

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 a scenario in a very exhaustive and comprehensive manner. While doing so this paper has also analysed 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 the international court is the 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. Basically, 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 the 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 stop the further spread 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 the lives would again be back to normal? How the losses are to be set off? Are the Chinese responsible behind this global pandemic? And if yes, whether any legal actions can be taken against them? We will discuss, in this very paper, the legal liability of the Chinese regime under the event of a pandemic.

2. COVID-19 AND ITS 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 torturing citizens talking about it. Till 14th 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.¹

If we believe Dun & Bradstreet's (D&B) latest economy assumption, the probability of countries entering into recession owing to the pandemic outbreak and several companies going bankrupt has increased, and the same can lead to a "global meltdown" of the economy.² According to the Organization for Economic Cooperation and Development (OECD), the World's economy could grow at its slowest rate since 2009, with a growth forecast of just 2.4% in 2020 and that the longer the virus outbreak could last, can potentially lead to further slash in growth rates, with a forecast of just 1.5% growth.³ Such is the negative impact caused by the virus outbreak that, major Stock Exchanges across the world, such as the Financial Times Stock Exchange (FTSE), Dow Jones Industrial Average, and the Nikkei have seen huge falls since the early days of the outbreak.

India is no exception to it, the report embarked "given the 21 day lockdown period, India's GDP is expected to moderate further from the earlier estimate of 5% for the Financial Year 2020 and the growth for the Financial Year 2021 remains uncertain".⁴

¹ 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).

² 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 30th March 2020.

³ 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.

⁴ Economic Times,Indian economy to be in 'deep freeze': Moody's,(The Economic Times May,09,2020)

<<https://economictimes.indiatimes.com/news/economy/indicators/moodys-investors-service-sees-indias-economic-growth-at-zero-in-fy21/articleshow/75619459.cms?from=mdr>> accessed 1 June 2020.

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.⁵

On 26 May, CRISIL announced that this will *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.⁶ Under complete lockdown, less than a quarter of India's \$2.8 trillion economic movements were functional. Up to 53% of businesses in the country were projected to be significantly affected. Supply chains have been put under stress with the lockdown restrictions in place; initially, there was a lack of clarity in streamlining what an "essential" is and what is not. Those in the informal sectors and daily wage groups are the most at risk. A large number of farmers around the country who grow perishable goods are also facing uncertainty. Various businesses such as hotels and airlines are cutting salaries and laying off employees.

The economy could contract by about 10 per cent in the first quarter of the fiscal year 2021, with GDP growth of 1 to 2 per cent in the fiscal year 2021, even in the scenario of relatively quick rebound, the livelihoods of eight million workers, including many who are in the informal workforce, could be affected. In other words, eight million people could have their ability to subsist and afford necessities, such as food, housing, and clothing put at severe risk. And with corporate and micro-, small-, and medium-size-enterprise (MSME) failure, nonperforming loans (NPLs) in the financial system could rise by three to four percentage points of loans. The amount of government spending required to protect and revive households, companies, and lenders

⁵ 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.

⁶Economic 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.

could, therefore, be in the region of 6 lakh Crore Indian rupees (around \$79 billion), or 3 per cent of GDP.⁷

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 to deal even in their domestic transactions.

3. WHETHER CHINESE REGIME CAN BE MADE LIABLE?

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 not too early to begin to discuss China's liability for this transfrontier 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 long sought to abandon itself from the legal accountability for its actions. It is not unique this time. However, the truth of these international-based treaties and laws is that even a State as averse to the rule of law as China has engendered a series of potential liabilities. These potential legal avenues 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 other nations.

⁷ 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 .

Blanket exemptions to these avenues of action are substantive. Sovereign immunity, or the principle that sovereign states should not 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 growth of international law, routes may have emerged to hold the PRC to account. This section sets out avenues that could exist to file disputes against the PRC (or actors close to it) for its role in the COVID-19 pandemic. It is not for this chapter to assess the prospects for any such claim nor does it seek to do so. Such prospects would depend on questions of jurisdiction and admissibility of claims, as well as the legal and factual merits of the case. The purpose here is to outline some of the legal routes that should be explored by nations, 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 injured by the "wrongful acts" of a state. 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).⁸ As well as conveying duties and rights upon the WHO, the IHR convey duties on states to act to prevent the spread of infectious diseases.

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

According to Article 6 of the International Health Regulations⁹, 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 6¹⁰.

By the end 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 31, that there are some unusual cases of pneumonia in Wuhan, saying that the transmission of the disease is from animals to humans, but actually, the spread was from human to human. Apart from not reporting correct and sufficient information to the WHO, China also rejected repeated offers from the WHO for epidemic investigation assistance until late January. On top of that China was not sending details that were expected and needed 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%.¹¹ 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

⁹ International Health Regulation, 2005, a 7.

