴⁴ *ibid.*

changing her track, the wind suddenly failed, in consequence of which she ran aground and sunk; and that was held a loss by the act of god.⁴⁵ The case found nothing unusual in the state of the wind or tide. Weather which would not be tempestuous for one vessel might be tempestuous for another. Again, at what particular point does a tempest begin? The correct criterion is, whether the damage has arisen from natural causes and without any negligence on the part of the carrier.

The 'act of god' means something overwhelming and not merely an accidental circumstance.⁴⁶ American legal reference defined an 'act of god' as any accident, due directly and exclusively to natural causes without human intervention, which [could not] have been prevented.⁴⁷ The defence of the act of god found a value in eroding the application of strict liability in disaster situations like flooding in *Rylands v Fletcher*.⁴⁸ The understanding of the case allowed for exceptions and fault liabilities under the law.⁴⁹ Hence, from the above decisions, the Courts were attempting to explore possibilities as well as understand what could exactly be an Act of God.

III. HOW DID THE LAW EVOLVE IN INDIA?

This section of the paper traces historical and current codified and judicial provisions on the Act of God. The evolution of Indian laws has emerged from the influence of colonial rule. A majority of the laws were introduced within the Indian jurisdiction after the 1850s, indicating colonial influence in the laws. Certain traces of colonial influences are visible in the way the principle of the act of god originated and developed in India. Similarly, the Courts in India have also played an important role in the interpretation and understanding of this doctrine. In India, too, *Rylands v Fletcher* has been discussed at length to discuss laws concerning disasters and the 'act of god'.⁵⁰ The rule in *Rylands v Fletcher* also led to the development of liability doctrines in India, which led to the creation of absolute liability, also known as no-fault liability.⁵¹ The 'act of god' doctrine, however, found its roots in India, during the British colonial era, within codified legislation and rules. This section of the paper analyses the origin and evolution of the term act of god and whether the initial colonial meaning has been shaped as per the environmental standards within the country.

⁴⁵ *Colt v M' Mechen* (6 John's R 160), p 314.

⁴⁶ Steinberg, Theodore, *Acts of God: The Unnatural History of Natural Disaster in America* (Oxford University Press 2006).

⁴⁷ Arnold O Ginnow and Milorad Nikolic, *Corpus Juris Secundum: A Contemporary Statement of American Law as Derived from Reported Cases and Legislation* vol 2 (West Publishing Co, 1985).

⁴⁸ *Rylands v Fletcher* (1868) 3 HL 330.

⁴⁹ Hall (n 34).

⁵⁰ M.C. Mehta v *Union of India* (1986) 2 SCC 176 : AIR 1987 SC 965 (IND).

⁵¹ Vidisha Rana, 'Strict Liability v Absolute Liability' (2020) 20 Supremo Amicus 596 <<https://supremoamicus.org/wp-content/uploads/2020/09/A1v20-65.pdf>> accessed 26 May 2024.

A. ACT OF GOD IN CODIFIED INDIAN LAW

The term ‘act of god’ was used in Indian law by the British in their colonial legislation and rules. A majority of legislation that includes this phrase is concerned with the transportation of goods or any kind of movement that might bring liability to government-owned corporations. The Railways Act, 1989,⁵² under Section 93, sets forth the rule that ‘a railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or non-delivery of any consignment, arising from any cause except (a) act of God;’ amongst other things. In furtherance, under Section 111(1) of the Railways Act, the extent of liability of Railway administration with respect to accidents at sea is discussed. It states that ‘When a railway administration contracts to carry passengers or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to goods which may happen during the carriage by sea from act of God,... the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1958, if the ships were registered under that Act and the railway administration were owner of the ship and not to any greater extent.’

The burden of proof for any such loss, injury or damage due to an act of god would lie upon the railway administration as laid down under Section 111(2) of the Railways Act. The Railway Act, 1989, was amended twice in 1989 and 2003 to replace the colonial essence of the 1890 Act. However, the abovementioned sections have not been replaced and still follow the same contours of the ‘act of god’ as a defence.

