

## **WHETHER TORTUM OF CHINESE REGIME FALLS UNDER THE SCOPE OF LEGAL PREVALENCE?**

*In this paper, the author has intended to dwell into the legal approach which world community can take or may take against China in upcoming months. The author has firstly statically provided the bunch of data to weight the overall damage happen to human lives and their economic structure caused due to COVID-19. In the furtherance of the same author has discussed various reports of an international organization on the economic impact of a pandemic such as Oxford University Press, O.E.C.D., McKinsey & Company and ORF. From there author has gone deep into the probative value of the arguments involved in such scenario in a very exhaustive and comprehensive manner. While doing so, this paper has also analyzed the foreseen arguments which can be taken from the side of the Chinese Government for their saving cause. Later, the author has tried to figure out the competency of the jurisdiction in such a case whether international court is competent or domestic court has relevant competency.*

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### **1. INTRODUCTION**

The novel coronavirus was initially identified in the Chinese city of Wuhan on December, 19. It has been called covid-19, a shortened form of coronavirus disease of 2019. Coronavirus is a family

of enveloped, positive-sense single-stranded RNA viruses that can cause illnesses ranging from the common cold, cough, respiratory symptoms, fever to severe pneumonia and even death. This new virus is escalating incontinently with such advance acceleration that in no time, public health emergency was announced. Earlier it was seen to be an epidemic, but its expeditious growing rage metamorphosed it into a global pandemic soon. The disease has been detected in approx. 215 countries and territories all over the world with the US, Brazil, Russia, India experiencing the most widespread outbreak followed by UK, Spain, Italy, Peru, Germany and Iran. The terrifying global outbreak of this virus resulted in jillions of deadliness, tons of joblessness, and much more economic crisis. The international labour organization estimates 195 million jobs could be lost due to this pandemic.

The sufferings are increasing with the increase of coronavirus cases. To prevent further escalation of the virus, the government had announced complete lockdown in the country and ordered people to stay at their homes. They had shut down all the restaurants, malls, gyms, theatres, schools, colleges, and all non-essential shops. Now, the primary concern of the human race has shifted to get through the pandemic properly.

The struggle to develop a vaccine for covid-19 by the scientists and experts are running with full pace. However, the medicines have to go through several processes before they are ready to be mass-produced and import into the market to be used by the public.

Since World War 2, coronavirus has become the greatest challenge in front of us. The communities are now unrecognizable. Dozens of the world's greatest cities are deserted, and now the situation is such that people are starving to death. With the everyday increase in death tolls, people are losing their hopes thinking of when they will return back to normality. How would the lives again be back to normal? How are the losses to be set off? Are the Chinese responsible behind this global pandemic? And if yes, whether any legal actions can be taken against them? In this very paper, we will discuss the legal liability of the Chinese regime under the event of a pandemic.

## **2. COVID-19 AND IT'S IMPACTS: AN ANALYSIS**

The redundant act of concealment of facts related to the corona pandemic and the inaction of the Chinese government in rousting with the early fall of the pandemic has directly affected the global community. Chinese regime allegedly used every possible step constituting malice on its part,

which includes an act of concealment and exemplifying misinformation by the authorized censorship and threats used by the Chinese government torefaring citizens talking about it. Till 14<sup>th</sup> March, this deadly virus has infected 41.1 Lakhs people worldwide, causing 286,330 deaths and has flooded across every single country around the globe.<sup>1</sup>

If we believe Dun & Bradstreet's (D&B) latest economy assumption, the probability of countries becoming a part of recession owing to the pandemic outbreak and various companies going bankrupt has expanded, and the same can give rise to a "global meltdown" of the economy.<sup>2</sup> According to Economic Cooperation and Development (O.E.C.D.), the world's economy could increase at its tardiest rate since 2009, with a development forecast of just 2.4% in 2020. However, protracted the virus outbreak would end, can potentially lead to further reduction in development rates, with a forecast of barely 1.5% growth.<sup>3</sup> Such is the adverse effect caused by the virus outbreak that, major Stock Exchanges across the globe, such as the Financial Times Stock Exchange (FTSE), Dow Jones Industrial Average, and the Nikkei have dropped down since the outbreak.