¹⁰ International Health Regulation, 2005 , a 6.

¹¹ Samir Saran, ‘#Covid19: Made in China pandemic,O.R.F’ (ORFonline 20 March ,2020)

<<https://www.orfonline.org/expert-speak/covid19-made-in-china-pandemic-63531/>>accessed 31 March 2020.

According to the WHO Constitution Article 63¹² 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 64¹³ 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.¹⁴

3.1.3. *UDHR and ICESCR*

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. Similar view has been taken by the Honorable Court in Nicaragua¹⁵ case and Food Channel case. As per Article 2¹⁶ 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.

¹² World Health Organization Constitution 2006 ,a 63.

¹³ World Health Organization Constitution, 2006,a 64.

¹⁴ Dr. J. Scott Brennan, 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.

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

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

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 UDHR¹⁷ 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 circumstances beyond his control." and this imposes duty on China not to interfere with the World Health scenario spreading the coronavirus pandemic or allowing it to spread or miss-representation of its fake news and thus China violated article 25(1) of UDHR.

Moreover, China has also violated article 12¹⁸ 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 Law¹⁹ and violation of International Humanitarian Law as adopted by the UN General Assembly vide Resolution dated December 16, 2005. In the Corfu channel case²⁰ held that non-sharing of dangerous warning to another state knowingly was sufficient for making the other state liable. In the present case, China refuse to transfer the information regarding covid-19 in early non transfer or miss representation amounts to violation of Article 2 of the said resolution.

China has also evaluated article 4²¹ of the act in the way that the public authority and the government dealt with the first two week of the discovery of the coronavirus is not expected

¹⁷ Universal Declaration of Human Right 1945 , a 25(1).

¹⁸ International Covenant of economic, Social and cultural rights 1966 ,a 12.

¹⁹ 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.

²⁰ International Law Commission (n 16) 7.

²¹ 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.

from a responsible state. China century restrict the media from publishing the news related to coronavirus and has also restricted the doctors from informing the world.

It also violate article 14²² of the said reslution and more so as in the 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 manage to inform WHO on 14th Feb 2020 and thus creating 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)²³, the International Court of Justice (ICJ) held that no state may "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 accidently or otherwise escaped from the lab of China.

At international level, Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972²⁴ and Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 1925²⁵ are the specific framework to deal with biological weapons. Also, the use of biological weapons during armed conflicts is dealt under international humanitarian laws as well as the Statute of 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

²² 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.

²³ I.C.J. Reports 1949, p. 244.

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

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

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 inspite of the same Chang is involved in biological warfare in name of Corona Pandemic to boost its economy.

3.2. Defenses Available To Chinese Regime

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

3.2.1. *Strict liability*

According to the strict liability Rule, it imposes a 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 fulfill 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 special purpose, i.e, 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*²⁶, 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 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*,²⁷ in which the arbitration panel announced two ground breaking 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.

²⁶ [1868] UKHL 1.

²⁷ 3 R.I.A.A. 1905.

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 trans boundary 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 little doubt about the seriousness of the transboundary harm emanating from wuhan. Additionally, there is a 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 procedure should got trapped in the sunshine of the motion running around in the world order. The same principal 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 the China but law is never valued on its quantity, its always valued on quality. Through Closer look we can analyse will find China has certain very essential and major laws supporting there avenues thus before filing any suit across the globe these must be taken into consideration. This includes sovereign immunity, Force Majure, Concept of limited liability and limitation of jurisdiction. Let's analyse these legal theories and their legal sanctity starting with the very first which can be claimed from the side of Chinese government is, sovereign immunity.

3.2.2. Doctrine of Sovereign Immunity

Under this doctrine which is 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 and the same has very crucial value.²⁸

Sovereign immunity forms the shield for the error acts done by the state or agents or subordinate body under the helm of seemingly public policy. Doctrine has basically arrived from common law principle which is borrowed from British jurisprudence that king commits no wrong²⁹ and he

²⁸ 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 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.

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

cannot be held guilty in any circumstances. It was an attribute of sovereignty that a state cannot be sued neither on its own courtroom or another state courts. It was not a fairy-tale 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 doctrine³⁰ 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 provide two sided edged weapon which gives immunity on the hand of a jurisdiction or jurisdictional issue and on other the hand that extend to the immunity from execution. The very first case of sovereign immunity in India was *Navigation Company v. secretary of state*³¹ 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 state is beyond ambit of judicial scrutiny and it shall not be tried against another state or trial in its own court. China has its own sovereign immunity across the globe which cannot be violated or otherwise interfered with China for violation of international law. It may not stop international court charging china but certainly restrict remedies available which include economic sanction. There is convention on immunities of 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 include foreign sovereign immunity act of United States³², UK state immunity act 1978³³, Canada state immunity act 1982³⁴, Australia foreign state immunity act,1985³⁵ and South Africa foreign state immunity act³⁶. 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 immunity is now the basic requirement of our country legitimate rights and interest of Chinese citizens as well as foreign

³⁰ REPROTS OF LAW COMMISSION OF INDIA ,First Law Commission (Chairman Mr. M. C. Setalvad) 1955,1958.

