

China: Dragon slays the world

Indian Courts: The new status quo

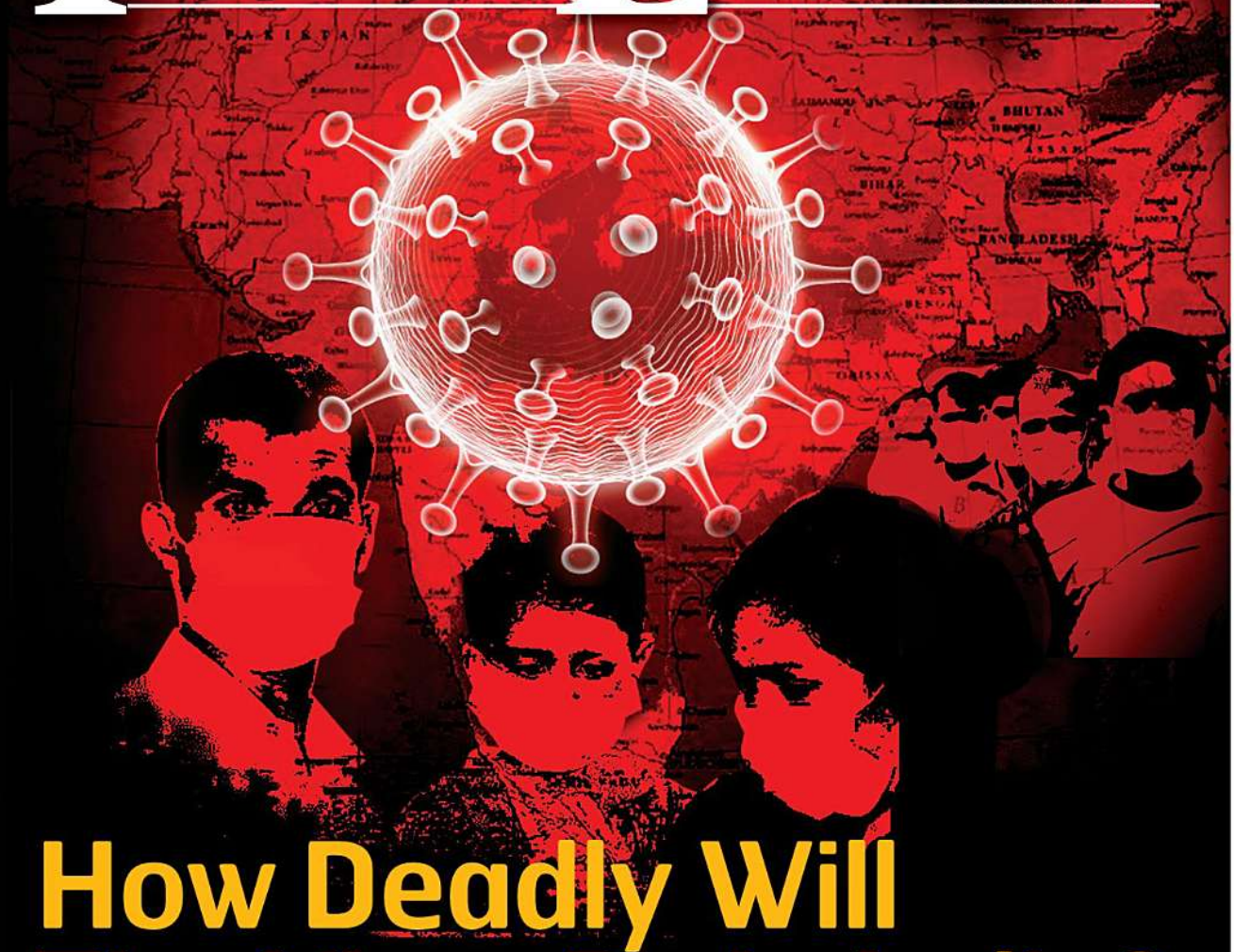
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INDIA LEGAL

STORIES THAT COUNT

May 18, 2020

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How Deadly Will The Virus Be In India?

The pandemic has acted differently all over the world. India with its young population, average life expectancy and faster development of herd immunity should be better placed. What do current research and comparable model projections suggest?

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COVID: BEYOND PUNDITRY

Inderjit Badhwar

OUR cover story this week is a non-hand-wringing, no-nonsense, calibrated, step-back-and-take-a-realistic-look analysis of the scourge that is cutting a swath of death, destruction and disruption across the world.

The article's real strength lies in its scholarly, evidence-based analytical approach based on facts and openly-sourced statistics on Covid-19 rather than on prevailing wisdom and shibboleths which now come cheaper by the dozen on television channels and internet punditry. That is why our editors decided to give it cover story status which you can read by tapping on this link:
https://www.indialegallive.com/special/how-deadly-is-covid-19-for-india-98678

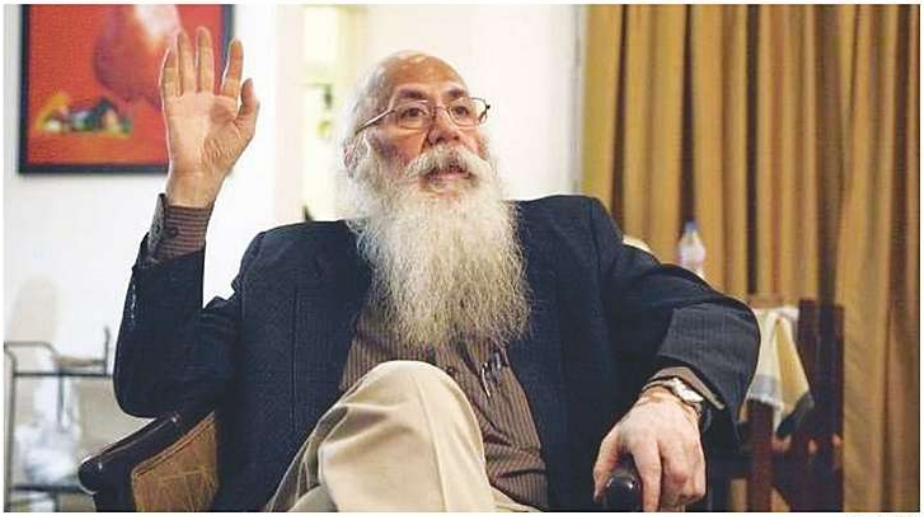
In a similar vein, I wish to bring to your attention another readable paper that makes you sit up and think afresh about balancing the need to take care of the countless millions of poor and dispossessed and the plunging economy against the punishing measures that may be needed to protect the health of the pandemic's hapless victims: All of us.

It is from the redoubtable, internationally acclaimed economist, Arun Kumar, Malcolm Adiseshiah Chair Professor, Institute of Social Sciences, who looks at options before policymakers to control the damaged economy.

In a previous article for this magazine, Prof Kumar had predicted that the Covid lockdown would bring untold hardships for everyone, but especially for the marginalised sections. But for essentials, production has largely come to a halt, businesses are suffering losses—many of them may not survive. So, the dilemma before the policymakers, he posits, is the "need for realism in planning. Policy has to be realistic and not based on wishful thinking that all will be well".

I reproduce below, in summary, the salient points Kumar makes which should be Must Reading for policymakers:

- It was speculated initially that heat would kill it but its continued spread in India in April and earlier spread in tropical climates does not give ▶



Anil Shakya

Prof. Arun Kumar (right) says the dilemma before the policymakers is the need for realism in planning. Policy has to be realistic and not based on wishful thinking that all will be well.





Photos: UNI

DIFFICULT TO IMPLEMENT (Above, L-R) Making the lockdown work in India is a challenge. The poor do not have the resilience to deal with such a crisis. They have to be supplied with essentials

much hope. As yet, there is no medicine or a vaccine against the disease.

• We should not be caught unawares a second time. This time we got caught not knowing how to cope with the acute crisis we confront. There is the "Precautionary Principle" which says assume that the worst can happen and plan for it. Survival is more important than any temporary gains that can be made in case luckily the intensity of the disease declines.

• A lockdown slows down the rapid spread of the disease and thereby prevents the medical system from getting overwhelmed. The Indian medical system is woefully inadequate with shortages of doctors, nurses, hospitals and equipment. The medical infrastructure in New York City, UK, Italy and Spain got overwhelmed quickly even though it is far better than the Indian system. It is clear that a lockdown does not kill the virus but buys time to cope with the spread. It also buys time till the vaccine or the medicine against the virus can be found.

• Given the deficiencies of the Indian medical system, widespread poverty and malnourishment, India needs a longish period of lockdown. Because of a lack of adequate testing facilities, we cannot even tell whether the disease is spreading or controlled. If some districts are not reporting any cases, we cannot be sure whether it is because of inadequate testing or because genuinely there are no cases.

• A premature opening up without having adequate testing is a sure shot invitation for another spread and another lockdown which would be even more painful. The disease could spread rapidly and overwhelm the very poor health system and lead to social chaos.

• There is an alternative view that due to the lockdown, the poor have lost employment and incomes, and they will die of hunger. It is also said that if a large number of people get infected and there is "herd immunity", as happens with other viruses, the population will develop resistance/immunity to the virus. Further, it is argued that 80 percent of people have a mild form of the disease and they get cured automatically. These are the asymptomatic cases. Out of the remaining, 15 percent will have medium level symptoms and would need isolation.

• But five percent will require hospitalisation and two percent would need ventilators and may die. This policy did not work in the UK and they had to reverse the policy in days as the cases shot up and their huge public health system got overloaded. They are on the way to having the largest number of deaths in Europe.

• In India, the human cost of a misadventure will be enormous. If the disease spreads to only 60 percent of the population in the first round, it will mean 82 crore Indians. If 20 percent require isolation and hospitalisation, it will mean 27 crore beds. If five percent need ventilators, it will mean about seven crore people and we have only about a lakh of them. So, most would die and their numbers may be upward of five crore in a year. Can society survive such

a catastrophe? That is why we need to have an extended lockdown. It is a consequence of our indifference to our huge poverty and neglect of public health infrastructure since independence.

- How to make the lockdown work?

Making the lockdown work in India is a challenge. The poor do not have the resilience to deal with such a crisis. They live in poverty, earning and buying their necessities daily. They cannot stock up essentials like the middle classes and the rich. They also live in crowded places, at times five or more people to a room so that isolation is difficult.