India is no exception to it, the report embarked "considering the 21 day lockdown period, India's GDP is anticipated to lower down further from the previous estimate of 5% for the Financial Year 2020 and the advancement for the Financial Year 2021 remains uncertain".<sup>4</sup>

According to the Azim Premji University COVID-19 Livelihoods Survey, about 80% of urban workers, lost their job during a pandemic, the average weekly earnings of those who were still employed fell by 61%. About 80% of urban households consumed less food in April-May compared to February, and 61% could not buy even a week's worth of essentials. Similar effects were felt in rural areas too, though to a smaller degree.<sup>5</sup>

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<sup>1</sup> Swarajya staff, Global Coronavirus Update: Covid-19 Tally Increases to 41.77 Lakh Globally; UAE Denies Plans to Raise VAT Rate, Swarajya, (March 14, 2020).

<sup>2</sup> Auto times, 'Coronavirus to impact India's economic growth severely: D&B, Economic Times', (The Economic Times, 26 March, 2020) <<https://auto.economictimes.indiatimes.com/news/industry/coronavirus-to-impact-indias-economic-growth-severely-db/74826344>> accessed 30<sup>th</sup> March 2020.

<sup>3</sup> OECD Economic Outlook, 'The world Economy on a tight rope' (OECD June, 2020). <<http://www.oecd.org/economic-outlook/june-2020/>> accessed 12 June 2020.

<sup>4</sup> Economic Times, Indian economy to be in 'deep freeze': Moody's, (The Economic Times May, 09, 2020) <<https://economictimes.indiatimes.com/news/economy/indicators/oody-s-investors-service-sees-indias-economic-growth-at-zero-in-fy21/articleshow/75619459.cms?from=mdr>> accessed 1 June 2020.

<sup>5</sup> The Hindu Data Team, 80% of urban workers lost jobs during coronavirus lockdown: survey, (The Hindu 13 May, 2020) < <https://www.thehindu.com/data/data-80-of-urban-workers-lost-jobs-during-coronavirus-lockdown-survey/article31569572.ece>> accessed 11 June 2020.

On 26 May, CRISL announced that this would *perhaps* be India's worst recession since independence. S.B.I research estimates a contraction of over 40% in the GDP in quarter 1 of the financial year of 2020. The economy was expected to lose over 32,000 crores (US\$4.5 billion) every day during the first edition of lockdown.<sup>6</sup> Under absolute lockdown, less than one-fourth of India's \$2.8 trillion economic movements were effective. Around 53% of businesses in the country were projected to have been suffered detrimentally. Supply chains have been affected due to lockdown restrictions in place; formerly, there was the absence of clarity in streamlining what is "necessary" and what is not. The informal sectors and daily wage groups are those to undergo risk the most. The farmers around the country who nurtured their perishable cultivation are also facing uncertainty. Several businesses, such as hotels and airlines are slashing salaries and dismissing employees.

The economy could dwindle by about 10 per cent in the first quadrant of the fiscal year 2021, with GDP rise of 1 to 2 per cent in the fiscal year 2021, even in the scenario of comparatively rapid bounce, the livelihoods of eight million workers, including numerous who are in the informal workforce, could have an adverse effect. Moreover, eight million people could have their ability to exist and afford essentials, such as food, housing, and clothing put at serious uncertainty. Also corporate and micro-, small-, and medium-size-enterprise (MSME) failure, nonperforming loans (NPLs) in the financial system could increase by three to four percentage points of loans. The amount of government spending required to support and recover households, companies, and lenders could, thus, be in the domain of 6 lakh Crore Indian rupees (around \$79 billion), or 3 per cent of GDP.<sup>7</sup>

These all are not merely the statically provided analysis, but the real realm on which India along with other countries is standing therefore shortly world may foresee the wave of demand or compensation against Chinese government as many countries are incapable of dealing even in their domestic transactions.

### 3. WHETHER CHINESE REGIME CAN BE MADE LIABLE?

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<sup>6</sup>Economic times author, India facing its worst recession in current fiscal, says Crisil, (The Economic Times 27 May, 2020) <<https://economictimes.indiatimes.com/news/economy/indicators/india-facing-its-worst-recession-in-current-fiscal-says-crisil/articleshow/76004775.cms?from=mdr>> accessed 1 June 2020.

<sup>7</sup> McKinsey and Company, Getting ahead of coronavirus: Saving lives and livelihoods in India, (McKinsey and Company 9 April, 2020) <<https://www.mckinsey.com/featured-insights/india/getting-ahead-of-coronavirus-saving-lives-and-livelihoods-in-india#>> accessed 1 May, 2020 .