Similarly, under the Motor Transport Workers Act, 1961,⁵³ within Section 13, an Adult motor transport worker is allowed to work more than Eight hours a day and Forty-Eight hours per week in the event of an act of god. Under the Mines Act, 1952, Section 38,⁵⁴ there is an exemption from employment provision. The provision sets forth that “In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, or in case of an accident, whether actual or apprehended or in case of any act of god or in case of any urgent work to be done to machinery, plant or equipment of the mine as the result of the breakdown of such machinery plant or equipment, the manager may... permit persons to be employed...”.

⁵² Indian Railways Act 1890 (Replaced hereby Indian Railways Act 1989) (IND).

⁵³ Motor Transport Workers Act 1961, s 13 (IND).

⁵⁴ Mines Act 1952, s 38 (Amended Mines Act of 1901) (IND).

There are other legislations that consider the acts of god as a legitimate defence. For example, The Carriage by Road Act, 2007,⁵⁵ exempts common carriers from 'the loss, destruction, damage or deterioration in transit or non-delivery of any consignment entrusted to him for carriage,' if the loss is attributable to 'act of god'. The Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010,⁵⁶ also a colonial legislation, uses acts of god as '... acts of God, natural phenomena, floods, droughts, earthquakes and epidemics.'

The use of the phrase act of god is along with natural phenomena, floods, droughts, earthquakes and epidemics. This particular provision on the 'act of god' is different from other provisions because the plain reading of this provision tells us that the act of god is different from other indicators in this rule. This further leads us to ask if all the indicators mentioned in the provision are to be considered separate indicators, then what does 'act of god' mean?

Similarly, the Petroleum and Natural Gas Rules, 1959,⁵⁷ Section 21, which sets forth a rule concerning the cancellation of licences and leases, states that 'force majeure' includes an act of God, war, insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake, and any other happening which the licensee or the lessee could not reasonably prevent or control."

Similarly, Section 59 in The Petroleum Concession Rules, 1949,⁵⁸ states that 'force majeure.—Failure on the part of a licensee or lessee to fulfil any of the terms and conditions of his licence or lease shall not give the Central Government any claim against the licensee or lessee or be deemed a breach of the licence or lease on so far as such failure arises from force majeure, and if through force majeure the fulfilment by the licensee or lessee or any of the terms and conditions of his licence or lease be delayed, the period of such delay shall be added to the period fixed by the licence or lease. Explanation—This expression force majeure, an act of god, war, insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake, and any other happening which the licensee or lessee could not reasonably prevent or control.'

The Schedule Rules in The Indian Carriage of Goods by Sea Act, 1925,⁵⁹ also separate acts of god with perils, dangers and accidents of the sea or other navigable waters, i.e., from generally understood Acts of God factors. These definitions that equate the 'act of god' with other natural phenomena lead to a

⁵⁵ Carriage by Road Act 2007 (Amended the Carriers Act 1865 <<https://jtrtransport.gov.in/pdf/note-on-carriage-by-road-act-and-implementation-status.pdf>>) (IND.).

⁵⁶ Central Electricity Regulatory Commission Indian Electricity Grid Code Regulations 2010 (IND.).

⁵⁷ Petroleum Concession Rules 1949, s 21 (IND.).

⁵⁸ Petroleum Concession Rules 1949, s 59 (IND.).

⁵⁹ The Indian Carriage of Goods by Sea Act 1925, Schedule Rules (IND.).

conflicting understanding of this phrase, especially when read with the judicial interpretation of this term, which is discussed in the next section. Overall, the doctrine remains overshadowed by colonial legislation, largely codified and adopted during the British Colonial Era. The interpretation and application of this doctrine has, however, evolved with the advancement in scientific and technological understanding of issues and meteorological phenomenon and also due to the usage of scientific experts by the judicial bodies when interpreting the doctrine. This is discussed in the next section. Additionally, a theological understanding can also be assumed due to the theological connection of the origins of this doctrine. In the wake of climate change, where disasters like floods and storms are being continuously linked to climate change and are becoming the face of climate change,⁶⁰ the existing conventional and textbook understanding of these legislations will not work out in many cases.