- The poor have to be supplied essentials where they live. Food godowns are overflowing, so food can be distributed to the poor. If this is not done, people will rush around and there may be food riots and the lockdown would fail. There should be free tests—they cannot afford Rs 4,500 per test. They also need to be decongested from their slums. For this, schools and halls can be used and tents set up in open grounds. Those wanting to go back to their villages should be enabled to do so after testing.
- Farmers face the problem of marketing of crops and prices are falling. Reports are coming of fruits and vegetables rotting in the fields. The State should procure all the crops and use the excess to supply urban pockets where there are shortages. Public transport—buses and trucks—that are lying idle can be used for the purpose. This extended procurement and enhanced public distribution at the doorstep would solve the problem of both the farmers and the poor in urban areas and enable the success of the lockdown.
- Health infrastructure should be rapidly expanded. Production of equipment and protective gear need to be ramped up in selected factories. Hotels and hostels can be used to create isolation wards. Medical and nursing students can be given paramedic training and used to help in isolation wards and hospitals.
- Resources needed for survival package

During lockdown, production is less than 25 percent of what it was earlier, in January 2020. Thus, the rate of growth of the economy is 75 percent. If it recovers back to the pre-pandemic level in six months (optimistic guess), the growth rate of the economy would be -17 percent. If the economy is in lockdown for two months and then it immediately recovers to the pre-pandemic level, an impossibility, the rate of growth would be -9 percent. How the IMF is expecting the rate of growth to be 1.9 percent is beyond comprehension.

- Such a big decline in the economy will lead to a sharp drop in government revenue. There will be no scope for tax cuts for businesses or giving them a stimulus. Prevention of business failures and collapse of the financial sector, which will be in big trouble, will be needed. Even funding essential expenditures like interest payment and defence will be difficult. Cuts in salaries, etc., would be needed to fund a survival package to take care of the poor, medical expenses and essential administration.
- If half the population which has lost work and has become poor is to be given essentials for six months and if this costs half the World Bank extreme poverty line of $1.9, Rs 15 lakh crore would be required. Add to this expenditure on health infrastructure, etc. The budget would not have so much resource unless other expenditures are drastically curtailed.



TOP PRIORITY
Farmers face the problem of marketing of crops and prices are falling. The State should procure all the crops and use the excess to supply urban pockets where there are shortages

Professor Kumar concludes:

"India faces an unprecedented crisis and that requires out of box thinking. According to experts, without a lockdown, the situation will spin out of control. But then the economy will stall and the resource position will deteriorate. However, life has to be protected so the lockdown has to be made to work and that requires that we spend only on the most essential—a survival package to protect life and businesses. After the pandemic, a rethink on the way our society is can be undertaken but currently the focus has to be on survival."

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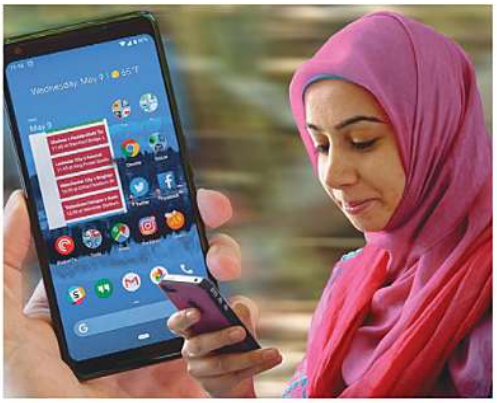


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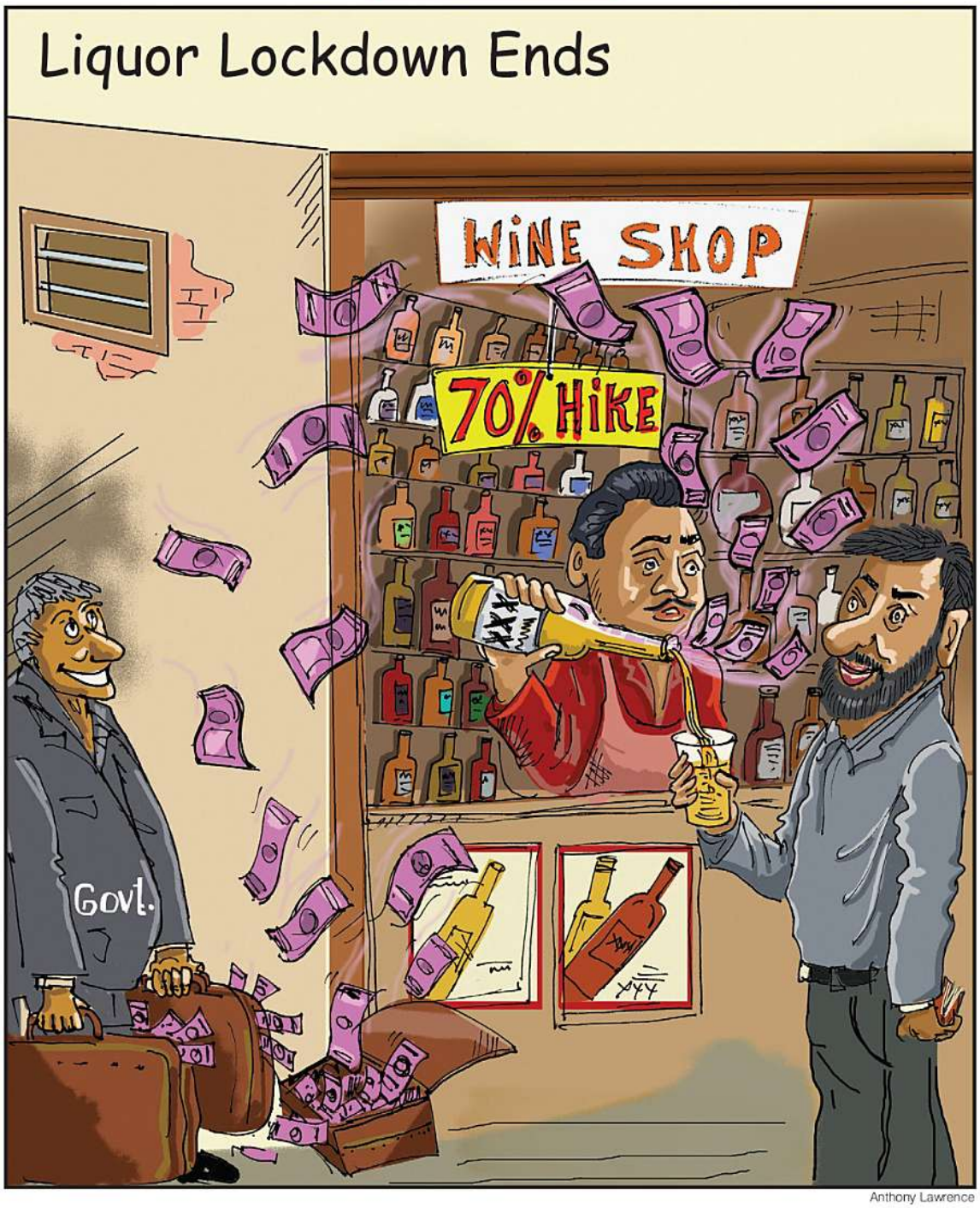
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RINGSIDE



Anthony Lawrence

SC junks plea against judge's appointment



The Supreme Court rejected a petition filed by a district judge that challenged the appointment of a "junior" judicial officer as an additional judge of the Karnataka High Court on the ground that it breached the seniority rule.

The petition was dismissed just 15 minutes before the judicial officer, Padmaraj N Desai, was to take oath as an additional judge of the High Court. "You have come late at the eleventh hour. No court had passed orders like this," ruled a bench of Justices Deepak Gupta and Aniruddha Bose.

The officer's appointment was challenged by Shivamogga principal district judge RKGMM Mahaswamiji on the grounds of seniority. The plea, which also sought a stay on the swearing-in, was taken up by the Court through video-conferencing at 10 am.

The petitioner cited the case of superseding/passing over of a senior district judge, appointed on February 25, 2008 under the reserved category by a junior district judge, and said recommendation of Desai's name by the Karnataka High Court collegium was arbitrary.

It argued that the recommendation was a violation of statutory rules/administrative instructions contained in the official memorandum, dated October 9, 1985. The petitioner also cited violation of the Fundamental Rights under Articles 14 and 16 of the Constitution, while challenging the swearing-in.

Arnab threatening us, says Maharashtra police to SC

The Maharashtra government filed an application in the Supreme Court stating that *Republic TV* Editor-in-Chief Arnab Goswami had abused the interim protection granted to him by the apex court by browbeating the Mumbai Police and creating a fear psychosis.



The apex court had on April 24 granted Goswami three weeks' protection from arrest in relation to the FIRs that were filed against him, directing a stay on the proceedings on all FIRs except the primary one filed in Nagpur. The Court had also transferred the FIR filed in Nagpur to Mumbai and had directed the investigation to be carried out on the attack made against him.

The application stated that Goswami used *Republic's* Twitter handle and alleged that "the police was biased against the Petitioner (Goswami)" and "the police are unnecessarily questioning the Petitioner for several hours". It added: "Ever since the occurrence and registration of case, the petitioner has made a media spectacle of the entire incident at every stage." The petition has sought a direction "to insulate the investigating agency from any pressure, threat and coercion" so that the investigation can be carried out in a "fair and transparent manner".

Virtual courts kept wheels of justice going: SC

The Supreme Court strongly defended the "virtual courts system" that has been put in place in view of the novel coronavirus, saying that "it ensured that the administration of justice does not crumble in the face of a pandemic".

The defence of the virtual courts system came in the wake of criticism by some quarters on the ground that the system did not adhere to the concept of "Open Courts". Lawyers have complained that they were facing varied problems—from sending a pdf file of their applications to convincing the judge of the urgency of the matter and addressing their arguments through video links.

In a 34-page note on hearings since the last week of March when the lockdown was announced and virtual courts were set up, the apex court, which is hearing only urgent matters through video link, backed its performance during the lockdown with data, and said it had heard matters on 22 days until May 1. It said that 116 benches assembled during the period, which included 73 benches for adjudicating review petitions.

According to the data, 538 matters were taken on board by the top court during this period, besides 297 connected matters.

—Compiled by India Legal team

How Deadly is it for India?