Over the past months, the Transboundary nightmare has buried away all the peace and happiness of the international society. The entire global world is now at stake. Every other person is suffering from this disease. The threat of this virus is such that the industrialized economies have committed economic suicide in the hopes of sparing lives. Even so, the worst calculations suggest that they will largely fail in their objectives. Particularly, among the most vulnerable societies, the fatality rate has increased tremendously. Also, as the virus will reach the affluent countries, new and more severe catastrophic problems are sure to arise.

It is never too unseasonable to discuss China's liability for this trans-frontier torment. The world community must consider every aspect, and a collaborated decision must be taken regarding the accountability of China's liability.

The Peoples' Republic of China (PRC) has overlong sought to abandon itself from the legal accountability for its actions. It is not unique this time. However, it looks like international-based treaties and laws do not matter to a state like China which has generated a number of potential liabilities several times. These potential legal course of action fall into two broad categories:

1. The first is available within the world's system of international justice.
2. The second exists within the domestic courts of different countries.

Blanket exceptions to these course of action are substantial. Sovereign immunity, or the principle that the sovereign states shouldn't be subject to the jurisdiction of foreign courts in non-commercial matters, is a longstanding one which dates back to the sixteenth century. And therefore, with decades of development in the international law, ways have emerged to hold the PRC liable. This section lay down the course of action that could exist to file suit against the PRC (or actors close to it) for its contribution in the COVID-19 pandemic. It is not for this chapter to evaluate the possibilities for any such claim, nor does it look to do so. Such possibilities would be based on questions of jurisdiction and admissibility of guilt, as well as the legal and factual merits of the case. The objective here is to find some of the legal ways that should be looked into by countries, corporations, and individuals injured by the COVID-19 outbreak.

### 3.1 Liability under International Laws

There are many international laws and treaties which offers a series of potential remedies to the parties who faced damages because of the "wrongful acts" of a nation. The affected party can seek remedies under these international laws, these are:-

#### 3.1.1. International *Health Regulations*

Long ago, the international communities have established measures with respect to the spread of infectious disease, in which the action of one has a material impact on another. In 1892, with the ratification of the first international sanitary convention, formed a body of law (international health cooperation) which inferred several duties on nations restricting the spread of diseases.

Today, the global health law is almost entirely a product of the IHR (2005).<sup>8</sup> As well as granting duties and rights upon the WHO, the IHR confer duties on countries to take measures so as to curtail the spread of infectious diseases.

According to Article 6 of the International Health Regulations<sup>9</sup>, a State has to assess events occurring in its territory, and if there is a possibility of the events constituting a public health emergency, they must notify WHO about it within 24 hours of the assessment. Following this notification, the State has to continuously communicate to the WHO timely, accurately and sufficiently detailed public health information available to it on the event. Also, according to Article 7 of the International Health Regulations, if a State Party has evidence of an unexpected or unusual public health event within its territory, irrespective of origin or source, which may constitute a public health emergency of international concern, it shall provide to the WHO all relevant public health information in accordance with Article 6<sup>10</sup>.

Subsequently, in the last days of December 2019, there were already more than 250 cases of coronavirus in Wuhan. Moreover, a doctor has also warned that it seems to be an infectious disease like SARS, and if not controlled quickly, there will be a severe outbreak with cataclysmic effects. These were serious events which should be accessed properly and was required to be reported within 24 hours to the WHO under article 6 of the IHR. But, china notified WHO on December

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<sup>8</sup> Global Health History, 'Origin and development of health cooperation' (World Health Organization 22 May, 2020) <[https://www.who.int/global\\_health\\_histories/background/en/](https://www.who.int/global_health_histories/background/en/)> accessed 30 May 2020.

<sup>9</sup> International Health Regulation, 2005, a 7.

<sup>10</sup> International Health Regulation, 2005, a 6.

31, that there are some unusual cases of pneumonia in Wuhan, saying that the transmission of the disease is from animals to humans, but, the spread was from human to human. Apart from not informing appropriate information to the WHO, China also declined repetitive endeavor given by the WHO for epidemic inquiry assistance until the end of January. On addition to that China was not forwarding vital information's that were expected and required by WHO officials. According to research, various scholars have argued that if China had taken proactive measures to maintain and suppress COVID-19 earlier in December 2019, the number of cases could have been mitigated by up to 95%.<sup>11</sup> These facts are enough to proclaim that China has violated Article 6 and 7 of the International Health Regulations, 2005.