From the abovementioned, it can be observed that the Legislations, statutes, rules and other notifications enacted by the Legislators in India reveal three distinct trends in the way the 'act of god' is dealt with. *Firstly*, 'act of god' has been seen to be kept as deliberately disjunctive from other natural disasters by the usage of the word 'or',⁶¹ and this clearly indicates that the other calamities mentioned will not be encompassed within the definition of 'act of god'. The Legislation, although an attempt to narrow down the scope, fails to explain the ambit of the phrase 'act of god' and in what instances the act of god as a liability would be levied.

Secondly, in a majority of notifications, it is clearly defined, with a definition that majorly encompasses any natural calamities such as drought, cyclones, lightning. For example, a notification released by the Ministry of Finance in 2020 stated that — "*A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause).*"⁶²

Thirdly, in some notifications, it is not clearly defined at all and is merely mentioned as a circumstance in addition to such disasters. In such cases, it is difficult to see whether the 'act of god' is to be read in conjunction with or as disjunct from the same. In case it is to be read as disjunct, there is no definite understanding of the interpretation of the same. An example of this can be seen

⁶⁰ Mark Croswell and Petra Tschakert, 'Climate change and disasters: The ethics of leadership' (2020) 11(2) Wiley Interdisciplinary Reviews: Climate Change 624 <<https://doi.org/10.1002/wcc.624>> accessed 26 May 2024.

⁶¹ Chhattisgarh Food Security Act 2012, s 33 (IND).

⁶² Ministry of Finance, *Office Memorandum No. F.18/4/2020-PPD*, 19 February 2020 <https://doe.gov.in/files/circulars_document/FMC.pdf> accessed 26 May 2024.

in a notification released by the Ministry of Power that stated, “Any of the events or circumstances, or combination of events and circumstances such as an act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.”⁶³

The common element of these three trends is the binding colonial origins of either the doctrine or the legislation itself. The embodiment of the Act of God within the legislation parlance of India has come from the Colonial Rule, which was further interpreted under the English common law. The same can be witnessed from the legislations introduced during the colonial times, and how they still suffer with the same laws with a mere provision of Act of God, but failure to actually expand the meaning of Act of God. Further, the legislations have, over the years, despite so much scientific progress, failed to provide information on when the Act of God would come into play. The legislation has not set any criteria for appointing scientific experts who could assist the courts in determining the act of god.

B. ‘ACT OF GOD’ AS INTERPRETED BY THE COURTS IN INDIA

Under the Indian context, in juxtaposition to the decisions of the English courts, the Indian courts have not delivered a definite rule as to the inclusion of a disease or a pandemic as an act of god. Over the years, the Courts have explored different possibilities to clearly define and understand the terminology of act of god.

Manindra Nath Mukherjee v Mathuradas Chhatturbhuj, was the first attempt by the Indian Courts to analyse an act of god from a more scientific point of view. In 1945, the Court adjudicated a dispute concerning damages from the fall of a roof due to winds.⁶⁴ In this case, the Court invited scientific experts to testify if the wind was of high intensity when the damage happened so that the fall could be characterised as an act of god.⁶⁵ The expert, however, testified that the wind was moderate and a common phenomenon during the monsoon time of the accident. The judge also supported the view of the scientific expert and ruled that it wasn’t an act of God but the negligence of the wrongdoer that caused the fall of the road and, hence, the damage.

⁶³ Ministry of Power, *Notification No. 23/25/2011-R&R (Vol-III)*, 30 March 2016 <https://powermin.gov.in/sites/default/files/uploads/2_I_Guidelines_for_procurement_for_power_for_short_term_issued%20by%20MOP%20on%2030th%20March%202016.pdf> accessed 26 May 2024.

⁶⁴ *Manindra Nath Mukherjee v Mathuradas Chhatturbhuj* 1945 SCC OnLine Cal 216 : AIR 1946 Cal 175 (IND).

