

A Bricolage for Legal Augmentation to Navigate Comprehensive Experimentation**Articles**

1. *COVID – 19 Lockdown and Increase in Child Abuse and Pornography: A Social and Legal Concern*
2. *COVID-19 and Reproductive Health Rights: Analysing the Impact on Women Health and Reproductive Rights*
3. *COVID-19 and the Constitutional Fabric of India- A Federal Perspective*
4. *Role of Health Workers and Occupational Risks in the Wake Of COVID-19: A Human Rights Approach*
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18. *Increasing Domestic Violence during COVID-19 Lockdown: A Human Rights Perspective*



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SYMBIOSIS LAW SCHOOL - HYDERABAD

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SYMBIOSIS LAW SCHOOL, HYDERABAD ABOUT THE JOURNAL

BALANCE - the International Multidisciplinary Law Journal, is an effort of Symbiosis Law School, Hyderabad, a constituent of Symbiosis International (Deemed University), Pune. As the subject of Law has grown to include normative and critical approaches calling for multidisciplinary involvement to make the field of Law more substantial, the objective of this journal is to cohere the multidisciplinary ideas to the field of Law thus forming a unified whole.

*In a nutshell, the purpose of the journal is to create a platform to integrate research ideas of different fields of study into the academic stream of Law to create a synergistic value to field of Law. Given the above, the journal is aptly titled as BALANCE. The word BALANCE not only denotes a situation in which different elements are equal or in correct proportions, but also projected as an abbreviation which can be expanded as **A Bricolage of Legal Augmentation to Navigate a Comprehensive Experimentation**. The word 'Bricolage' means construction of creation of things from a diverse range of available things.*

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**COVID-19 – AN ACCIDENT OR AN ACT OF BIOLOGICAL
WARFARE? FROM HUMAN RIGHTS PERSPECTIVE**

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COVID-19 – AN ACCIDENT OR AN ACT OF BIOLOGICAL WARFARE? FROM HUMAN RIGHTS PERSPECTIVE¹

ABSTRACT

Any epidemic and pandemic outbreak requires detailed and effective response strategies, in terms of policies, diagnostic, treatment, and prevention of further growth of the contagious disease², and for a disease spread to be labeled as a contagious enough to be labeled as epidemic or pandemic certain criteria has to be satisfied under respective jurisdiction of nation-states.³

With the outbreak of COVID-19 and its significant impact on the economy of any nation-state, and in peculiar the public-healthcare system, there is also a surge in demand to hold Chinese regime and the WHO legally and financially responsible for how the virus spread under international law. Another question that arises is as to whether there will be any legal grounds to hold it accountable? Another point of deliberation that needs to be discussed is as to whether the WHO was really negligent in its initial response to the spread of the virus or did it violate its WHO charter by coordinating with China in hiding the actual reality? Furthermore, what human rights, duties and obligations have been violated and are still being violated through the spread and failure to contain the virus?

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² Thomas V. Inglesby, Tara O'Toole, Donald A. Henderson, "Preventing the Use of Biological Weapons: Improving Response Should Prevention Fail," Volume 30 Issue 6 CLINICAL INFECTIOUS DISEASES, Pages 926–929, (June 2000), , <https://doi.org/10.1086/313794>

³ Kriti Kapur, Dr. WHO and Mr. Hyde, OBSERVER RESEARCH FOUNDATION, (Last accessed on 14th May, 2020), <https://www.orfonline.org/research/dr-who-and-mr-hyde-64151/>

Keywords: Covid-19 Plague, Pandemic, Biological Weapons, Retribution.
IHR-International Health Regulations

2. INTRODUCTION

Nature [is] that lovely lady, to whom we owe Polio,

Leprosy, Smallpox, Syphilis, Tuberculosis, Cancer -Stanley Norman Cohen

As Robert Jay Lifton wrote of nuclear weapons in *Indefensible Weapons*, “*In many cases, there appears to be an extraordinary impact made upon people simply by new information.... New information makes contact with amorphous fears.... The menace one has known, but kept hidden comes into the open. And there is a beginning sense that one might, just possibly, be able to do something about it.*”⁴

On this note, one starts to question the role played by the weapons played in our society, more so in affecting it adversely in terms of right to life, peace, environment, and other second generation rights such as timely and equal access to healthcare information, infrastructure and facilities. Questions often arise and put in dilemma the international community as a whole such questions state: Whether are the weapons used proportionally in relation to the force required under Article 51 and 24⁵ and 25⁶ of the UN Charter pertaining to collective self-defense?