### **3.1.2. WHO Constitution**

According to the WHO Constitution Article 63<sup>12</sup> states that “Each Member shall communicate promptly to the Organization important laws, regulations, official reports and statistics pertaining to health which have been published in the State concerned” and Article 64<sup>13</sup> states that “Each Member shall provide statistical and epidemiological reports in a manner to be determined by the Health Assembly”. And China neither accessed the events properly nor submitted the correct reports of the events going on in their country to the WHO and they have continuously shown lesser numbers of death and infections caused by the novel coronavirus which has also resulted in the violation of Article 63 and 64 of the WHO Constitution.

According to a study by Oxford University, the virus was spreading expeditiously in the territory since November 2019, but china chose to conceal the facts and circumstances. Owing to these, we can easily conclude that even after knowing about the serious impact of the situation, it chose to hide the true nature and extent of the virus from the whole world.<sup>14</sup>

### **3.1.3. UDHR and ICESCR**

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<sup>11</sup> Samir Saran, ‘#Covid19: Made in China pandemic, O.R.F’ (ORF online 20 March, 2020) <<https://www.orfonline.org/expert-speak/covid19-made-in-china-pandemic-63531/>>accessed 31 March 2020.

<sup>12</sup> World Health Organization Constitution 2006, a 63.

<sup>13</sup> World Health Organization Constitution, 2006, a 64.

<sup>14</sup> Dr. J. Scott Brennen, Felix Simon, Dr Philip N. Howard and Professor Rasmus Kleis Nielsen, ‘Types, sources, and claims of COVID-19 misinformation’ (Oxford University 7 April, 2020) <<https://reutersinstitute.politics.ox.ac.uk/types-sources-and-claims-covid-19-misinformation> > accessed 22 May2020.

According to draft articles on state responsibility under article 1, it underlines the very basic principle, which is that a breach of international law by state entails international responsibility. Similar principle has been applied by PCIJ in various cases one of the major is Morocco case where state commits an internationally wrongful act against another state, is established to be liable. Complementary view has been adopted by the Honorable Court in Nicaragua<sup>15</sup> case and Food Channel case. As per Article 2<sup>16</sup> of the said convention or draft, there is an internationally wrongful act of a state when consisting of an action or omission it's a breach of international obligations of that particular state.

In the present matter, China has been party to UDHR and ICESCR and violation of its provision of international human right fall under "International wrongful act of a state". China has violated article 25 (1) of UDHR<sup>17</sup> which states "everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care services, and the right of security in the event of unemployment, sickness common disability, widowhood, old age or other like of livelihood in the circumstances beyond his control." and this imposes a duty on China not to interfere with the World Health scenario spreading the coronavirus pandemic or allowing it to spread or mis-representation of its fake news and thus China violated article 25(1) of UDHR.

Moreover, China has also violated article 12<sup>18</sup> of national covid-19 under which state parties have a responsibility for the prevention treatment and control of epidemic but in the present case, it feels that it intentionally refuse to do so and clear vitiating Human Rights norms as provided in ICESCR.

China's inaction to control the outbreak of the Novel Coronavirus which also lead to migrant worker crisis comes under the purview of the Article V of the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law<sup>19</sup> and violation of International Humanitarian Law as adopted by the UN General Assembly vide

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<sup>15</sup> Nicaragua v. U.S.A (1986) ICJ Rep 14; ICGJ 112 (ICJ 1986).

<sup>16</sup> International Law Commission Report 53rd Session, 23 April-1 June and 2 July-10 August 2001, Supplement No. 10 (A/56/10), a 2.

<sup>17</sup> Universal Declaration of Human Right 1945, a 25(1).

<sup>18</sup> International Covenant of Economic, Social and Cultural rights 1966, a 12.

<sup>19</sup> General assembly, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law 2005, a 5.



Resolution dated December 16, 2005. In the Corfu Channel case<sup>20</sup> held that non-sharing of dangerous warning to other state knowingly was sufficient for making the other state liable. In the present case, China refuses to transfer the information regarding covid-19 early, and non-transfer or mis-representation amounts to a violation of Article 2 of the said resolution.

China has also evaluated article 4<sup>21</sup> of the act in the way that the public authority and the government dealt with the first two weeks of the discovery of the coronavirus is not expected from a responsible state. China century restricts the media from publishing the news related to coronavirus and has also restricted the doctors from informing the world.

