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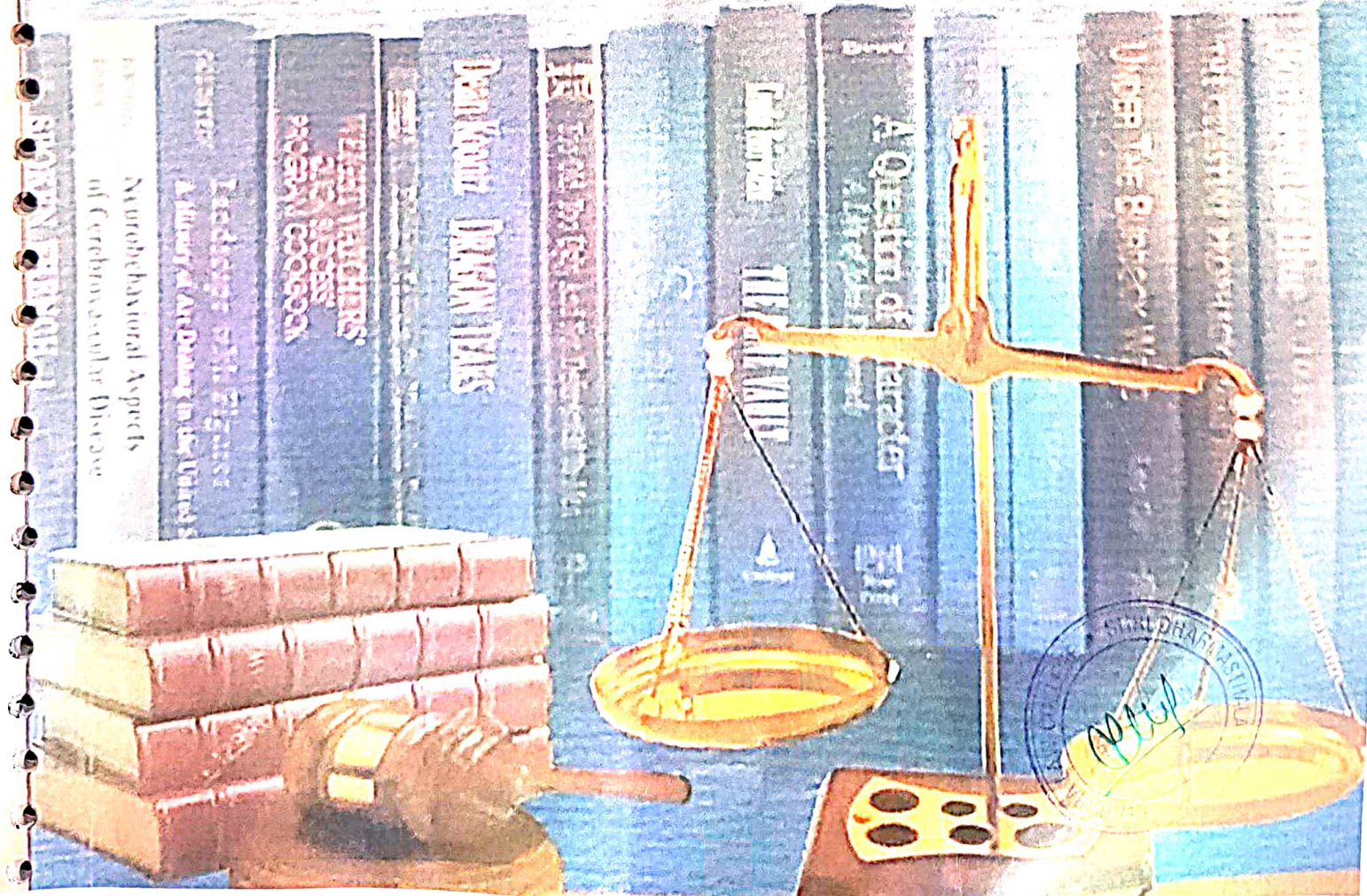
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# Legal Opus

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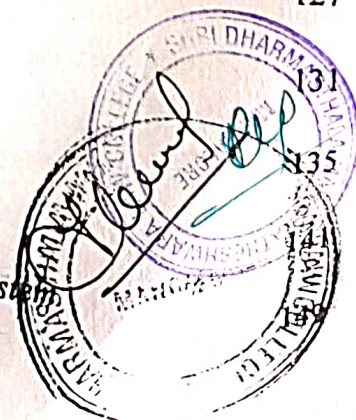