⁴ LIFTON RJ, FALK R., *INDEFENSIBLE WEAPONS: THE POLITICAL AND PSYCHOLOGICAL CASE AGAINST NUCLEARISM* (New York, Basic Books, 1982)

⁵ “1. *In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.*

2. *In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.*

3. *The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.”*

⁶ “*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*”

On the basis of the above questions and dilemma posed by the pandemic spread we may quote Frank Snowden who in his book titled, “**Epidemics and Society: From the Black Death to the Present**,” had very aptly said while giving a telephonic interview: “*Epidemics are a category of disease that seems to hold up the mirror to human beings as to who we really are.*” In other words, those epidemics, plagues, pandemics, have in entirety to deal with the mortality of all living organisms, including human beings, our relationship to our lives, and to our ultimate death. They also replicate our association and rapport with the environment, the vagaries we cause in the environment, and the response of the natural environment that responds to the damage we cause to it. They show the moral relationship that we have towards each other as people, and what a chaos we are witnessing that today in terms of institutional, and multilateral dialogue, with the former posing more relevance than latter all the more.⁷

3. HISTORICAL USE OF BIOLOGICAL WARFARE

Historically, as per Jared Diamond analysis the victors of the historical and previously held wars usually were not always the armed forces equipped with best generals but rather the ones bearing the nastiest germs to transmit to their enemies. For example, the Crimean Peninsula was controlled by Mongols, who then decided to exploit the pandemic to advance further conquests. Consequently, as they beleaguered the city of Caffa, they tossed and flung the corpses of their comrades who died of the plague over the city walls. By the medium of which the flees harboring the bubonic bacteria, quickly transmitted from the dead to the living, and as result of which several lives were lost, and consequently it became to be known as the first use of biological weapon. A microanalysis of the European conquest of America indicates that Eurasian microbes or germs enable or assist in European conquest and depopulation of Europe.”⁸

⁷ ALAN LEVINOVITZ, THE CORONAVIRUS IS NOT MOTHER NATURE’S REVENGE, MAY 26TH, 2020.

⁸ JARED DIAMOND, GUNS GERMS & STEEL: A SHORT HISTORY OF EVERYBODY FOR THE LAST 13,000 YEARS,(Penguin Random House, UK, London, 1998)

Also from the works of Richard Betts in 1998, and Robert Koch in the 1800s, it could be inferred that efforts to use Chemical Biological Weapons have so far proved to be unsuccessful due to factors such as- lack of expertise and not deliberate act- and prior to that modern technology was evolved to develop microbiological experiments. These set of events did lead to the increase in the knowledge pertaining to, and in relation to production of a huge stockpile of particular germs, and the first deliberate act for using the microbes was chronicled in the 1900s during the World War I in which the Germany Army infected the livestock and animal feed provided by the partners to the Allied Nations.

After many horrific uses and disastrous aftermath effects of the weapons -both conventional and non-conventional, diplomatic attempt was made to reduce the use and creation of chemical and biological war material through negotiation and implementation of *Geneva Protocol for the Prevention of the Use in War of Asphyxiating, Poisonous or other Gases and Bacteriological Methods of Warfare*⁹ to stop the usage of biological agents during war.

Over the breadth of time laws like the *Warsaw Pact*,¹⁰ the *1972 Convention on the Biological Weapons and its Destruction*¹¹ were executed and brought into force in practicality as a response to events such as the anthrax attack by Japan on China etc.