⁶⁵ *ibid*.

In a 1954 Case, the Indian court discussed the ‘act of god’ doctrine in detail.⁶⁶ The Court equated ‘act of god’ with *vis major* and *damnum fatale* - a Scottish Law doctrine defined by Lord Westbury in *Tennent v Earl of Glasgow*.⁶⁷ To be an ‘act of god’, the occurrence in question must be due to natural causes exclusively, of an extraordinary nature, and such that it could not be anticipated or provided against, such as an accident caused by the burst of a tyre due to no fault of the driver.⁶⁸ A bank took the defence of ‘high-velocity wind’ as an act of god and reason that caused the fall of their signboard and consequent injury to the defendant.⁶⁹ Court held: “*It was an act of God and, hence, it could not be held guilty of having committed a tort of negligence.*”⁷⁰ Both the above cases do not use ‘force majeure’ as a defence but ‘act of god’.

One of the popular cases where an ‘act of god’ was discussed briefly was the Oleum Gas Leak case, which discusses differences between fault and no-fault liability in cases of ultra-hazardous and extremely dangerous activities or substances.⁷¹ If the rule of *Rylands v Fletcher* was applied to the specific situation of dangerous substances, and if the escape of the dangerous substances happened due to an act of god, then the person possessing the dangerous substance can be exempted from liability. This rule of *Rylands v Fletcher* received a judicially pronounced proviso, which said that even in cases of act of god, liability can’t be escaped if the entity engages in inherently dangerous activities or ultra-hazardous activities in the Oleum case leak case.⁷² The Supreme Court of India held that:

*“the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity must be conducted with the highest standards of safety, and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm irrespective of the fact that the enterprise had taken all reasonable care and that the harm occurred without any negligence on its part.”*⁷³

The rationale behind this understanding is that any enterprise engaged in an activity is likely to cause massive harm to those in proximity to the same. For example, nuclear power activity is different from the massive water storage activity in *Rylands v Fletcher*. Due to this, the Civil Liability for Nuclear Damage Act of 2010 is “*An Act to provide for civil liability for nuclear damage and prompt compensation to the victims of a nuclear incident through a no-fault liability regime channelling liability to the operator, the appointment of Claims Commissioner, the*

⁶⁶ *State of Madras v I.S. and C. Machado* 1954 SCC OnLine Mad 389 : AIR 1955 Mad 519 (IND).

⁶⁷ *Hugh Tennent v Earl of Glasgow* (1864) 2 M (HL) 22.

⁶⁸ *Lal Bahadur v Ravi Singh* MACP No.5365/2016 (IND).

⁶⁹ *Bank of Baroda v Mahesh Gupta* 2022 SCC OnLine Del 4356 (IND).

⁷⁰ *ibid.*

⁷¹ *M.C. Mehta v Union of India* (1987) 1 SCC 395 : AIR 1987 1086 (IND).

⁷² *M.C. Mehta v Union Bank of India* (1986) 2 SCC 176 : AIR 1987 SC 965 (IND).

⁷³ *ibid.*

establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto.”

This implies that even if nuclear damage occurred within the territory of India due to acts of God or natural phenomena like floods, earthquakes, storms, etc., there would be no-fault liability. ‘Act of god’ can’t be claimed as an exception to be exempted from liability. This is not even covered within the umbrella jurisprudential doctrine of force majeure, which allegedly covers acts of God as an exemption from liability within the territory of India.