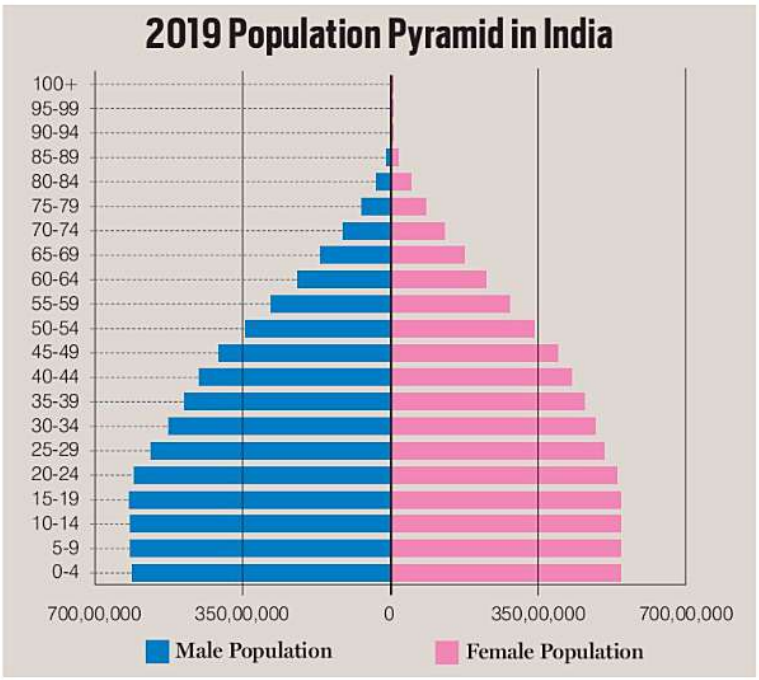
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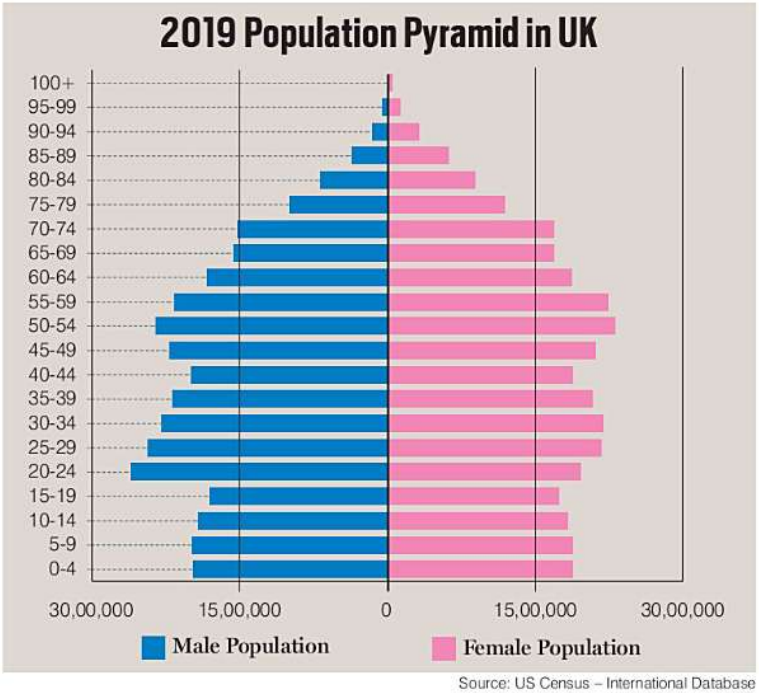
By Saif Razvi, Sai Praveen Haranath and Vikram Ramakrishnan

UNI



SAFETY MEASURES A medical team wearing PPE attends to a Covid-19 patient in a hospital





Source: US Census – International Database

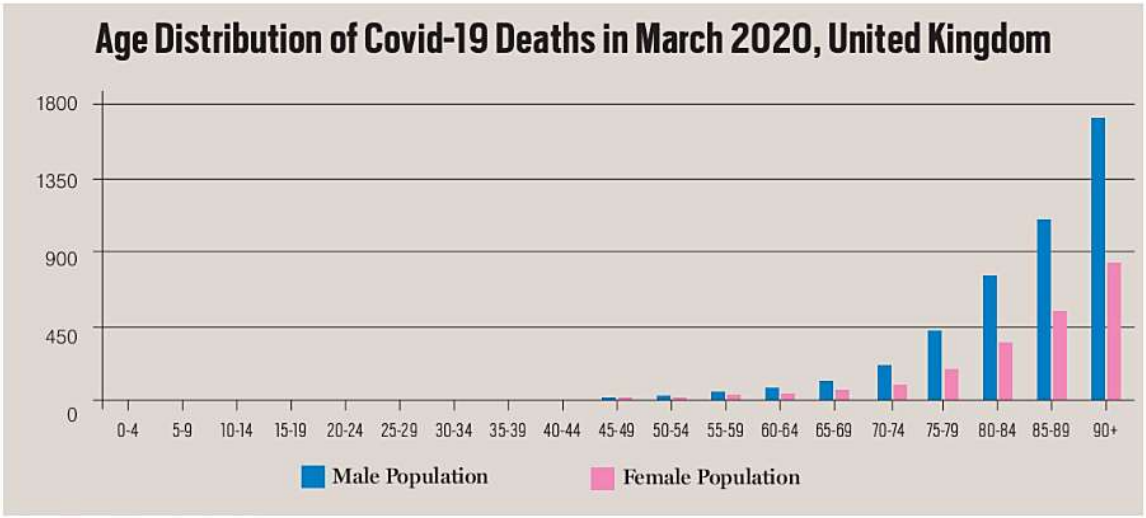
THE Covid-19 pandemic has led to a range of social containment measures in different countries. These were introduced for two main reasons—first, to slow the spread of infection and second, to reduce the preventable loss of lives, mainly by increasing intensive care capacity for those who can be saved. However, the most important question that must be answered is—how deadly is the virus?

There are two terms to understand here—Case Fatality Rate (CFR) and Infection Fatality Rate (IFR). CFR measures the number of fatalities as a proportion of the diagnosed cases confirmed by a test. CFR varies tremendously across countries based on the amount of testing performed, as most cases are asymptomatic or mildly symptomatic. IFR estimates the total death rate based on all people with Covid-19 infection (whether symptomatic or asymptomatic, whether confirmed by a test or not). IFR is always an estimate as we cannot test all people.

At the outset of the Covid-19 outbreak, CFR was thought to be extremely high due to a selection bias, as only the sickest cases were identified and a higher proportion of them died. Current CFR estimates vary widely because of variance in testing from nation to nation. The current best assumption of Centre for Evidence Based Medicine (University of Oxford) is that CFR is about 0.72 percent.

However, it is IFR that is more vital. Several public health authorities in the West projected that for each death from Covid-19, there were likely to be 1,000 infected persons in the community, possibly based on the 0.1 percent death rate of annual influenza. Emerging data may back this assertion as in circumstances where there has been aggressive contact testing, a high number of healthy asymptomatic or minimally symptomatic individuals have been detected, who in normal circumstances would not be considered ill.

We also have a lesson to learn ▶



Source: Office of National Statistics, UK

from the 2009 H1N1 influenza pandemic, which may have affected up to 20 percent of the world population. IFR ended up as a maximum of 0.02 percent, fivefold less than the lowest initial estimate of 0.1 percent, after the first ten weeks of the outbreak.

Studies have shown that a much wider section of the population has already been infected, especially in metropolitan areas such as New York. The US, that is currently performing the largest number of tests, has detected the largest number of cases and confirmed deaths. However, due to selection bias, the vast majority of tested individuals continue to be older adults. Also, it is possible that a significant proportion of deaths due to Covid-19 in the elderly and those with pre-existing diseases would anyway have taken place next year. Typically, one in 10 individuals above 80 years will die each year. Covid-19 may have hastened death in such cases. Such considerations suggest that IFR estimates will continue to drop, as more evidence emerges of the much wider incidence and prevalence of Covid-19 in the community.

INDIA EXTRAPOLATION

So far, India has had relatively few Covid-19 deaths despite its large population. It has a young demographic with over half the population under 35, an average life expectancy of 68 years, with only 5.46 percent aged above 65. In contrast, in Britain (over 32,000 deaths to date, nearly 90 percent deaths occurring above 65), 16.4 percent of the population is aged above 65.

In the chart *(facing page)*, the key figure is IFR. As the Indian age pyramid is different from many western nations worse affected by Covid-19, we have in the best possible scenario, reduced IFR to 0.04 percent, in the middle case scenario to 0.06 percent and in the higher case scenario to 0.1 percent. Applying the 0.04 percent IFR, we estimate deaths of 3.25 lakh (60 percent of population infected). In the middle case scenario (60 percent of population infected), we estimate about five lakh deaths and in the higher possible scenario with an IFR of 0.1 percent, we estimate approximately 8.1 lakh deaths. Even with an IFR double that of influenza (0.2 percent), approximately 16 lakh Indians will die. A potential mitigating factor in the country could be faster development of herd immunity. Understandably, other local factors such as malnutrition and access to quality healthcare may increase IFR.

To put this in context, over 90 lakh people die each year in India, with 22,500 deaths each day. This includes more than 1.5 lakh dying in road traffic accidents annually. Tuberculosis, a deadlier infection, kills approximately 4.4 lakh Indians each year.

MEDICAL OPINION

According to the Indian Council of Medical Research (ICMR), more than 60 percent of Covid-19 positive individuals in India to date are asymptomatic. In a random sampling of populations in Iceland and Italy, between 40-50 percent of Covid-19 positive individuals were asymptomatic. Such healthy infected individuals would not normally be identified, but would spread infection.

In India, social mixing is unavoidable, especially in the lower socio-economic strata. Therefore, once the Covid-19 virus has entered a community, nearly all members will at some point of time become exposed or infected.

It is improbable that a curative medicine will emerge soon. Influenza, despite being around for a long time, still does not have a curative medicine. A vaccine is likely to be 12 to 24 months away and will be more useful for future seasonal

Covid-19 Deaths Forecast in India

Infection Fatality Rate (IFR)	Infected	Deaths Forecast	Proportion of Usual Expected Deaths in a Year
0.04%	20%	108,160	1.2%
	30%	162,240	1.8%
	60%	324,480	3.6%
0.06%	20%	162,240	1.8%
	30%	243,360	2.7%
	60%	486,720	5.4%
0.1%	20%	270,400	3%
	30%	405,600	4.5%
	60%	811,200	9%

returns of Covid-19 (like winter flu jabs each year).