It also violates article 14<sup>22</sup> of the said resolution and more so as in terms of the para 3 of this particular article of the international application requiring a state to prevent a given event occurs when the event occurs an extended over the entire period during which the event continues and remains not in conformity with that obligation Chinese authorities allowed novel coronavirus spread from around of December 2019, but they have only managed to inform WHO on 14<sup>th</sup> Feb 2020 and thus creating a violation of article 14.

#### **3.1.4. ‘*sic utere tuo ut alienum non laedas*’**

The principle of “*sic utere tuo ut alienum non laedas*” is a well-accepted principle in modern international law also. The most often cited cases in this regard are the Trail Smelter Arbitration case and the Corfu Channel case. In the Corfu Channel case (1949)<sup>23</sup>, the International Court of Justice (ICJ) held that no state might “knowingly allow its territory to be used for acts contrary to the rights of other states.” In the present case, this principle can be made applicable even if it is proved that; COVID 19 is accidentally or otherwise escaped from the lab of China.

At the international level, convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, 1972<sup>24</sup> and

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<sup>20</sup> International Law Commission (n 16) 7.

<sup>21</sup> General assembly, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law 2005, a 4.

<sup>22</sup> General assembly, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law 2005, a 14.

<sup>23</sup> I.C.J. Reports 1949, p. 244.

<sup>24</sup> The Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, 1972.

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods of Warfare, 1925<sup>25</sup> are the specific framework to deal with biological weapons. Also, the use of biological weapons during armed conflicts is dealt with under international humanitarian laws as well as the Statute of the International Criminal Court. The 1925 Protocol specifically prohibits the use of biological weapons and the 1972 Convention specifically prohibits, 'in any circumstance to develop, produce, stockpile or otherwise acquire or retain: Microbial or other biological agents, or toxins whatever their origin or method of production, or types and in quantities that have no justification for prophylactic, protective or other peaceful purposes'. Thus any country who is a party to this Convention and Protocol is bound to restrain itself from creating a biological weapon. China is a party to both these international instruments in spite of the same China is involved in biological warfare in the name of Corona Pandemic to boost its economy.

### **3.2. Defences Available To Chinese Regime**

There are certain arguments which the Chinese government may hold for their defences author in this section will try to analyse their value in respect to a shield it can provide.

#### **3.2.1. *Strict liability***

According to the strict liability rule, it imposes legal responsibility for the damages to the plaintiff, even if the defendant was not negligent and took adequate care towards others safety.

Essential elements to fulfil the condition of strict liability:-

1. Dangerous thing- dangerous thing means something which entails extraordinary risk to others or is likely to do mischief if it escapes.
2. Non-natural use- the person must use it for a special purpose, i.e., a purpose which causes danger for others. Such purpose must be different from ordinary use.
3. Escape- the dangerous thing must escape from the premises of such person.

This rule was laid down in *Rylands v. Fletcher*<sup>26</sup>, where it was held that, any person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it

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<sup>25</sup> Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods of Warfare, 1925.

<sup>26</sup> [1868] UKHL 1.

escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape".

Similarly, there was another case of Trail Smelter Arbitration,<sup>27</sup> in which the arbitration panel announced two groundbreaking legal principles regarding transboundary harm.

**Firstly**, no country has the right to use or permit the use of its territory of another or the properties or persons therein.

**Secondly**, that a polluting state must pay the damage caused relevant polluting activities on its own territory.

The trail smelter arbitrations imposed liability on Canada for the serious nature of transboundary harm caused by the smelter.

In this context of Covid-19 pandemic, with the global death toll increasing and economic destruction avalanche, there can be minute ambiguity about the gravity of the transboundary harm emanating from Wuhan. Additionally, there is a shred of clear and convincing evidence that it was caused by the negligence and concealment of facts by the Chinese government.

It is not always mandatory that legal procedures get trapped in the sunshine of the motion running around in the world order. The same principle will also apply in the covid-19 pandemic, world order is against China, but when it comes to the legal liability, China can claim the legal defence. The numbers of such defences maybe few when we compared to allegations against China but law is never valued on its quantity, it's always valued on quality. Through Closer look we can analyze will find China has certain very essential and major laws supporting their avenues thus before filing any suit across the globe these must be taken into consideration. This includes sovereign immunity, Force Majeure, Concept of limited liability and limitation of jurisdiction. Let's analyze these legal theories and their legal sanctity starting with the very first, which can be claimed from the side of the Chinese government is, sovereign immunity.