However, the question remains whether that the COVID-19 spread was a case of conspiracy by China or US and if it all can it be compared to the Russian Anthrax Spores

⁹ Bunn, G. (1970). THE BANNING OF POISON GAS AND GERM WARFARE: THE U.N. RÅ"LE. *The American Journal of International Law*, 64(4), 194-199. Retrieved August 26, 2020, from <http://www.jstor.org/stable/25660367>

¹⁰The Treaty of Friendship, Cooperation, and Mutual Assistance, signed at Warsaw on 14 May 1955 (219 U.N.T.S. 24

¹¹ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, opened for signature Apr. 10, 1972, 1015 U.N.T.S. 163 (entered into force Mar. 26, 1975), available at <http://www.opbw.org/convention/documents/btwctext.pdf>.

case of 1980s whereby the anthrax was released from a military microbiology facility based in Russia.¹²

4. CRITICAL EXAMINATION OF COVID -19 BEING AN ACT OF BIOLOGICAL WARFARE

Considering that China already does not hold good human rights record, which is evident through the Hong Kong protest, widespread and systematic torture and grave violation of human rights of Uighur muslims, and despotic rule to suppress freedom of speech and intellectual thought process makes us question the entire pandemic scenario of being a merely a natural spread or an accident.¹³ The following questions would be examined in the light of the not so bright historical record of the Chinese Communist regime.

4.1. Present Situation Whether It Is An Intentional Act Or Not?

As the COVID-19 has been on the surge various questions have risen to question as to the conspiracy theories behind the spread of the virus. One theory states that it is a result of an accident at a biosafety level 4 laboratory in China's Wuhan City, and on the other hand other theory states that China may have deliberately launched a biological attack in order to position itself at a strategic position over its rivals globally by sabotaging their economies by the spread of the virus.¹⁴ There also conflicting claims that whether it is natural mutation or human engineered that will time and proper investigation will tell.

The present pandemic crises has been termed to be the largest one since World War II by UN Secretary General Antonio Gueterres, and some like Bill Gates have described it to be a World War by other means. Furthermore, the world leaders globally refer to their

¹² ANAT GEORGI, FROM BLACK DEATH TO COVID-19: SCIENCE ADVANCES, THE FEAR REMAINS, March 20, 2020.

¹³ <https://www.hrw.org/news/2019/10/18/un-human-rights-council-should-bring-increased-attention-grave-rights-violations>

¹⁴ Tara Kartha, "Is Covid-19 a Chinese weapon or an accident? Either way, world must stop playing in bio labs?," THE PRINT, <https://theprint.in/opinion/covid-19-a-chinese-weapon-or-an-accident-world-must-stop-playing-in-bio-labs/394160/>

strategies to prevent and respond to COVID-19 as existential war and consider themselves as the healthcare and biosecurity champions and leaders.¹⁵

If the rumor mills are deemed to be true then the classification of this pandemic as a deliberate act of biological warfare would have following implications and inferences.

Furthermore, in the present case, there is no confirmation and hence there is no proof or credibility to the rumors that the COVID-19 virus was created by China as a part of its secret biological warfare program in its Virology Lab based in Wuhan and that the outbreak had been caused by the leak. To such an extent this theory has been discredited so far by the Indian administration as well.¹⁶ There are a lot of contradictory theories pertaining to this. For instance, Tom Cotton, a Republican Senator had insinuated that the virus had originated in the China Lab. On the other hand there does not seem to be any conclusive proof.

Additionally, such a claim has been further refuted and disapproved by the datum and circumstance that virus must be man-made because it is immoral and depraved is the height of anthropocentric pomposity. According to Dan Kaszeta, who is a London based specialist in chemical and biological defenses states that *“this virus is nature made and genetic analysis is a proof to the same as humans cannot create viruses as neatly as possible. Fiction of Frankenstein being created from a mixture of RNA and DNA cannot be practically implemented.”*¹⁷ Further the question that how does China or US really benefit from the pandemic?”