So, what can a person do to face Covid-19? Perhaps, the body's natural immune response is the best defence. The public must, therefore, be encouraged to adopt healthier lifestyles. The added long-term benefit of this would be to reduce other lifestyle-related diseases such as heart disease and dementia. Under these circumstances, some pertinent questions can be asked.

- How do lockdowns help? Initially, Covid-19 was thought to be far deadlier than what we know now. The response was to lock down. We now have a better understanding and can recognise that lockdowns are effective only during that period. Once the virus comes in contact with susceptible individuals, it will start to spread again. Unless we can eliminate the virus across all asymptomatic and healthy reservoirs of humans (unlikely) in the local population and prevent any new infected humans from entering India (again unlikely), Covid-19 waves will continue. So, the only reason for a lockdown is to improve health facilities for the minority of people affected who may need additional medical support.
- What are the negative impacts of lockdowns on health? There are huge consequences from the non-Covid costs of lockdowns. These costs include disability and death due to non-Covid diseases such as cancer and heart disease, whose detection and treatment may be delayed during lockdowns. In addition, the mental and physical health of the population may suffer due to loss of livelihoods. The long-term impact on the next generation of children in terms of nutrition, education, skill-acquisition and job opportunities could be substantial. Economic depression could lead to impaired social and health indices, which could take many years to recover.
- What roles do society, media, industry and the government play? First, public education about Covid-19 is vital. Stigmatisation of Covid-19 patients must be stopped with a public awareness campaign and it should be considered as just another infection. Individuals with symptoms must be encouraged to step forward and families and contacts encouraged to adopt self-isolation measures after exposure to a positive case. Harsher measures of forced quarantine in distant facilities must be avoided as this encourages ill individuals to not self-report their illness.

> The public must be encouraged to adopt healthier lifestyles. The added long-term benefit of this would be the reduction of other lifestyle-related diseases such as heart disease and dementia.

Second, specific sections of society who are more vulnerable to the illness, such as the elderly, those with cancer, serious heart and lung diseases, must be educated about social distancing. This could involve personal measures to reduce unnecessary social interactions and wearing masks until a better treatment strategy emerges.

Third, there must be a coordinated effort between private and public healthcare systems to pool resources, especially intensive care facilities. Private hospitals could provide clean sterile non-Covid-19 facilities for specialist medical care such as heart surgery. Going forward, the partnership forged between government and private healthcare during the pandemic could continue, supported by increased public spending on healthcare.

Improvement in critical care infrastructure during the pandemic could help reduce deaths in future from common diseases such as pneumonia, sepsis and epilepsy. Technological innovations that have existed but not been widely adopted until now such as telemedicine and tele-critical care could be developed via national and regional networks.

Another positive outcome via increased public awareness of personal hygiene may be a decline in other respiratory infections like tuberculosis. Better hand hygiene may reduce diarrheal illnesses, a major cause of distress and death especially in young children.

Fourth, industry and the government need to consider strategies that keep the nation running, whilst at the same time protecting the physically and economically vulnerable. Many European nations have kept vital sections of their economies open during their lockdowns. Besides healthcare, sectors such as food, agriculture, public services and infrastructure projects have continued during this time. This has had the ▶



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DISTANT CARE
Telemedicine and tele-critical care could be developed to reach more patients

advantage of keeping nations functioning, salaries being paid, as well as companies and workers planning for their post-Covid-19 futures.

From a public health perspective, this has also allowed the younger, less vulnerable workforce to mix slowly at the workplace, perhaps allowing Covid-19 infection to spread over a period. In India, a large section of the workforce is healthy, young individuals in urban areas, living by themselves away from their elders. Resumption of work, with cautions at the workplace, is feasible. This may help develop herd immunity within younger sections of society and subsequently decrease the rate of spread from this younger "herd" to the elderly and other vulnerable groups later.

Therefore, the possible short-term benefits of a lockdown in a developing nation must be balanced against more definite, obvious long-term adverse effects of an economic slowdown, with natural implications on both the physical as well as the financial health of its people.

LEGAL OUTLOOK

There are many acts such as the Epidemic Diseases Act, 1897, which were used by the government to take special measures for the pandemic. On April 23, the act was further amended, with the incorporation of punishments for individuals obstructing frontline health workers. It has also been clarified that no suit or other legal proceedings shall lie against any person, including healthcare workers, for acting in good faith.

The Disaster Management Act, 2005, also provides for the effective management of disasters and for matters connected therewith or incidental thereto. Additional regulations have also been introduced by various state governments such as the Delhi Epidemic Diseases Covid-19 Regulations, 2020, the Maharashtra Covid-19 Regulations, 2020 and the Kerala Epidemic Ordinance, 2020.

The pandemic has led to changes in the functioning of the judiciary. Advocates now put forth cases via video-conferencing, a first in India. This is likely to continue in the short term. However, this could be a future opportunity as advocates are able to participate in legal proceedings remotely. This addresses some of the imbalances in legal expertise available in some areas of India.

At a time when many countries facing the pandemic are working to get enactments through legally, the UK was the first to pass the Corona Virus Act 2020 that grants emergency powers to handle the pandemic.

The virus has to be fought on all fronts and by all stakeholders before this war can be won. ■

—Saif Razvi is a neurologist in the UK; Sai Praveen Haranath is a pulmonologist and critical care physician in India and the US; Vikram Ramakrishnan is a a surgeon, management consultant and entrepreneur. Inputs were given by KG Krishnaraj and S Shanthakumari, advocates in the Supreme Court. The views and opinions expressed here are personal and don't reflect the official positions of the organisations the writers work for.

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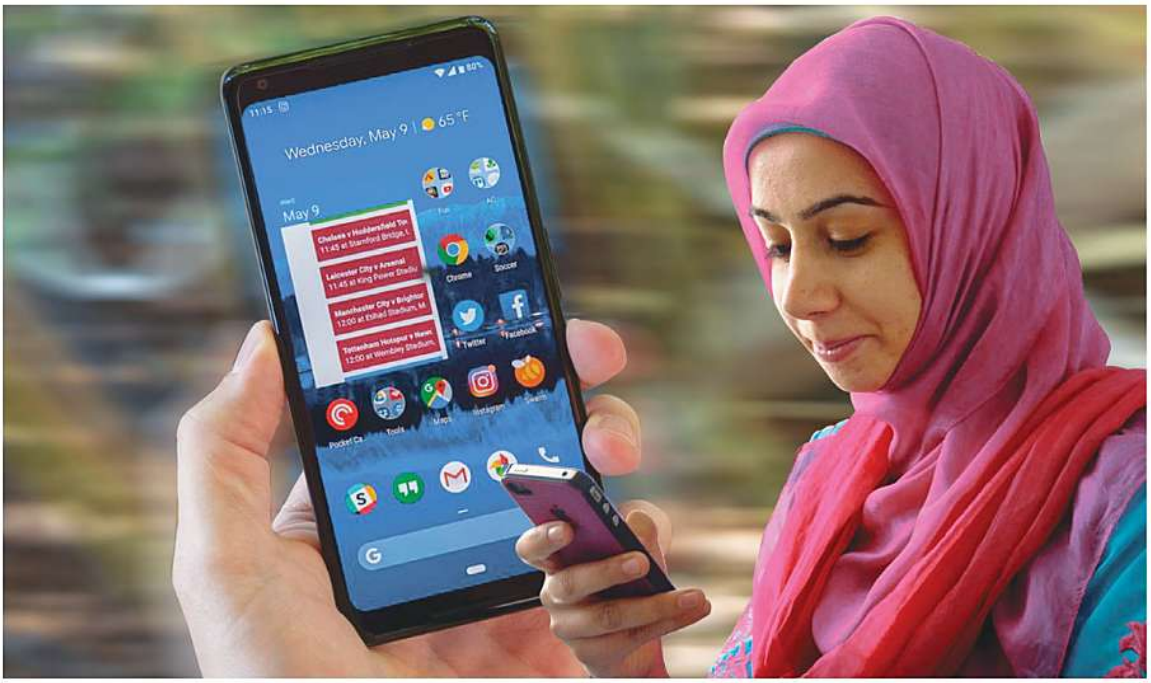
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From 4G to 2G

Various petitions in the Court sought restoration of 4G internet service in the UT as the present 2G one was affecting education and business during the lockdown

By Srishti Ojha

SINCE the abrogation of J&K's special status on August 15, 2019, its people have been subject to multiple restrictions, including those regarding the internet. And now with the entire world crippled by Covid-19, the Union Territory is finding itself handicapped with yet another restriction—the speed of the internet has been restricted to 2G by the government. Petitions challenging this restriction and restoration of 4G have been filed before the Supreme Court and the High Court.

On May 4, the Supreme Court reserved its order on a petition filed by advocate Shadan Farasat to restore 4G services on behalf of Foundation for Media Professionals. It challenged the government order restricting internet speed, contending that it was in violation of Articles 14, 19, 21 and 21A of the Constitution. Another order was passed by the J&K administration on April 3 retaining these restrictions till April 15.

According to the petitioner, during this period of health crisis, the government was obliged to ensure access to the "digital infrastructure" that is required to make the right to health of citizens an effective reality. The residents of J&K, it said, were unable to benefit from initiatives like the health ministry's Covid-19 dashboard and MyGovIndia's WhatsApp chatbot which responds to queries and counters Covid myths with text, infographics and videos. They cannot access potentially life-saving information from these services, which is violative of their right to equality, right to freedom and right to life, the plea said.

Further, the petitioner stated that no access to 4G made it impossible for the residents to follow the government mandated "work from home" policy, especially for businesses in the IT and ITES sector, and educational institutions. Access to 4G is, therefore, crucial to implement the work from home policy promoted by the government.

Another PIL in the Supreme Court by Private Schools Association, Jammu and Kashmir, an association of more

than 2,200 schools, also challenged the government's orders on the ground that restriction of 4G data was an infringement of the right to education. The petition, filed through advocates Soayib Qureshi and Charu Ambwani, stated that data connectivity at the speed of 2G was not sufficient to circulate information, and restrictions on availability of good internet speed were unreasonable and unjustified.

The petitioner referred to the landmark decision in *Anuradha Bhasin vs Union of India* on January 20 where the right to internet was held to be part of fundamental rights and restriction on internet speed in this case amounted to suspending the internet for eternity.