In *S. Vedantacharya v Highways Deptt. of South Arcot*, a public transport vehicle plunged into a stream because the culvert over which it was passing gave way.⁷⁴ The appellants who filed the suit are the parents of the deceased in this accident and claimed Twenty-five thousand rupees for the damages. The issue in this case was whether the collapse of the culvert was due to the downpour of heavy rain or was negligence of the Highways Department of the State of Tamil Nadu. The trial court held that the very collapse of the culvert raised a presumption of negligence on the part of the Highways Department of the government and awarded Rs. 9,100 as damages. The government of Tamil Nadu appealed to the High Court, and the appeal was accepted, stating that the culvert gave way because of the downpour of rain during the preceding week and the breach of a small tank upstream. This decision was appealed before the Supreme Court of India (SC). In brief, the SC relied on the report of an expert (Assistant Engineer), but the report itself did not supply any evidence of whether or not the necessary preventive measures had been taken in anticipation of rain and flood. Though the court does not mention the ‘act of god’, it is presumed that the determination of whether the collapse of the culvert was caused by rain and flood relates to the defence of the Act of God. In this case, the invocation of the ‘act of god’ fails because the report of the Assistant Engineer fails to disclose any preventive measures, even though the cause of action as per the report was the downpour of rain, floods, and the breach of a small tank upstream. Here, the SC relied on the fact that *first*, heavy rain and flood were within the contemplation of the Highway Department; *second*, the Department could, therefore, not be absolved unless they took the necessary preventive measures or anticipatory action to protect against such rain and flood. Therefore, the invocation of the act of god defence rests on two factors: *first*, whether or not that natural occurrence can be anticipated, and if the first question is answered in the affirmative, accordingly secondary, the preventive measures taken in anticipation of such a natural occurrence. Overall, the SC relied heavily on scientific evidence for this case.

The Apex Court’s decision in *Divisional Controller, KSRTC v Mahadeva Shetty*,⁷⁵ where stated that the expression ‘act of god’ signifies the operation of

⁷⁴ *S. Vedantacharya v Highways Deptt. of South Arcot* (1987) 3 SCC 400.

⁷⁵ *Divisional Controller, KSRTC v Mahadeva Shetty* (2003) 7 SCC 197.

natural forces free from human intervention with the caveat that every unexpected natural event does not operate as an excuse from liability if there is a reasonable possibility of anticipating their happening.

In *Transco Plc v Stockport Metropolitan Borough Council*, where an embankment collapsed due to the accumulation of water and its pressure, causing a gas man to be exposed, unsupported and a dangerous possibility that the gas main may crack.⁷⁶ The defence of the act of god was invoked by the respondents; however, it was not dealt with in any detail, considering that the court did not find the presence of something dangerous in the first place to invoke the rule in *Rylands v Fletcher*. However, the court referred to Reference was made to experts' reports that addressed the drainage of the disused embankment. However, this was not relied upon in dealing with the 'act of god' defence. In fact, the reference to the report was only made to allude to the different bases on which the initial case was argued.

In *Vohra Sadikbhai Rajakbhai v State of Gujarat*, a large amount of water was released from the public dam, which flooded the land of the appellants and destroyed the plantation thereon.⁷⁷ The respondents argued that the water had to be released from the dam as it reached an alarming level because of heavy rains, and non-release would have breached the dam. The action was taken in public interest and was occasioned by the rains, which were an 'act of god'. The appellants contended that it was sheer negligence for not maintaining a low level of water, keeping in mind the upcoming monsoon season. The act of god defence did not succeed, as the Court referred to reports and evidence by scientific experts and the meteorological department, who said they had scientific technology to predict the rain and its intensity. Scientific expertise played a significant role. Where the precise extent of rainfall could be predicted by the Meteorological Department, the court noted that the failure of the respondent to take anticipatory preventive action, keeping in mind such extent of rainfall, meant that the 'act of god' could not be invoked.

In *Srinagar Bandh Aapda Sangharsh Samiti v Alaknanda Hydro Power Co Ltd*, Samiti took up the issue of injuries to the citizens who suffered from damages caused by the floods in the area.⁷⁸ The respondents submitted that the catastrophe was an 'act of god' (para 6), and therefore, the respondents can't be held liable for the injuries to the people. The NGT rejected this argument (para 41). The Court cites the scientific evidence in this case and states that the government was well aware of the geological sensitivities of the area and 'Having regard

⁷⁶ *Transco Plc v Stockport Metropolitan Borough Council* (2004) 2 AC 1 : (2003) 3 WLR 1467 : 2003 UKHL 61.