# LEGAL OPUS

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# RELEVANCE OF ACT OF GOD IN THE ERA OF HUMAN INDUCED NATURAL DISASTERS:

*'IT IS NOT AN ACT OF GOD, BUT A RESULT OF PURE HUMAN GREED'*

Mrs. Sarika Rai \*

## Abstract

*Act of God is an effective defence in Tort Laws for damage or loss suffered as consequences of natural disasters. The wrong doer can escape liability by pleading Vis Major or Act of God. It is based on the principle that man can be made liable only to damages caused by his actions and not to those factors which are beyond his control caused by the fury of nature like, Floods, incessant rains, hurricane, tsunami, earthquake etc. But the series of natural calamities occurring around the globe at unprecedented frequencies raises a question, if these are really Acts of God or whether mankind is responsible for the occurrences, if so how relevant is the defence of Act of God? This paper tries to examine the nexus between the natural occurrences and industrial developments creating and ecological imbalance, and the relevancy of denial of liability based on the justification of Act of God.*

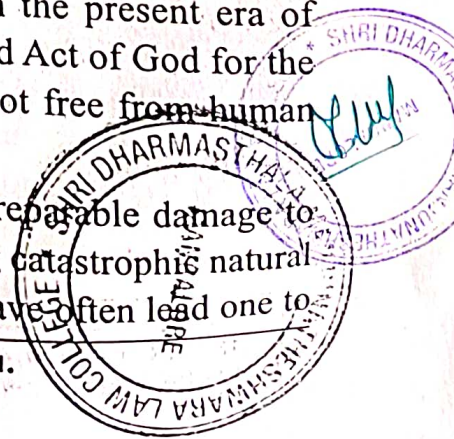
**Key Words:** *Natural Disaster, Liability, Act of God, Damage, Foreseeability.*

## Introduction

Act of God is an act caused by the forces of nature without the intervention of any human agency. The damages caused by flood, excessive rain, earthquake, landslides and such other natural calamities can be termed and blamed on Act of God. It is a general defence available against the damage caused by natural forces which is unforeseen and could not have been prevented by human agency. Act of God also known as Vis Major can be pleaded as defence in cases that are so extreme, that any human agency could not have foreseen or predicted it, as such event has never been occurred since time immemorial. The crucial question is, in the present era of industrialisation and modernisation is, how ethical it is to plead Act of God for the damages caused by natural calamities, when in reality it is not free from human influence?

The unscientific modern developments have led to serious irreparable damage to environment resulting in unpredictable climate change causing catastrophic natural calamities. The frequency in the occurrence of these events have often lead one to

\* Associate Professor, Dept. of LLM, SDM Law College, Mangaluru.

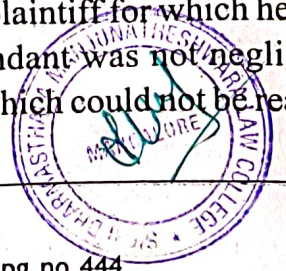


ponder over the fact, if these events are natural calamities or man-made disasters. The floods followed by landslides in Coorg and Kerala in the year 2018, the Tsunami that washed away tens and thousands of life and crores of property beginning from 2004 and subsequently, the floods of Uttarakhand, and extreme heavy rainfalls in Mumbai, Kerala, Karnataka that had thrown life haywire are a few instances of this common phenomena. Especially heavy rainfalls and the flooding in the cities causes havoc, leaving the people stranded for days together in water logged places without food, water, power and shelter is a common feature in the monsoons. The epidemics that spread rapidly after such disasters adds salt to injury. The death and loss of property as a result of these occurrences are conveniently blamed on the natural forces branding them as Act of God an easy way to escape the liability.

The fact that needs to be researched is that how far natural calamities are alone responsible for these mass disasters. The frequency of the occurrence of disaster at alarming rate, clearly indicates that man and his greed have destroyed the ecology to the extent causing imbalance in the eco system which naturally leads to such extreme calamities. The unscientific construction of roads, buildings and townships, deforestation, greenhouse gases, pollution causing global warming can be clearly cited as reason for these phenomena. As we explore the reasons for these disasters human agency emerges as the culprit solely responsible for these extreme factors. In this scenario when extensive damage results out of these human agencies sponsored calamities, it is indeed not appropriate to term them as Act of God, and consequently the plea of Act of God also become irrelevant. In this article the author attempts to explore the intervention of human agencies in divine forces triggering extreme consequences to life and property and why the defence of Act of God becomes irrelevant and should be looked upon by the courts in a new light. It also urges to think upon the State's liability in promoting developments in an unscientific manner without much thought to sustainable development, thereby making state also responsible for the cause and effect of natural disasters.