The petition came before a bench headed by Justice NV Ramana. Senior lawyers Salman Khurshid and Huzefa Ahmadi represented parties seeking restoration of 4G.

The apex court in *Anuradha Bhasin*, while dealing with the lockdown in J&K, stated that the importance of the internet cannot be ignored and wide circulation of information was important. The right to freedom of speech and expression was thus held to be a part of Article 19(1) under the Constitution, and any order for suspension of the internet should be subject to judicial review.

During the hearing, Ahmadi challenged the restrictions and stated that as only 2G connectivity was available, students in J&K were unable to access classes that schools were holding via a video-conferencing app. Section 144 was imposed there on March 1, after the outbreak of the pandemic and through subsequent orders, internet speed was restricted to 2G. Doctors too were facing difficulties in accessing information about the treatment of Covid and some 75 of them had made a representation to the government.

In response to Justice Ramana's query about the government's contention that there was a surge in terrorist activities, he stated that according to numbers, these activities were more in the 1990s when there was no internet



Justice NV Ramana had stated that according to numbers, militant activities were more in the 1990s when there was no internet and there was no study to show these had increased due to 4G.

and there was no study to show these had increased due to 4G. He added that the government was unable to show any direct nexus between the surge in terrorist activities and 4G. He suggested that the government remove the restrictions for a week, monitor the results and see if there was any link with terrorism.

Khurshid stated that private schools were given directions by the government to provide education through video-conferencing. There is an obligation under the right to education to provide this to students. Security concerns should be adhered to but data to check the impact of 4G on security should be made available by the government. Though the government had stated that there has been a weekly review of the situation, none of these review orders was made available in public. He also suggested that internet sites which were problematic could be blocked by the centre.

Advocate Soayib Qureshi cited the Anuradha Bhasin case and said that as government orders had repeatedly said that anti-national information was being disseminated through social media platforms, why couldn't these be restricted instead of the internet.

Ahmadi submitted that the *Anuradha Bhasin* judgment was not being followed, as according to it, orders must be reviewed within a week. He said no orders of the review committee were placed on record. He said that it was elementary knowledge that 2G couldn't be used for video-conferencing and slow internet was a handicap for students. Students in J&K were competing with those in the rest of India and couldn't access education like them, he said.

Attorney General KK Venugopal submitted that they were disputing the issue of violation of the fundamental right to education and not the facts. The orders passed specifically stated that restrictions on internet speed were required for national security and passed for protecting the lives of the population of J&K. Those tasked with protecting national security must be the sole judges of this, he said.

Justice Ramana said the purpose of the review committee was to see whether there was a need for review based on the material present. The government had passed orders every seven days. He asked: "Where is the review committee order? Order must indicate that review committee has considered it. Are you saying internet restriction orders have been passed after review?"

Responding to the Bench, Solicitor General Tushar Mehta stated that orders had been reviewed by the Committee. When Article 370 was abrogated, the government started with a complete lockdown, then opened up movement, then landlines, then 2G internet. He added that the orders were not mechanical and decisions were made according to officials at the ground level. He said that health services were working. There were other areas in the country where there was no internet or where only 2G was available, and still there was no information that someone had died of Covid-19 because they didn't have internet access, he added. ■



Amitava Sen

The New Status Quo

The coronavirus pandemic has changed the way we engage and it will be worth watching how, post-lockdown, courts adapt to the lessons learnt from the past three months

By India Legal Bureau

FROM the blue skies above to the crystal-clear waters of the Ganges to wandering herds of nilgai in Noida City Centre, there is change everywhere. Even the courts, ever steeped in tradition, are witnessing changes that have seen them falling back on the past even as they embrace the new.

Delhi High Court perhaps typifies this best. In the backdrop of reports that central air-conditioning (AC) may spread Covid-19 infectious droplets, it fell back on old-fashioned pedestal fans. It also prepared detailed directives for all stakeholders—judges, lawyers, court staff and clients—on life in the hallowed rooms once normal routine is restored post-lockdown.

In mid-April, the Court constituted a committee led by Justices Hima Kohli, Vipin Sanghi, Rajiv Shakdher and Talwant Singh for preparation of a "Graded Action Plan" for functioning after the lockdown to contain the spread of the coronavirus. The decision to take the traditional route to keep cool came in the wake of reports that ACs may circulate infectious droplets bearing the coronavirus.

In the third week of April, the Court sought a response from the centre and the AAP government in Delhi on a petition by a lawyer that no centrally air-conditioned buildings, including






POST-LOCKDOWN MEASURES
The committee formed by Delhi HC and led by Justices (clockwise from far left) Hima Kohli, Vipin Sanghi, Rajiv Shakdher and Talwant Singh has issued several directions

courts, be used without taking precautions to prevent the spread of Covid-19. The notice was issued by a bench of Chief Justice DN Patel and Justice C Hari Shankar and was also served on the Registrar of the High Court, seeking their stand.

On April 28, a meeting was held by this Committee to consider whether the AC plant could be run in the High Court after lifting of the lockdown and if so, what steps were required so that circulated air did not facilitate the spread of the coronavirus.

The Committee considered a report submitted by Sanjeev Rastogi, chief engineer, PWD, and Vikas Tiwari, junior engineer, PWD. According to the report, even if the Court incurs massive expenditure on procuring and installing ultraviolet germicidal irradiation devices, there would be no certainty of eradication of all virus, germs and particles, including Covid-19. They said that such a device can only disinfect the air received for re-circulation and if any Covid-19 infected person enters an area with a central AC, there was the likelihood that the particles of the virus exhaled by such a person may remain airborne and infect others. They said that even in the SC, the central AC system had not been switched on till now and suggested that instead of investing a huge amount in procuring these devices, whose efficacy was still not clear, the Court could procure sufficient number of pedestal fans/wall fans and instal them at appropriate places in all the blocks.

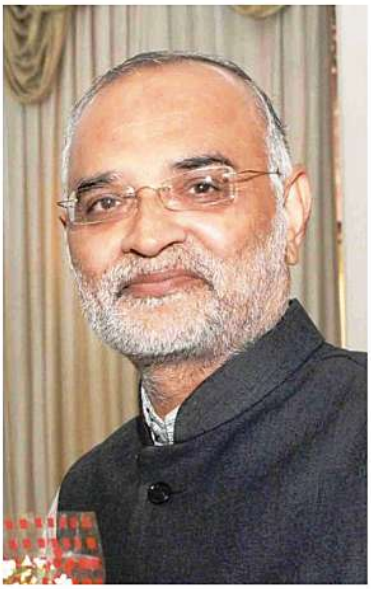
The engineers informed the Committee that they would try to find out whether previously installed hooks, meant for ceiling fans, were still available so that they could be re-installed. The Committee resolved: "Let PWD conduct a survey in this regard and submit a proposal regarding the required quantity of all such types of fans in every block. Since the windows and doors of Court Building may be required to be left open for proper circulation of air during the working hours, PWD shall ensure that all such windows have proper net/mesh so that no insect/mosquitoes etc. enter inside the court building."

The Committee directed the registrar-general to get in touch with the Director General of Health Services and Chief Medical Officer and to apprise them about the possibility of conducting pool-testing for Covid-19 for staff and visitors.

Another agenda was to assess the working of the present system in the High Court for hearing urgent matters through video-conferencing. As many officers and staff officials were coming to the Court for facilitating video-conferencing and discharging other administrative duties, it was resolved that they should come by rotation and not consecutively. It was also to be ensured that they maintained a safe distance from one another and continued using sanitisers, masks and gloves.

The registrar-general was directed to seek inputs from all other registrars and prepare a flow chart describing how files, whether they be e-files or physical files, would move from one hand to the other before they reached judges holding courts through video-conferencing and also till the orders were uploaded on the website. This flow chart should also reflect per hour productivity of each dealing hand involved with the assigned tasks.

In order to further contain the spread of Covid-19, it was resolved that all advocates who visit this Court or subordinate courts for video-conferencing hearing need not wear coats, bands ▶





A Delhi HC bench of Chief Justice DN Patel (left) and Justice C Hari Shankar sought responses from the centre, Delhi government and the court registrar on a petition that no central-AC buildings, including courts, be used without precautions against Covid-19.

and ties. Also, to facilitate quick release of any accused/undertrial, a copy of the bail order passed by this Court should be sent through email to the Director General (Prison), Delhi, immediately by the concerned official. Every district and sessions judge, in coordination with the local bar, would create a facility for video-conferencing in their respective complex. It would cater to those advocates/litigants whose matters have been listed for hearing but who are not in a position to handle video-conferencing from their respective homes/offices.

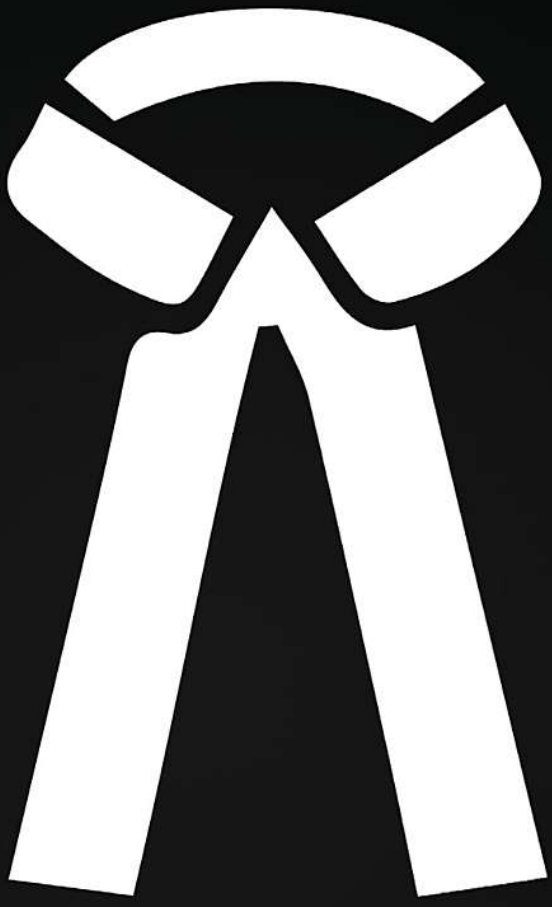
The Committee also issued the following directions to various Family Courts in Delhi:

- Family courts will start taking up matters where arguments have been heard and the judgment reserved, and shall give priority to cases where judgment has been pronounced. This should be reflected in the causelist in advance for intimation of all concerned and an auto-generated SMS should also be sent.
- Fresh petition under Section 13-B (2) of the Hindu Marriage Act, 1955, should be permitted to be filed only through e-filing module of Case Information System software developed by the e-committee of the Supreme Court and conducted through video-conferencing.
- In case the lockdown is extended, all matters, except for petitions with regard to 13-B (2), Hindu Marriage Act, and final argument matters of more than five-year-old cases, should be adjourned en bloc.
- Efforts should be made to dispose of all final arguments matters. Each side should be asked to send point-wise written submissions not exceeding five pages in pdf format. The counsel shall file proper index indicating, *inter alia*, the points on which any authority is cited. The relevant paragraphs of such authorities should be clearly mentioned. Proper and complete citations should be stated. The Court may, wherever found appropriate and necessary, hear oral arguments through video-conferencing, with advance notice to counsel/parties.
- In the next phase, urgent applications, whether in pending cases or otherwise, seeking maintenance, custody, visitation rights, petitions with regard to 13-B (1) of the Hindu Marriage Act and *ex parte* matters shall be taken up through video-conferencing.
- Filing of non-urgent/routine matters shall also be permitted through the e-filing module with the rider that these matters be taken up for hearing as and when the normal functioning of the courts resumes.