⁷⁷ *Vohra Sadikbhaiss Rajakbhai v State of Gujarat* (2016) 12 SCC 1.

⁷⁸ *Srinagar Bandh Aapda Sangharsh Samiti v Alaknanda Hydropower Co Ltd* 2014 SCC OnLine NGT 1180.

to these known conditions, human foresight could have reasonably anticipated that laxity in taking timely protective measures such as slope dressing, terracing, tow walls covering the topsoil at the permanent much, disposal sites would prove disastrous to the environment' (para 40). The scientific expertise played a significant role in establishing causation between natural factors and the failure to take protective measures.

In *State of U.P. v McDowell and Co Ltd*, before the Supreme Court of India, an Indian Made Foreign Liquor of different brands was destroyed in a fire at a distiller, and the Company sought to recover the amount of excise duty lost by indicating that the fire possibly took place because of short circuit, and it was argued by the respondent that it was an 'inevitable accident'.⁷⁹ Inspection was conducted, and reports were prepared by the Deputy Excise Commissioner, the Fire Brigade Officer, and the Assistant Excise Commissioner, Rosa Distillery. The relevance of these reports was in determining the cause of the fire. However, they were not referred to specifically with respect to the contention that it was an 'act of god'. The Court analysed that the expression 'act of god' signifies the operation of natural force free from human intervention, such as lightning. It was held that in the present case, there was nothing related to the forces of nature, such as storms, floods, lightning, or earthquakes, that were in operation or had caused the fire. Further, when nothing of an external natural force had been in operation in a violent or sudden manner, the event of the fire in question could be anything but an act of God in legal parlance. Scientific reports were relied upon primarily to determine the cause of the fire and whether the Distiller or Excise Staff deputed by them were responsible for negligence. Despite there being no such indication of negligence, the case was not found to fall within the definition of an 'act of god' as no natural forces had been in operation in a violent or sudden manner, but the fire was likely caused by a short circuit in electricity.

These cases highlight a departure from the theological origins of the doctrine and a shift towards a more scientific understanding of the issues at hand. The Courts in India have frequently used scientific experts and science as a measure to decide if an event was an 'act of god'. This highlights that advancements in scientific understanding and the fact that events that could not be explained before, events whose causation could not be traced or proved with evidence before, have become more explainable and traceable. This implies that with the advancement of scientific understanding, it is becoming easier to study and prove the causation of events that were beyond explanation a few years ago. This also implies that the causation helps trace the human influence or human elements in cases of disasters, catastrophes and losses.

⁷⁹ *State of U.P. v McDowell and Co Ltd* (2022) 6 SCC 223.

IV. ACT OF GOD AND FORCE MAJEURE DURING AND AFTER COVID-19

COVID-19 emerged as a rare event that became central to the question that we are also looking at in this piece, i.e. “whether an event (for this section COVID-19) was an act of god?”⁸⁰ The Indian Courts also had to deal with this question. In *Assn of Diplomats of the National Board of Doctors v State of W.B.*, the Calcutta High Court equated the emergency posed by COVID-19 as an act of God or supervening impossibility.⁸¹ However, the Court did not use a scientific expert or scientific testimonies to make this assertion.

In *Polytech Trade Foundation v Union of India*, the Delhi High Court stated that Covid-19 was a *force majeure*.⁸² The Court said, “A Force majeure (FM) means extraordinary events or circumstances beyond human control such as an event described as an Act of God (like natural calamity).”⁸³ Through this, the Court clarified that the spread of Coronavirus should be considered as a case of natural calamity, and Force Majeure may be invoked. Similarly, in *Zee Entertainment Enterprises Ltd v Railtel Corpn of India Ltd*,⁸⁴ and *Halliburton Offshore Services Inc v Vedanta Ltd*,⁸⁵ it was observed by the Delhi High Court that the restrictions imposed under the outbreak of Covid-19 was a force majeure event and created special equities in favour of the parties. In all of these cases, a scientific assessment is needed to analyse whether COVID-19 was man-made or natural, an ‘act of god’. The Courts have, however, kept the event or catastrophe of COVID-19 within the larger umbrella doctrine of force majeure.