**What is Act of God? An analyses of the Defence of Vis Major / Act of God:**

The defence was recognised by Blackburn J. in Ryland v. Fletcher<sup>1</sup> and it was first applied in Nichols v. Marsland<sup>2</sup>. In this case the defendant for many years had been in possession of some artificial ornamental lakes formed by damming up a natural stream. An extraordinary rainfall, 'greater and more violent than any, within the memory of witnesses' broke down the artificial embankments and the rush of escaping water flushed away four bridges causing damage to the plaintiff for which he brought a suit against the defendant. The Jury found that defendant was not negligent and ought not to be liable for an extraordinary act of nature which could not be reasonably anticipated<sup>3</sup>.



1 1886, L.R. 1 Ex 265, 280

2 187, L.R. 10, Ex 255, 260

3 Winfield and Jolowicz on Tort, twelfth edition by W.V.H. Rogers. pg. no. 444

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However the House of Lords in *Greenock Corporation v. Caledonian Railway Co.*, criticised the application of Act of God in *Nichols v. Marsland*. Their Lordships cast doubt on finding of facts by jury in that case. The Corporation constructed a concrete paddling pool for children in the bed of the stream, by altering the course of a natural stream and obstructed the natural flow of water. Owing to extraordinary rainfalls, the stream overflowed into the pond and great volume of water which would have otherwise flown into the stream, rushed into the stream and the town causing extensive damage to plaintiff's property. The House of Lords refused to accept the plea of Act of God and held the Corporation liable. It recognised the duty of the Corporation to make property and occupiers on a lower level as secure against the injury as they would have been, had nature not intervened. Therefore, responsibility of creation of risk is shifted to responsibility of culpable failure to control the risk.

In *A.H. General v. Cory Bros*<sup>4</sup>, it was held that an artificial danger escaped through natural causes was no excuse to person who brought an artificial danger there<sup>5</sup>.

In the light of the above discussed cases in its broader sense, an Act of God can be defined as every occurrence that takes place on earth. However, for legal purposes a limitation has to be set on this definition. A comprehensive legal definition would be incomplete without embodying following elements.

1. *Unforeseeability by reasonable human intelligence*
2. *The absence of human agency causing the alleged damage*

Generally, the event has to be unprecedented in that particular region and was not foreseeable, if it is foreseeable the defendant will not be absolved of liability. The literal construction is qualified by human memory of the occurrence and limited by recorded history. To establish the defence of Act of God not only there must be in fact an Act of God in the legal sense, but also the burden of proving that alleged damage was proximately caused by Act of God is also on the defendant. In case of any intervention contributed by the defendant's negligence occasioned the unforeseeable result it cannot be said to have been the proximate cause of the result. Act of God is often a difficult defence to establish. There is uniformity in the decision which require both exclusion of human agency and unforeseeability to establish Act of God. However authorities are split as to negligence on part of person sought to be charged will be considered as a remote or concurring cause of loss<sup>6</sup>.

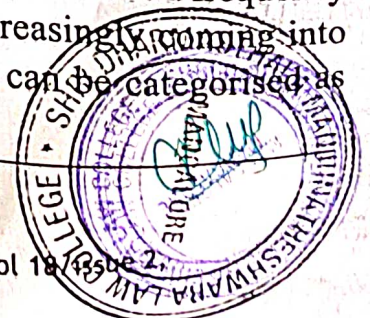
### **Evident Causes of Natural Disasters: Whether Natural or Human Induced**

One of the most evident causes of natural disasters of high magnitude and frequency experienced today is climate change. Climate change is increasingly coming into fore of public debate. The physical risk of Climate change can be categorised as being either,

4 1919, 35TLR, 570,574

5 Supra note 3

6 James LewisHowz 'Act of God :Reconsideration' , Lee Law Review, vol 18, 1995, 29



1. Gradual onset such as longer term shifts in climate patterns , sea level rise chronic heatwaves or
2. Catastrophic, such as extreme weather events.
3. Air pollution is also a right based issue and is the world's single biggest environmental health risk. The main cause of air pollution is linked to burning of solid fuel and diesel used in transportation. 80% of the energy needs is sourced through fossil fuel and the carbon-di-oxide emissions from their use also is a major factor that drives climate change.<sup>7</sup>
4. Developments in attribution science are improving our ability to detect human influence on extreme weather events. By implication, legal duties of government, business and other organisations to manage foreseeable harms are broadening and may lead to more climate change litigation<sup>8</sup>.