### *3.2.2. The Doctrine of Sovereign Immunity*

Under this doctrine known as sovereign immunity, the law bars suit against the federal and State government in most circumstances. Honourable Supreme Court of various countries across the globe hybrid and created this concept, which has very crucial value.<sup>28</sup>

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<sup>27</sup> 3 R.I.A.A. 1905.

<sup>28</sup> Republic of Argentina v. Weltover Inc 504 US 607 (1992); Texas Trading & Milling Corp v. Federal Republic of Nigeria 647 F.2d 300 (2d Cir. 1981); Rush-Presbyterian-St Luke's Medical Center v. Hellenic Republic, 877 F2d

Sovereign immunity forms the shield for the state or agents' error acts or subordinate body under the helm of seemingly public policy. The Doctrine has arrived from common law principle which is borrowed from British jurisprudence that King commits no wrong<sup>29</sup> and he cannot be held guilty in any circumstances. It was a characteristic of sovereignty that a nation cannot be charged in either on its own courtroom or other state courts. It was not a fairytale for this doctrine while trying to be held in this legal fraternity in fact Law Commission of India in its very first report has recommended for deletion of this doctrine<sup>30</sup> and debate across the country, but we still find the doctrine of sovereign immunity in the legal framework of our country. Basically, this form of immunity provides two-sided edged weapon which gives immunity on the hand of jurisdiction or jurisdictional issue and on other the hand that extends to the immunity from execution. The very first case of sovereign immunity in India was *Navigation Company v. secretary of state*<sup>31</sup> for India, in that particular case, it was firstly held what amount to be sovereign function and what not. From there is always a dispute regarding what amounts to sovereign functions and what not amount to sovereign function but there is a legal certainty about the sovereign immunity that the status of the state is beyond the ambit of judicial scrutiny and it shall not be tried against another state or trial in its own court. China has its sovereign immunity across the globe which cannot be violated or otherwise interfered with China to violate international law. It may not stop international court charging china but certainly restrict remedies available which include economic sanction. There is a convention on immunities of the state which was adopted in 2004 for the concept of sovereign immunity and its codification along with this some state have even enacted the national legislation on the basis of this doctrine which includes foreign sovereign immunity act of United States<sup>32</sup>, UK state immunity act 1978<sup>33</sup>, Canada state immunity act 1982<sup>34</sup>, Australia foreign state immunity act, 1985<sup>35</sup> and South Africa foreign state immunity act<sup>36</sup>. China is also planning to enact law recently a move made by the Deputy of National people's Congress of China who said the law of sovereign

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574 (7th Cir 1989); *Zappia Middle E Constr Co v. Emirate of Abu Dhabi*, 215 F3d 247 (2d Cir 2000) see also *Nawab Usmanali Khan v. Sagarmal* AIR 1965 SC 1798.

<sup>29</sup> The King can do no wrong, Herbert Barry, *Virginia Law Review* Vol. 11, No. 5 (Mar., 1925), pp. 349,371

<sup>30</sup> REPORTS OF LAW COMMISSION OF INDIA, First Law Commission (Chairman Mr. M. C. Setalvad) 1955, 1958.

<sup>31</sup> (1911) ILR 38 Cal 230.

<sup>32</sup> Foreign sovereign Immunity act, 1977 s 1330, s 1391(f), s 1441(d) see also s 1602–11.

<sup>33</sup> State Immunity Act 1978.

<sup>34</sup> State Immunity Act 1985 s 18.

<sup>35</sup> Australia foreign state immunity act, 1985.

<sup>36</sup> South African foreign states immunities act, 87 of 1981.

immunity is now the basic requirement of our country legitimate rights and interest of Chinese citizens as well as foreign investors.<sup>37</sup> Moreover in the case of *Germany v. Italy*<sup>38</sup> where Greece is an intervening party ICJ has discussed the concept of sovereign immunity at a larger extent. In that case, military was ordered for making certain laws which will ensure the restriction on their domestic code which was allegedly involved in the payment of sovereign immunity of Germany. With regard to the same they referred to certain United Kingdom Supreme Court cases i.e. - *Capital Limited v. Argentina*<sup>39</sup> which also supports this doctrine. China may claim that any such suit results into violation of China's National sovereignty and the principle of sovereign equality which is widely acknowledged by the international community and the UN charter.