In a letter to the district and sessions judge-cum-special judge (PC Act) (CBI), all district and sessions judges and all principal judges (Family Courts), Registrar-General Manoj Jain wrote: "Despite the fact that the functioning of courts is suspended during the lockdown, there is every attempt to alleviate the hardship of litigants by hearing urgent matters. All such hearings, as far as possible, need to be conducted through video conferencing only.

"Every district, in coordination with the local Bar, is required to immediately create proper facility for video conferencing in respective District/Complex, if not already in place. This facility will cater to those Advocates/Litigants whose matters have been listed for hearing but who are not in a position to handle video conferencing from their respective homes/offices. The compliance report of videoconference facility be sent to the Registrar at the earliest. If videoconferencing is not feasible in a given case, the crucial norms of social distancing be strictly adhered to during court-room hearings. It be also ensured that there is no crowding even in the corridors and other areas of the court-complex."

Until a few years ago, what seemed a simple technological shift—the use of a camera for live meetings—was unthinkable in courts in India. The coronavirus has once and for all changed the way we engage, courts included, and it will be worth watching how the lessons of the recent past help in the future. ■



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The Law and Wages

During the lockdown, what happens if an employer cannot comply with the direction of payment of wages? This will be punishable under the Disaster Management Act and IPC

By Shruti Agarwal



ON March 23, 2020, the Union Ministry of Labour and Employment advised all employers of public and private establishments not to terminate their employees, particularly casual or contractual workers, or reduce their wages. So far, so good.

The next day, the National Disaster Management Authority (NDMA) under Section 6(2)(i) of the Disaster Management Act, 2005 (DMA) directed ministries/departments of the government of India, states and Union Territories to take effective measures to prevent the spread of Covid-19 in India. The same day, the home secretary under Section 10(2)(I) of the said Act said that certain guidelines had been issued. This order was effective for 21 days from March 25.

The guidelines direct closure of commercial, private and industrial establishments, transport and hospitality services, educational institutions, etc., subject to exceptions therein. It is clear that these are "containment measures" and violation of them would be punishable under Sections 51 to 60 of the said Act, besides Section 188 of the Indian Penal Code (IPC).

This order of March 24 was followed by two more orders on March 25 and March 27. A third addendum order was issued by the home secretary on March 29 in the backdrop of the widespread movement of migrant workers. The order, issued under Section10(2)(I) of the said Act, directed: "All the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on the due date, without any deduction, for the period their establishments are under closure during the lockdown...."

It is this direction that has caused consternation among a large number of employers despite their best intentions to support their employees during the crisis. Businesses across most segments have faced disruptions due to the Covid-19 outbreak. And many industries and employers, especially in the small and medium size sectors, work with a high proportion of fixed operating expenses. This makes their businesses high-risk in case of revenue fluctuations. So is this direction to compulsorily pay wages to workers, without any deduction, for the entire period of the lockdown feasible for such an employer?

The concerns here are two-fold. First, is this direction justifiable in law? And, second, what are the consequences



Photos: UNI

of non-compliance?

In the first case, *prima facie,* the direction appears unreasonable, arbitrary, vague and disproportionate. The third addendum order, which was purportedly issued in the backdrop of the mass movement of migrants, directs all employers to pay wages to all workers on their roll. It is not clear whether the direction only applies to employers of migrant workers or is a blanket direction to all employers. It, therefore, is vague and unreasonable. The said direction also does not take into consideration the financial capacity of the employer to bear the burden. The capacity of the employer to pay depends upon the capacity to maintain consistent production, which hasn't been possible during the lockdown. Therefore, this direction lacks "reasonableness". Thirdly, it is arbitrary as it postulates situations where the law treats unequals equally. The direction seems to apply to all employers, irrespective of whether they are engaged in "essential services" and thus generating revenue, or whether their operations are completely closed. Even an establishment that comes under "essential services" has two sets of employees—technical employees whose services are used and clerical whose services are not being used. The law mandates equal treatment of both classes. Most importantly, this direction treats employers of SMEs/MSMEs (who may not have the working capital to pay full wages during the lockdown) and those in large-scale industries (who may be able to comply with this direction), alike.

PANDEMIC PANGS
A closed restaurant in Srinagar; (below) a closed mall in Chennai

The direction was issued under Section 10(2)(l) of the DMA which states that the National Executive Committee (NEC) may lay down guidelines for, or give directions to concerned ministries/departments of the government and states regarding measures to be taken by them in response to any threatening disaster situation or disaster. It is worth considering whether the said provision empowers the NEC to give directions to a private employer and whether the burden of "mitigation" or "economic ▶



Pay heed or face action

Various laws under which an employer can be punished for not giving full wages during a pandemic lockdown

Section/Act	Offence	Punishment
Section 51(b), DMA	Refusal to comply with any direction given by the Central/ State governments or by the National/State Executive Committee or District Authority	Imprisonment for a term which may extend to one year or with fine or both, extendable to two years if refusal results in loss of lives or imminent danger
Section 58, DMA	Offence by companies. Every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty and liable to be proceeded against and punished	
Section 188, IPC	Disobedience of order duly promulgated by public servant	Simple imprisonment of either description for a term which may extend to six months, or with fine which may extend to one Rs 1,000 or both.

rehabilitation or reconstruction", which is a part of disaster management, can be imposed on employers, and if so, to what extent.

What happens if it is impossible for an employer to comply with the direction of payment of wages during the lockdown? Would the maxim *lex non cogit ad impossibilia* (the law does not compel the doing of impossibilities) be applicable in this case? It is clear that violation of this direction to pay would be punishable under Section 51-60 of DMA and Section 188 of the IPC.

The Supreme Court in *Supdt. of Taxes v. Onkarmal Nathmal Trust* (1976) held:

"62. The law in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling performance of that which is impossible.

"... where the law creates a duty or charge, and the party is disabled to, perform it, without any default in him, and has no remedy over, there the law will in general excuse him: and though impossibility of performance is in general no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse....The same principle has been stated in Craies on Statute Law.

"Under certain circumstances, compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, *lex non cogit ad impossibilia*, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God or the King's enemies, these circumstances will be taken as a valid excuse."

The Court also held in *Krishnaswamy S. Pd. v. Union of India* (2006): "16. The maxim *actus curiae neminem gravabit* i.e. an act of court shall prejudice no man is an important one. The maxim 'is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law', said Cresswell, J. in *Freeman v. Tranah*. An unintentional mistake of the court which may prejudice the cause of any party must and alone could be rectified.

"17. The maxim of equity, namely, *actus curiae neminem gravabit*—an act of court shall prejudice no man, is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other relevant maxim is, *lex non cogit ad impossibilia*—the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intentions of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases."

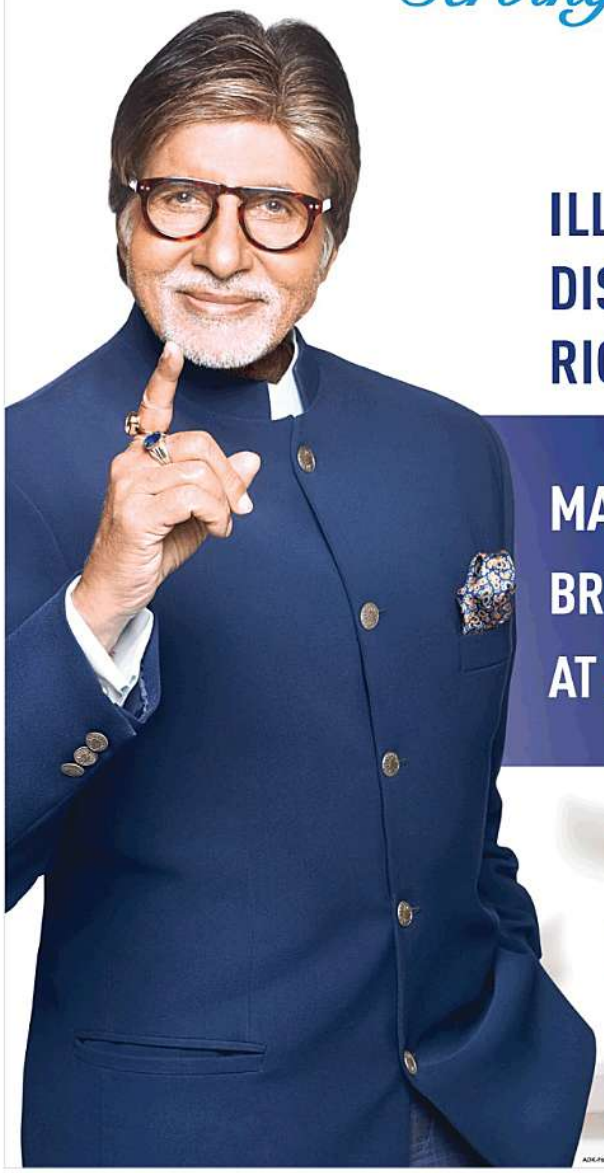
It would be interesting to see whether courts, in appropriate cases, apply the aforesaid principles of *actus curiae neminem gravabit* and *lex non cogit ad impossibilia* in order to grant relief to an employer who, despite his best intentions and efforts, is unable pay wages to his workers on the due date during the lockdown.