### Legal Challenges in Private Litigation:

Legal issues are central to ongoing debates on loss and damages associated with climate change impacts and risks. Public Law litigation related to climate change has often focused on obligation of state to mitigate climate change rather than directly on ways to address losses and damages. In recent years particularly since 2006, climate change lawsuits have increased in quantity and sophistication. The reason for increased suits is due to the recognition of the fact that climate change is an issue for both government and citizens to pursue. The mounting public awareness is evident in US climate change law suits, Most of the law suits relating to climate change are aimed to influence industrial and environmental policies by promoting regulations and impact assessment.

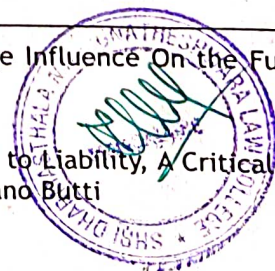
The main focus on regulatory claims rather than tort law claims is due to the hurdles faced by individual applicants showing locus standi in exhibiting direct liability of entity sued and feasibility of appropriate redress. The challenges encountered when seeking redress of environmental wrongs linked with carbon emission through tort action are many. Private law litigation face a multiple hurdles and to date many litigations on these issues have been unsuccessful. The primary hinderance for applicant is substantial interest of standing. Since it is difficult to identify specific harm, specific species at risk of being endangered, it is difficult for judicial panel to grant relief<sup>9</sup>.

Another major challenge is the issue of attribution. It is difficult to identify the proper defendant and to prove the direct responsibility of the defendant. It is generally impossible to attribute a certain climate event to human induced climate change and

7 [www.clientearth.org/](http://www.clientearth.org/)'The Legal Perspective-Climate Change Influence On the Future Business Venture

8 [www.nature.com/articles/ngeo3019](http://www.nature.com/articles/ngeo3019)

9 [www.digitalcommons.wcl.american.edu/](http://www.digitalcommons.wcl.american.edu/)'The Tortious Road to Liability, A Critical Study On Climate Change Litigation in Europe and North America', Luciano Butti



certainly not to the emission of specific person or entity, while no doubt that Green House Gases emissions as a general proposition cause harm, it is currently impossible to trace specific damage to certain emitters. Most legal system require a direct casual relation for damages to be granted but climate science offers only probabilistic attributions<sup>10</sup>.

Even with recent developments of environmental liability doctrine which seems to be undergoing process of strong internationalisation, the road to clear and convincing guidelines for establishing liability is still a long way. Courts are usually reluctant to touch matters which require a fine tuned balance between different interests. A laid-back attitude is seen among the Government, Judiciary and other public and private organisational actors to allow courts to take over the role, which is thought now to be best left to domestic and international regulators. Should the judiciary show activism to open doors to redress for damage linked to local infringement, there would be proliferation of petitions and consequences of international equilibrium would be immense.<sup>11</sup>

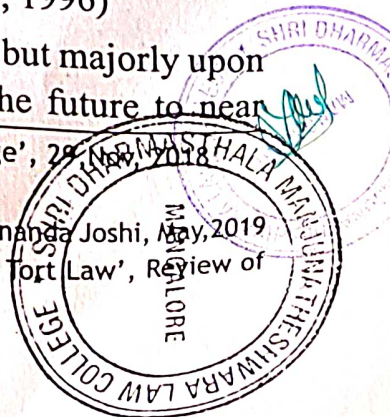
**Principle of Foreseeability for Torious Liability and Scientific Developments:**

Today science has advanced to such an extent, where man is able to understand and predict, the course of nature to a great level of accuracy. Natural disasters are no longer a mystery to mankind anymore and thus the applicability of the defence of Act of God should be seen in the light of scientific developments and reduced on the test of reasonable foresight.<sup>12</sup>