An amendment was passed in 2016 in FSIA act<sup>40</sup> which limit the ambit of the legal doctrine of foreign sovereignty or immunity this act allows the court's jurisdiction over foreign powers in action in the US caused by an act of terrorism. Now whether the actions of China fake news and mis-representation of fact amounts to terrorism is a subject of interpretation. Misrepresentation of facts perhaps even validates some unspecified Chinese act.

### *3.2.3. Liability of the Chinese Government and the Chinese National Communist Party*

There is another realm of law under which Chinese government entities and Chinese Communist Party can be sued. They are not entitled to the immunity since Chinese government entities are involved in various trade across the globe therefore based on these activities an action can be taken against them.

### *3.2.4. The Doctrine of Force Majeure*

China may also invoke the legal doctrine of force majeure under which whenever an unforeseeable, unavoidable or unconquerable situations arrive contract may get frustrated and it's crucial for

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<sup>37</sup> Niyati Singh, 'Chinese lawmakers propose foreign states immunities law to counter Covid-19 lawsuit in the US' Hindustan Times 26 March ,2020) <<https://www.hindustantimes.com/world-news/chinese-lawmakers-propose-foreign-states-immunities-law-to-counter-covid-19-lawsuit-in-the-us/story-HaiJQT59lj4h86wUiHHKM.html>> accessed 30 March 2020.

<sup>38</sup> ICGJ 434 (ICJ 2012).

<sup>39</sup> 573 U.S. (2014).

<sup>40</sup> The Hindu (n5) 2.

world that China must fulfil their contract.<sup>41</sup> In today's world China has been involved in trade affairs across the globe, Dept. of China supersede USA when it comes to international trade and Commerce. If China has invoked this doctrine in this, the global economy may lead to a crisis which can never be managed. Such an invocation or threatening of the same will act as a weapon for crushing every serious attempt to make it liable for coronavirus pandemic.

## 4. QUESTION OF JURISDICTION

If we lived in a utopian world, we might have held china liable in the Security Council, but in this world of towering economic influence, it seems a fairytale. Even if, China's inaction and negligence have caused physical, psychological, economic and social harms of unforeseen proportions, how might it feasibly be brought before an international court? If yes, the question is, where does the jurisdiction lie?

### 4.1. International Jurisdiction

#### 4.1.1. UNSC

The Security Council is assigned with paramount responsibility for maintenance of international peace and security, and, securitization of global health. It calls upon the parties to a dispute to resolve the dispute by peaceful means and proposes mechanisms of adjustment or settlement terms. The Security Council can, in some situations, use sanctions or even allow the use of force to preserve or restore the international peace and security. Under article 39, chapter VII of the United Nations charter, the UNSC has the power to maintain or restore international peace and security. But, China, as a permanent member of the UNSC, has already been particularly resistant to the jurisdiction of UNSC's dominion in the past. The countries who are the members of the United Nations Security Council can also pressurize china in order to permit for further investigation and compensate for the losses incurred. The authoritarian country is also liable under Article 18 of the Vienna Convention on Law of Treaties, 1969 (VCLT)<sup>42</sup> for not adhering to the 'object and purpose' of the WHO constitution, read with Article 31 of the VCLT of not acting in 'good faith'

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<sup>41</sup>Jenny, Y, Lieu, 'Corona Virus in the Chinese Law Context: Force Majeure and Material Adverse Change' (Pillsbury Law 16 March, 2020) < <https://www.pillsburylaw.com/en/news-and-insights/coronavirus-in-the-chinese-law-context-force-majeure-and-material-adverse-change.html>> accessed 1 June 2020.

<sup>42</sup> Vienna Convention of Law of Treaties 1969, a 18.

after it exercised its veto power to block the discussion of Covid-19 in the meeting of United Nations security council (UNSC). Further, The United Nations Security Council is also empowered to broach the cases to ICJ, is remains unsettled by any mode of settlement.

#### **4.1.2. ICJ**

Principle 15 of the Rio Declaration under International Environment Law<sup>43</sup>, states that, "...Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." In situations of profundity and urgency like the present one, the international court of justice (ICJ) under the powers vested with it under Article 41 of its Statute can order provisional measures of protection to avoid irreparable harm. The ICJ may look at the least issue an advisory opinion by Chapter IV, Articles 65-68 of the Statute of the ICJ<sup>44</sup> read with Part IV, Articles 102-109 of the Rules of the Court, if such an issue is referred to it by international organisations. In this backdrop, this piece examines issues of jurisdiction and merits based on public international law to make a case.