³¹ (1911) ILR 38 Cal 230.

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

³³ State Immunity Act 1978.

³⁴ State Immunity Act 1985 s 18.

³⁵ Australia foreign state immunity act, 1985.

³⁶ south african foreign states immunities act 87 of 1981.

investors.³⁷ Moreover in the case of Germany v. Italy³⁸ 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 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. Argentina³⁹ 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 act⁴⁰ which narrows the scope of 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 Chinese Government and 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 on the basis of these activities an action can be taken against them.

3.2.4. Doctrine of Force Majeure

China may also invoke legal doctrine of force majeure under which whenever an unforeseeable, unavoidable or unconquerable situations arrive contract may get frustrated and its crucial for world that China must fulfill their contract.⁴¹ In today's world China has been involved in trade

³⁷ 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-HaiJOT59lj4h86wUjHHKM.html>> accessed 30 March 2020.

³⁸ ICGJ 434 (ICJ 2012).

³⁹ 573 U.S. (2014).

⁴⁰ The Hindu (n5) 2.

⁴¹ Jenny,Y,Lieu, 'Corona Virus in the Chinese Law Context: Force Majeure and Material Adverse Change'(Pills Burry Law 16 March,2020) <

affairs across the globe, Dept. of China in fact supersede USA when it comes to international trade and Commerce and if China has invoked this doctor 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 attempts to make it liable for coronavirus pandemic.

4. QUESTION OF JURISDICTION

If we lived in utopian world, we may 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 has 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 lies?

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 settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security. Under article 39, chapter VII of United Nations charter, the UNSC has 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 member countries 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)⁴² 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'

<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.

⁴² 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, it remains unsettled by any mode of settlement.

4.1.2. ICJ

Principle 15 of the Rio Declaration under International Environment Law⁴³, 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 so as to avoid an irreparable harm. The ICJ may at the least issue an advisory opinion in accordance with Chapter IV, Articles 65-68 of the Statute of the ICJ⁴⁴ 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.⁴⁵ 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 empowers the organisation to refer disputes concerning the application of its terms to the ICJ. China failed to expeditiously share 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

⁴³ Rio Declaration on Environment and Development 1992., P 15.

⁴⁴ Statute of International Court of Justice 1945 a 16.

⁴⁵ Constitution of World Health Organization 1946 a 75.

prevent pandemics. China's failure to disclose information also plausibly fall foul of Articles 22 and 64 of the WHO constitution⁴⁶, which mandate enforcement of the International Health Regulations and require governments to disseminate data. Furthermore, China's wilful 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.

4.1.4. ICC

Crimes against humanity are defined as serious violations committed as part of a large-scale attack on any civilian population. The facts as they prima-facie stand so far do warrant such an enquiry under the Rome Statute, for today all of humanity is under attack. Due to the carelessness and failure to provide public services in the food and marketplaces, and prevent transmission of the virus, China is accountable under Art. 7(1) of the eleventh act of ICC⁴⁷, which states that, "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" as mentioned under 'crimes against humanity.'

Therefore, according to article 15 of the Rome statute of ICC⁴⁸, The prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of this court.

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. Ghana⁴⁹ Supreme Court of Ghana is illustrative. In May 2006, a federal court in New York issued a judgment in favor of a bond holder, NML Capital, against the Republic of Argentina, the issuer of sovereign bonds. Supreme court has reviewed the matter against sovereign.

⁴⁶ Mckinsey and Company (n7) 3..

⁴⁷ Rome Statue 1998, a 7(1).

⁴⁸ Rome Statute 1998, a 15.

⁴⁹ ITLOS 185.

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.⁵⁰

Ergo, 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 fulfils 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 title as basic principles and the right to remedy, reperations for victims of gross international human rights law in which article 8 has 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 give access to an effective judicial remedy in international law but also in their respective domestic courts. One of its article talk about remedies for the gross violation of international human right laws as it includes the appropriate International process in which a person may have a 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 right to health of their citizens.

5. CONCLUSION

In this paper author has finally analyzed the legal aspects which may get involved in suit filed against Chinese regime with regard to they have done world society in 2020 in the face of coronavirus. There are still questions regarding domestic courts whether they have the power to make the another Sovereign state liable under their domestic laws but that itself does not

⁵⁰ *New Jersey v. Delaware*, 291 U.S. 361, 383 (1934).

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 the favor of world order and neither to China itself. Through this paper author has established that if suits file with 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 Chinese regime which they can use as a counter claim but the same cannot vitiate ambit of international law .Even if we analyses world 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 states that any action against the superpower leads to political instability.