Most large scale natural disasters entail human errors, such as in design, construction, operation, maintenance, inspection, regulation or preparation or response to emergency. The legal result, whether Act of God is viewed as duty issue or intervening causation issue, the defence does no seem to fit rationally. For example: Negligence may arise in design, setting, construction, maintenance or operation of a faculty. Structural survival cannot normally be guaranteed in occurrences like earthquake, hurricane or similar acts of nature. However there may be designs and techniques used in such geographical areas which are prone to such disasters, which may minimise the impact of damage. When such techniques and design s are not adopted, it would be a matter of negligence, thus making it an act of people, a technical failure, rather than Act of God<sup>13</sup>. ([https://papers.ssrn.com/s013/papers/act of god or act of man? A reprisal of Act of God defence in tort law](https://papers.ssrn.com/s013/papers/act%20of%20god%20or%20act%20of%20man%20a%20reprisal%20of%20act%20of%20god%20defence%20in%20tort%20law), Denis Binder, review of litigation, Chapman University, eflow school of law, vol 15, nov 1, 1996)

Foreseeability today just not relies on past experiences and events but majorly upon the modern technology of science which allows us to project the future to near

10 Springer.com, 'Legal Responses To Climate Change Induced Loss and Damage', 29  
11 Supra note 9  
12 Blog.ipleaders.in, 'Act of God and Inevitable Accidents, Aditya Dubey and Krishnanga Joshi, May, 2019  
13 Denis Binder, 'Act of God or Act of Man? A reprisal of Act of God Defence in Tort Law', Review of Litigation, Chapman University, Eflow School of Law, Vol 15, Nov,01, 1996



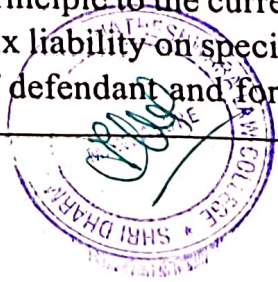
accuracy. Act of God has its origin in the past where it was not possible to predict the nature and also guard against the consequences of disaster and minimise the resulting damage. If the event was such that the occurrences were beyond human memory, it was termed as Act of God and floated as a valid defence. Today foreseeability is based not just on past but also on future. Science has advanced to a point where we can understand the nature, the change, the consequences, magnitude and the geographical areas that may be affected and we have techniques as well as disaster management mechanisms to if not totally prevent the eventualities or at least minimise the damage.<sup>14</sup>

Certain kinds of hazards are atypical to certain geographical areas and it is so evident that legislations are enacted to minimise the risk. For example the California enacted the Field Act in response to 1993 beach earthquake which placed design of schools under supervision of State Division Architecture. Therefore it can be fairly assumed that it is highly possible in most cases to foresee disasters, and take appropriate measures to minimise the damage in the light of development of science and technology that include design, warning techniques, maintenance, inspection etc<sup>15</sup>.

**Conclusion:**

Act of God involves human error at some point of time. From the above discussions it can be concluded that there is no doubt the frequent occurrences of natural disasters have a nexus with the human activities like unscientific construction and developments, over exploitation of resources, disturbance of eco sensitive areas etc. The damage caused by natural disasters can be prevented, averted or minimised by timely action on part of human agency with the aid of cost effective technology. In the light of the above discussion one can fairly assume that the defence of Act of God raised in case of natural disaster has to be looked with a new light. The defence depending on the cause and consequences can now be related to human intervention and thus cannot be called purely as Act of God. Man is responsible for the disaster and man also has the power to prevent the disaster. In the light of the new developments it is time to reflect upon allowing the wrong doers from getting away with the defence of Act of God. Negligence can still be attributed on the grounds of preparedness and duty of care based on foreseeability which is made more proximate with available technology. Therefore this defies the defence of Act of God. The felt difficulty however is holding specific persons responsible for the occurrence, still the liability can be fixed for failure to prevent or mitigate the damage. The approach of judiciary has to be more open and look at the liability not ignore the new developments from the time of evolution of the principle to the current times. The court must understand that though it is difficult to fix liability on specific persons, it becomes important to examine the duty of care of defendant and foreseeability in

<sup>14</sup> Ibid  
<sup>15</sup> Ibid



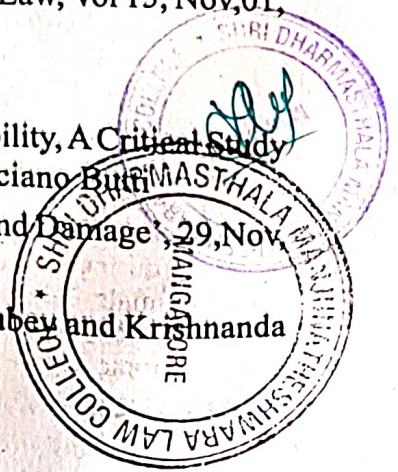


the light of modern scientific developments. This approach will limit the the strict application of the defence of Act of God and help provide justice to the victims.

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