It is indisputable that tough times call for tough measures. The challenges posed by Covid-19 are of an unprecedented nature, and are being met by both the State and the citizenry to the greatest possible extent. ■

The writer is an Advocate-on-Record in the Supreme Court

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Rules of Engagement

Even as corona cases go up, strict guidelines have been issued for the gradual easing of restrictions in offices and industries. But will Indians let go their old habits of spitting and social proximity?

By Papia Samajdar



UNI

LOCKDOWN VIOLATIONS
Social distancing is a new concept in India and many people find it difficult to practise it

AS is the case with any new disease, it takes time for health authorities to issue tips and guidelines to the general public. This was the case with the novel coronavirus too. At the onset, the WHO, heads of government and scientists were sceptical about measures that are now mandatory. Even when the WHO issued recommendations for droplet and contact protection for carriers, world leaders paid little heed. Many questions were raised about the efficacy of wearing masks too. As the cases piled up, social distancing and masks in public places were mandated.

Since March 24, 2020, India implemented one of the strictest lockdowns to curb the disease. As it prepares to open up parts of the country on May 3, the home ministry has issued a list of guidelines to be followed.

The guidelines vest state governments with decision-making powers and the implementing authority has to ensure that safety is maintained. In an effort to re-start the economy, the centre has provided some relaxation to certain sectors. However, states, Union Territories and district administrations are required to ensure that the guidelines for social distancing in offices, wearing masks, etc, remain in place. Any dilution of these norms will not be allowed.

Though travel restrictions continue, a small exception has been made for migrant labour. While interstate movement is not allowed except for medical and essential services, migrant workers can move within the state to other districts for employment. But all civilian domestic and international travel by air, trains, metro rail, buses, taxis, autos and cycle rickshaws remains suspended till May 3, except for medical and security purposes.

Industries which are exempted include agriculture and animal husbandry, pharmaceutical and medical services and some construction activities. Factories operating outside the municipal limits, Special Economic Zones, export-oriented units, industrial estates and industrial townships are also allowed, provided they arrange for the transport and stay of their workers within the premises and have standard operating procedures to ensure social distancing at the site. Other industries include food processing units outside city municipality limits, manufacturing of IT hardware, mining, manufacturing of packaging units, oil and gas refinery and brick kilns in rural areas. Apart from that, government offices and NGOs providing care are exempted from the lockdown post-April 20.

The guidelines have also laid down rules to be maintained in offices and workspaces. These include wearing a face cover while in public, social distancing and no official gathering with

more than five persons at any time. There is strict prohibition of *gutka*, tobacco and spitting in public spaces and those violating will be fined. All organisations are also mandated to sanitise the office periodically, ensure staggered lunch times and have good hygiene practices. The district magistrate is responsible for strict implementation of these rules. Failure to follow them will invite a penalty, as per the ministry guidelines.

Some of these measures may be difficult to implement in India. For example, 70 million Indians are estimated to chew tobacco, *gutka* and pan masala. This is a matter of concern in corona times as their spit can carry the virus. Prohibiting its sale is one way to control this chronic habit of some Indians. If found spitting, one is liable for a fine and a jail term of a year under the Disaster Management Act.

Punya Srivastava, joint secretary in the home ministry, admitted in a press address that spitting was a dangerous habit as the virus spreads through droplets. "We need to impose the strictest punishment," she said.

This is probably the first time that the government and municipalities will enforce rules against spitting with such vigil. Most municipal laws prohibit spitting and have a fine attached to it. Though there have been anti-spitting drives in Mumbai, weak enforcement of rules has allowed this habit to thrive.

Bihar, Jharkhand, Telangana, Uttar Pradesh, Uttarakhand, Maharashtra, Haryana, Nagaland and Assam had already banned the use of smokeless tobacco products and spitting in public. Kerala and Maharashtra impose a fine of Rs 500 and Rs 1,000, respectively, on anyone caught spitting. In Mumbai, spitting can cost one either Rs 1,000 or detention under IPC Section 189. The BMC collected more than Rs 1 lakh within 24 hours of announcing the fine on March 18. ICMR has also appealed to the public against chewing tobacco products and spitting in public.

Dr Ritu Bansal, a Delhi-based dentist, told *India Legal*: "To test for corona virus, a mouth swab is taken. This means the virus is present in the mouth of those with the disease. Hence, spitting should be avoided at all costs."



Anil Shakya

The MHA guidelines mandate prohibition of *gutka*, tobacco and spitting in public spaces and violators will be fined. The rules also say that offices must be sanitised with staggered lunch times.

Sadly, spitting has also become an act of defiance in some cases and doctors and medical staff have become victims of it. In Tiruchirappalli, a Covid-19 positive patient was booked for attempt to murder after he allegedly spat on a doctor treating him. TV visuals have also shown suspected patients spitting on police personnel from a bus ferrying them to hospitals for treatment. They were booked under Sections 269, 270 and 271 of the Indian Penal Code, which stipulates punishment for unlawfully committing an act to spread diseases dangerous to life and violating quarantine rules.

As the second lockdown gets relaxed, the number of Covid-19 cases and death toll due to it continue to rise. States are also divided between imposing a strict lockdown or giving some leeway. Maharashtra, which tops the number of cases, has relaxed the lockdown only for industries in the green and orange zones. However, all districts continue to be sealed with only essential services permitted. Similarly, Delhi's 11 districts have 108 containment zones. Delhi Chief Minister Arvind Kejriwal announced that any decision regarding the easing of restrictions will be taken only after carefully assessing the situation as cases continue to rise. However, it has allowed standalone and neighbourhood shops and single units to open.

Kerala, which claims to have flattened the curve, has decided to reopen restaurants and allow private vehicles to ply on an odd and even basis. Haryana has also decided to allow industrial activities after owners of industrial units are granted permission through its SARAL portal, provided they are not under the containment areas.

In Goa, which currently has no active cases, the government has allowed fisheries cooperative societies and associations to start selling fish. This is coupled with implementation of strict social distancing guidelines and certain rider restrictions.

While states and the centre have issued strict guidelines, implementing agencies continue to face difficulty in ensuring total compliance. According to the data published by Delhi Police, 66,000 FIRs had been registered by April 4 against people flouting the lockdown norms. Similarly, people in Assam, Goa and Delhi came out on April 20 despite only a partial lift of the lockdown and cases were registered against many.

Social distancing is a relatively new concept in India and many people find it difficult to practise it always, leading to violations. Not only does this water down the government's efforts but it could sound the death knell for many. ■

Slumdog Millionaire's Ticking Time Bomb

Many slums in Mumbai have become coronavirus hotspots but the one dominating the headlines is Dharavi—Asia's second biggest slum. What can be done to contain the Covid-19 spread and the potential risk to the rest of Mumbai, India's commercial capital?

By Kamakshi Singh Mehlwal and Geetanjali Mehlwal



Shekar

SPREADING LIKE WILDFIRE
(Above) The number of Covid-19 cases in Dharavi has crossed 600; the police distributing masks and sanitisers to slum dwellers in Dharavi

DHARAVI, spread over 2.16 square kilometres, is one of the most densely populated areas on earth. A Covid-19 community spread here in the heart of bustling Mumbai, will explode like a grenade. Dharavi is, without doubt, a major ticking time bomb. Almost 10 lakh people—many of them migrant labourers from all states of the country—live here in small shanties.

Many slums in Mumbai, including Dharavi, Govandi, Byculla and Kurla, have become coronavirus hotspots. The only way to prevent hospitals in Mumbai getting overwhelmed is to thwart the virus from breaking loose in Dharavi and other slums in Mumbai. Community spread in these slums will be lethal to Mumbai's fight against the coronavirus.

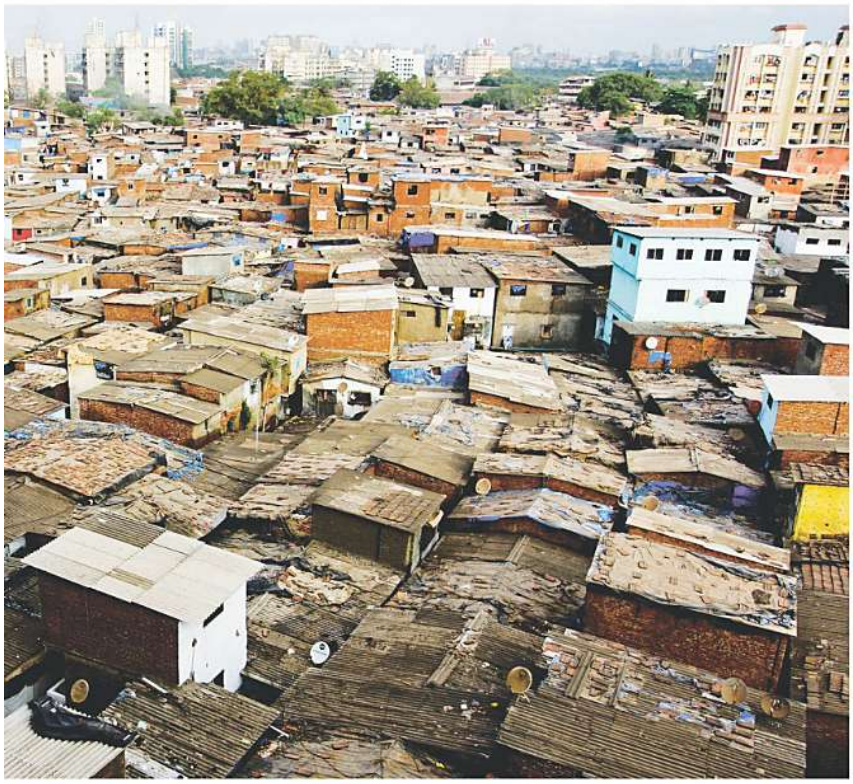
According to the Brihanmumbai Municipal Corporation (BMC), on May 4, the number of Covid-19 cases in Dharavi stood at 590, with a death toll of 20. One officer of the Dharavi Fire Station also tested positive for Covid-19. Dharavi is the largest slum in Mumbai and the second largest in Asia after Orangi Town in Karachi.