In the recent advisory opinion by the International Tribunal on the Law of the Sea, the Tribunal acknowledged that the issue of causation in individual cases claiming adverse effects of climate change remains a challenge.⁸⁶ This means that

⁸⁰ T Pieterse and C Landman, ‘Religious Views on the Origin and Meaning of COVID-2019’ (2021) 77(3) HTS Teologiese Studies/Theological Studies; Ketut KA Wijaya, Ni KA Styawati, and Gusti N Muliarta, ‘Maintaining the Harmony of Man, Nature and God during the Covid-19 Pandemic: Perspectives on Environmental Philosophy’ (2023) 3(2) European Journal of Development Studies 74-77; V Velikorossov and others, ‘The Russian COVID-19 Pandemic Takeaways: An Artificial Disaster, or a Man-Made Crisis?’ (2020) 12(4) International Journal of Pharmaceutical Research 4045 <<https://doi.org/10.31838/ijpr/2020.12.04.557>> accessed 26 May 2024; Pankaj Chaturvedi, Natarajan Ramalingam and Arjun Singh, ‘Is COVID-19 Man-Made?’ (2020) 3(2) Cancer Research, Statistics, and Treatment 284-286 <https://journals.lww.com/crst/fulltext/2020/03020/is_covid_19_man_made_.19.aspx> accessed 26 May 2024.

⁸¹ *Assn of Diplomat of National Board of Doctors v State of W.B.* 2021 SCC OnLine Cal 244 [16] (IND).

⁸² *Polytech Trade Foundation v Union of India* 2020 SCC OnLine Del 922.020.

⁸³ *ibid.*

⁸⁴ *Zee Entertainment Enterprises Ltd v Railtel Corpn of India Ltd*, 2021 SCC OnLine Del 5004.

⁸⁵ *Halliburton Offshore Services Inc v Vedanta Ltd*, 2020 SCC OnLine Del 2068.

⁸⁶ ITLOS Advisory Opinion, ‘Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law’ (21 May 2024) [252] <<https://>

while there is no doubt that greenhouse gas emissions have caused and continue to cause climate change, it is difficult to link the cause of a disaster as an adverse impact of climate change to specific sources of emissions.⁸⁷ In the event of climate change, the doctrine of the act of god will be looked into to understand if a particular weather event was caused by man or by god; in other words, was it anthropogenic or divine? In such cases, scientific analysis on a case-by-case basis will help evaluate the position.

V. CONCLUSION AND FUTURE OF THE DOCTRINE

It is clear that the 'act of god' as a doctrine has theological and colonial origins in the Indian legal system. Additionally, the doctrine is based on a larger umbrella defence of force majeure, which is generally used as a defence in cases that are rare and unpredictable and can originate in both natural and man-made causes. The doctrine emerged in India as a codified law from several colonial and British-era legislation. The substantial nature of this doctrine was interpreted and applied in India from a scientific lens during the British Colonial times. The advancement in science and technology allowed the judicial bodies to utilise scientific experts and testimonies to evaluate whether a particular weather anomaly or other event can be characterised as an act of God or not. The judicial interpretation and application of the Act of God doctrine is generally based on science and its advances. However, we also see cases where the court did not apply science, for example, the COVID-19 case and used the common-sense test to characterise the event of COVID-19 as an act of God event or a Force Majeure event. For example, in most COVID-19 cases, the Courts, instead of conducting a very scientific analysis of the issue, guided themselves on the common knowledge of the issue or, in other words, the common understanding of a man about the issue.

Regardless of this, future work before the judiciaries around the world will be to understand if anthropogenic factors and influence cause a particular weather event. If the event is not caused by anthropogenic activities, then it might be characterised as an act of God. If the event is disastrous and has affected the capacity of communities to cope, causing emergency situations, then the event may also be characterised as force majeure. Conclusively, the 'act of god' doctrine is becoming redundant as a defence.

www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf> accessed 26 May 2024.

⁸⁷ *ibid.*