¹⁵ PTI, “COVID-19 pandemic most challenging crises since second world war: UN Chief,” THE ECONOMIC TIMES, (Last Accessed on 5th June, 2020), <https://economictimes.indiatimes.com/news/international/world-news/covid-19-pandemic-most-challenging-crisis-since-second-world-war-un-chief/articleshow/74923642.cms?from=mdr>

¹⁶ Anirban Bhaumik, DHNS, New Delhi, COVID-19: India follows US to remind the world a 1975 treaty against bio weapons, DECCANHERALD, Read more at: <https://www.deccanherald.com/international/covid-19-india-follows-us-to-remind-the-world-a-1975-treaty-against-bio-weapons-818359.html>

¹⁷ Dan Kaszeta, No, the coronavirus is not a biological weapon, WASHINGTON POST, <https://www.washingtonpost.com/outlook/2020/04/26/no-coronavirus-is-not-biological-weapon/>

There is in-fact a linkage of Professor. Charles Lieber of Harvard University being arrested for his dubious links with Wuhan University for making false statement regarding his some research involvement with the Chinese government and non-disclosure of the funding, but the myth has been busted by the press statement by the Department of Justice reveals that the entire fiasco has nothing to do with coronavirus creation and spread.¹⁸

Further, the likelihood of the biological warfare, on the other hand has been fueled by the following events:

a) Texas Lawsuit

In March, 2020 a class action law suit worth \$ 20 million dollars against China was filed in a Texas District Court or the "creation and release, accidental or otherwise" of the new virus causing COVID-19. It sought on the account of negligence, public nuisance, and abnormally dangerous activities. The petition stated that COVID-19 was created to be an "effective and a catastrophic biological warfare weapon" to kill mass populations and that Chinese authorities are responsible for causing *enormous death, suffering and economic losses*. It further stated that there are many other indications apart from nature of the disease illustrating that the virus was engineered in Chinese Military laboratory or laboratories. The cause of the caution as stated by State Attorney General Eric Schmitt was that the Chinese Government delayed in reporting COVID-19 to the WHO for weeks after the identification of the virus in the Chinese medical community.

Another allegation that the petition leveled that the Chinese PR agencies had engaged in massively spreading rumors that it was US which was responsible for it and not China. Furthermore, the petition also alleged that China was hoarding maliciously the PPEs had adversely impaired the ability of the healthcare providers throughout the world including from US and Missouri from safely and effectively treating patients with virus.

¹⁸Chayan Kundu, *Fact Check: Truth of corona conspiracy theory behind the arrest of Harvard professor*, INDIA TODAY, (Last Accessed on 5th June, 2020), <https://www.indiatoday.in/fact-check/story/truth-coronavirus-conspiracy-theory-behind-arrest-harvard-professor-1663659-2020-04-05>

Which of the allegations or rumors come out to be true only time and proper investigation will tell.

b) Indian Lawsuit

A petition as a PIL was filed under Article 32 of Indian Constitution filed by lawyer Madurai resident K K Ramesh in Supreme Court of India seeking a direction to the Union Government to approach the International Court of Justice to recover almost \$ 600 billion dollars compensation from China for creating biological warfare to kill mass populations in India. It further stated that the excuse of China that the virus originated from animals is untrue, and this position as held by India is held by various other world leaders globally. It sought a direction in the form of a writ, preferably a mandamus writ directing the Centre to file so.

The petition was filed by Advocate C R Jaya Sakin and it stated that the Wuhan's Institute of Virology was used for creation of the virus. It further stated that the virus was deliberately created and released in public areas in India to target its population, and damaged its economy. It further stated that many people died because of the spread, it was an extremely dangerous disease, which was designed to mutate from one person to another, and as a result of which many people were admitted in hospitals and many people also lost their jobs.¹⁹

Additionally, the International Council of Jurists and All India Bar Association under the leadership of advocate Adish Aggarwala filed a complaint at the United Nations Human Rights Commission seeking an unspecified amount as reparations from China over global spread of virus. The petition based the allegations on China's legal liability on commission of "grave offences" under the 'Responsibility of States for Internationally Wrongful Acts,

¹⁹ Ashish Tripathi, DHNS, *PIL filed in SC for India to seek compensation from China in ICJ for COVID-19*, Published on May 09, 2020 Read more at: <https://www.deccanherald.com/national/pil-filed-in-sc-for-india-to-see-compensation-from-china-in-icj-for-covid-19-835599.html>