Another way to obtain China's consent, on this issue, is, if China does not agree on any mode of settlement, could be to bring a lawsuit to the ICJ through Article 75 of the Constitution of World Health Organisation.<sup>45</sup> This article states that: Any question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice..."

#### **4.1.3. WHO**

The Constitution of the WHO authorize the organisation to refer disputes concerning the authority according to its proviso to the ICJ. China failed to expeditiously share the information which makes China liable under articles 5 to 8 and para 9 of the international health regulations which requires states to provide and share expedited, timely, accurate, and sufficiently detailed information to WHO about the potential public health emergencies identified in order to galvanize efforts to prevent pandemics. China's failure to disclose information also plausibly fall foul of Articles 22

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<sup>43</sup> Rio declaration on Environment and Development 1992, P 15.

<sup>44</sup> Statue of International Court of Justice 1945 a 16.

<sup>45</sup> Constitution of World Health Organization 1946 a 75.

and 64 of the WHO constitution<sup>46</sup>, which mandate enforcement of the International Health Regulations and require governments to disseminate data. Furthermore, China's willful negligence in regulating wildlife trade conceivably imperils the objective of the WHO, enshrined in Article 1, triggering a breach of the treaty. Though previously untested, this route does offer promise for invoking the contentious jurisdiction of the ICJ to assess Chinese liability.

#### **4.2. Power of Domestic Court to Adjudicate the Matter**

Hon'ble Domestic court also has the power to adjudicate the matter. In the case of *Argentina v. Ghana*<sup>47</sup> Supreme Court of Ghana is illustrative. In May 2006, a federal court in New York issued a judgment in favour of a bondholder, NML Capital, against the Republic of Argentina, the issuer of the sovereign bonds. Supreme Court has reviewed the matter against sovereign.

Justice Cardozo also embraced the international law-development function of domestic courts when he stated that international law "has at times, like the common law within States, a twilight existence . . . till at length the imprimatur of a [domestic] court attests its jural quality." Attesting the "jural quality" of a rule in heretofore "twilight existence" is not all that different from constituting the rule, thereby developing existing law.<sup>48</sup>

Ergo, the domestic court plays a recognized role in development and enforcement of international human right and in the situation of COVID 19 where there is alleged pressure on international court domestic court may fulfil its moral and legal obligation.

In arguendo to the same, it is very crucial to give reference of a resolution adopted by a General Assembly (16 december,2005) which is the title as basic principles and the right to remedy, reparations for victims of gross international human rights law in which article 8 has a context which talks about the access to justice and this victim of a gross violation of international human right law or a serious violation of international human rights law to which China is subjected to since they have violated ICCPR and UDHR which are considered as the Grand norm of humanitarian laws it not only gives access to an effective judicial remedy in international law but also in their respective domestic courts. One of its articles talks about remedies for the gross violation of international human right laws as it includes the appropriate International process in

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<sup>46</sup> McKinley and Company (n7) 3.

<sup>47</sup> ITLOS 185.

<sup>48</sup> *New Jersey v. Delaware*, 291 U.S. 361, 383 (1934).



which a person may have legal standing and the same empowers any other domestic remedies from domestic court.

Moreover, it also talks about judicial sanctions under 21(f) the said resolution. This provides the authority to domestic court to impose sanctions on China for the violation of the right to health of their citizens.

## **5. CONCLUSION**

In this paper, the author has finally analyzed the legal aspects which may get involved in suit filed against the Chinese regime with regard to they did world society in 2020 in the face of coronavirus. There are still questions regarding domestic courts whether they have the power to make another Sovereign state liable under their domestic laws, but that itself does not precludes China from its liability as we have noted above solution of entreaties and options of international laws and if you permit search violations at such a level certainly respect of international law across the world will face a dent. This situation is interesting but neither in favor of world order and neither to China itself. Through this paper, author has established that if suits file with the right intention in any part of the world there is very little China can do. Through the course of this paper, there are certain weapons in the hand of the Chinese regime which they can use as a counter-claim, but the same cannot vitiate ambit of international law. Even if we analyses word order also we came to know that there is very less international law is doing in terms of Justice, there is very less what ICJ is doing than what is expected from it, and there is very less that anytime soon countries like USA China and Russia can be held liable for their wrongful act. The author would like to leave readers with a question what exactly is the objective of international law: Justice or international peace as there are certain arguments which state that any action against the superpower leads to political instability.