It is estimated that one million people live in Dharavi, which spans just over 2.1 square kilometres (0.81 sq miles; 520 acres). Assuming that the population is only 7,00,000, the population density comes to over 2,77,136 per sq km or 7,17,780 per square mile. There are approximately 5,000 businesses and 15,000 single-room factories in Dharavi. The slum is the most literate in India, with a literacy rate of 69 percent. The percentage of people living in slums is estimated to be as high as 41.3 percent in Greater Mumbai, implying that over 9 million people live in these areas.

Consequent to an expert team's adverse appraisal of Dharavi, the BMC decided to make a 1000-bed isolation facility for non-critical Covid-19 patients, with pathology labs at the adjacent exhibition grounds in the Bandra Kurla Complex meant exclusively for Dharavi residents to be constructed by MMRDA. This facility is estimated to be ready by May 20 and can be further expanded to accommodate 5,000 beds. BMC has also taken over a 50-bed Sai Hospital and two small hospitals within Dharavi as the rapid rise in the number of cases was giving nightmares to the administration. A municipal school in the heart of the slum is also being equipped with a 700-bed isolation facility.

The government of India's team of experts suggested that the state government focus on the high-risk patients in the slums. It also recommended the shifting of suspected patients out of the slums and installation of mobile toilets.

Focus must be on sanitisation, containment and isolation in Dharavi. Fifty persons on an average use a toilet seat each day. The BMC says it has been disinfecting all 225 public bathroom complexes and 1,500 toilets daily. A special





UNI

treatment and solution machine imported from New Zealand has been deployed for the purpose. BMC workers also fumigate the area every alternate day.

Dharavi emerged as a settlement for migrant factory labourers when factories were shifted from peninsular Mumbai in 1884. It has a history of epidemics and other disasters, including a widespread plague in 1896 which killed over half of the population of Mumbai. In 1986, a cholera epidemic was reported, where most patients were children of Dharavi. In recent years, many cases of drug-resistant tuberculosis have been reported in Dharavi. Fires and other disasters are also common here. For example, in January 2013, a fire destroyed many slum properties and caused injuries. In 2005, massive floods led to deaths and extensive property damage.

Informed citizens feel that the central government should bring in the Army to handle the slums of Dharavi and Govandi in Mumbai as the coronavirus pandemic in Maharashtra has crossed all boundaries. If proper protocols are followed, containment zones might require up to 10 lakh tests.

The population of Mumbai has more than doubled since 1991, making it a melting pot due to the influx of migrants that relocate to the "city of dreams" for employment opportunities. The 2011 census put Mumbai's urban agglomeration at 20,748,395, making it the fourth most populous city in the world while the main city itself had a population of 12,478,447. The next national census is scheduled for 2021.

An estimated 60 percent of Mumbai's waste plastic is recycled in Dharavi. The first polluting tannery moved from peninsular Mumbai into Dharavi in 1887. People who worked with leather, typically a profession of the lowest Hindu castes and Indian Muslims, moved into Dharavi. Other early settlers included the Kumbars, a large Gujarati community of potters (another polluting industry). The British government granted them a 99-year land lease in 1895. Other artisans, like embroidery workers from Uttar Pradesh, started the ready-made garments' trade. These industries created jobs, labour moved in, but there was no government effort to plan or invest in any infrastructure in or near Dharavi. Its empty spaces have continued to serve as the waste-dumping grounds for operators across the city.

Impromptu disorganised growth has resulted in inadequate sanitation, drains, safe drinking water, pavements, roads or other basic amenities. But some ethnic communities have built schools and temples. Dharavi's first mosque, Badi Masjid, started in 1887 and the oldest Hindu temple, Ganesh Mandir, ▶



YouTube

FLOUTING RULES
A group of young men in Dharavi had pelted stones on the police during the lockdown

was built in 1913. Dharavi's large recycling industry, a source of heavy pollution in the area, processing recyclable waste from other parts of Mumbai, is reported to employ approximately 2,50,000 people. The numerous household and micro enterprises consist of 5,000 businesses and 15,000 single-room factories, while export goods around the world consist of various leather products, jewellery, accessories, and textiles.

The markets for Dharavi's goods include stores in the United States, Europe and the Middle East. The total (and largely informal economy) turnover is estimated to be between $500 million and over $1 billion per year. The estimated per capita income of the residents, depending on approximate population range of 8,00,000 to about 10,00,000, ranges between $500 and $2,000 per year. Several big stores and brands outsource manufacturing here.

Mahim Creek, where the Mithi river drains into the sea, is widely used by local residents for urination and defecation, leading to the spread of transmittable diseases. Release from open sewers into the city drain, into the creek cause stinking odour, spike in water pollutants and contamination. Moreover, the air pollutants cause diseases such as lung cancer, tuberculosis and asthma.

As Mumbai struggles to fight the coronavirus pandemic, it was reported that on April 1, 2020, a group of misguided youth pelted stones on the police after being asked to stay indoors at Dharavi. Multitudes are not cooperating with the authorities and are still thronging grocery stores within the slum, pushing aside barricades installed to maintain social distancing. So far 3,000 residents have been quarantined and Mumbai Police conducts "flag marches' every other day.

Dharavi's first Covid-19 positive case was linked to the Tablighi Jamaat Markaz in Delhi. The police investigation into the contacts of the 56-year-old garment unit owner who died on April 1 has revealed that 10 Jamaat members stayed in one of his vacant houses in Dharavi between March 22 and March 24, and four of them visited him before heading for Kerala. The BMC team alerted the police and categorised the man's family as high-risk and instructed that they be quarantined.

The Dharavi Vidhan Sabha constituency is part of the Mumbai South Central Lok Sabha constituency. *Slumdog Millionaire*, a 2008 British crime drama film that won eight Oscars, including "Best Picture", depicting the love and life in Dharavi was shot there. So was *Dharavi (City of Dreams)*, a critically acclaimed 1993 Hindi film, a joint NFDC-Doordarshan production that won the National Film Award for Best Feature Film. Dharavi has also featured in a 2019 film *Gully Boy*.

Since the 1950s, proposals for redeveloping Dharavi have emerged. MV Duraiswamy, a well-known social worker, had promoted a society with 338 flats and 97 shops in the 1960s.

In 1997, the Maharashtra government floated multiple tenders to redevelop Dharavi like the former slums of Hong Kong such as "Tai Hang" but without success. In 2004, the cost of redevelopment was estimated to be Rs 5,000 crore ($700 million). By 2010, it was estimated to cost Rs 15,000 crore ($2.1 billion). Companies from around the world have bid to redevelop Dharavi, including Lehman Brothers, Dubai's Limitless and Singapore's Capitaland Ltd.

In the third week of February 2020, Dubai-based SecLink Technologies Corporation, that won a Rs 28,000 crore ($4 billion) tender to redevelop the slum, alleged that there is a conspiracy to derail the project. The company had emerged the highest bidder for the mammoth project over a year ago. In a letter to the Dharavi Redevelopment Authority (DRA) and the Slum Rehabilitation Authority (SRA), the company stated that it had placed Rs 28,000 crore—the entire project cost—in an escrow account in Dubai, as endorsed by the Indian embassy and a Dubai auditor, and is losing $20 million per month as interest at the rate of .5 percent per month. It has warned that it will seek compensation of Rs 2,299 crore ($320 million) if the Dharavi Redevelopment Project is not awarded to it. Meanwhile, one can almost hear the ticking of the bomb. ■

—The authors are advocates with the Supreme Court of India

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The Dragon And The World

The West has attacked the communist nation over Covid-19 and demanded compensation from it. China baiters accuse that country of an attempt to create a new world order

By Ajay Kaul

BLAME GAME
US President Donald Trump with Chinese President Xi Jinping. A confrontation has been triggered between the US-led West and China by the suspicion that China let Covid-19 sweep across the globe

WHILE the world is engaged in a war against the coronavirus, another global confrontation is picking up pace—between the US-led West and China. The confrontation has been triggered by the suspicion in the US and some other countries such as the UK and Germany that China played dirty and let the deadly disease sweep across the globe to cause an unprecedented catastrophe. The US went to the extent of saying that the virus had originated in a lab in the Chinese city of Wuhan, implying that it was not a natural catastrophe but man-made.

Underlying the brewing war are apprehensions in the US, Europe and other countries that the Covid-19 crisis could be used by China to spread its

economic and military tentacles across the globe, and thus, possibly, create a new world order.

The concern about Chinese expansion comes against the backdrop of the plummeting economies of the US and other western powers, with projections of deep recession in the near future. US President Donald Trump, who has been describing Covid-19 as a "Chinese virus", recently said he was convinced that it originated in a lab in Wuhan. On April 23, he said: "We were attacked. This was an attack. This wasn't just the flu by the way."

US Secretary of State Mike Pompeo too said there was "enormous evidence" to show that the coronavirus originated in a lab in China. The Trump administration has reportedly tasked American spies with finding details about the origins of the virus. Trump has said he was looking at different options in terms of consequences for China. "I can do a lot," he warned. Some individual states of the US have already filed lawsuits against China.

Amid the growing chorus that compensation should be demanded from China, Trump has cancelled a mega trade deal with it and vowed to impose new tariffs on Chinese goods. Demands for punishing China and seeking compensation surfaced in the UK too, while Germany's largest tabloid newspaper, *Bild*, asked it to foot a bill of approximately 150 billion euros owing to the losses the country suffered due to corona. The UK is reportedly planning to punish China and one way of doing so could be scrapping of the 5G programme of Chinese company Huawei, according to reports.

China finally hit back at the US, which is leading the attack against it, saying its politicians are "lying through their teeth". The war between the two countries has gone to such an extent that a summit of G20 leaders to discuss the coronavirus crisis, slated for April 24, was cancelled at the 11th hour.

Besides these countries, several other nations such as Spain, the Netherlands and Slovakia are also unhappy with China over defective medical equipment supplied by it, including testing kits and masks. White House Trade Advisor Peter Navarro too said that China had sent low-quality and even counterfeit antibody testing kits to the US. He accused China of "profiteering" from the pandemic by selling "fake" kits.

India, which too has been at the receiving end over the testing kits imported from China, has so far been a mute spectator to the growing war between the West and China. The government has, however, halted the use of these kits after complaints from various places.

Analysts feel that the underlying cause of the US anger against China might be the fear that Beijing could use the pandemic to expand its prowess across the globe. The possibility of a new world order emerging post-corona crisis cannot be ruled out, they feel.

US Secretary of State Mike Pompeo said there was "enormous evidence" to show that Covid-19 originated in a lab in China. The Trump administration has tasked spies with finding details about its origin.



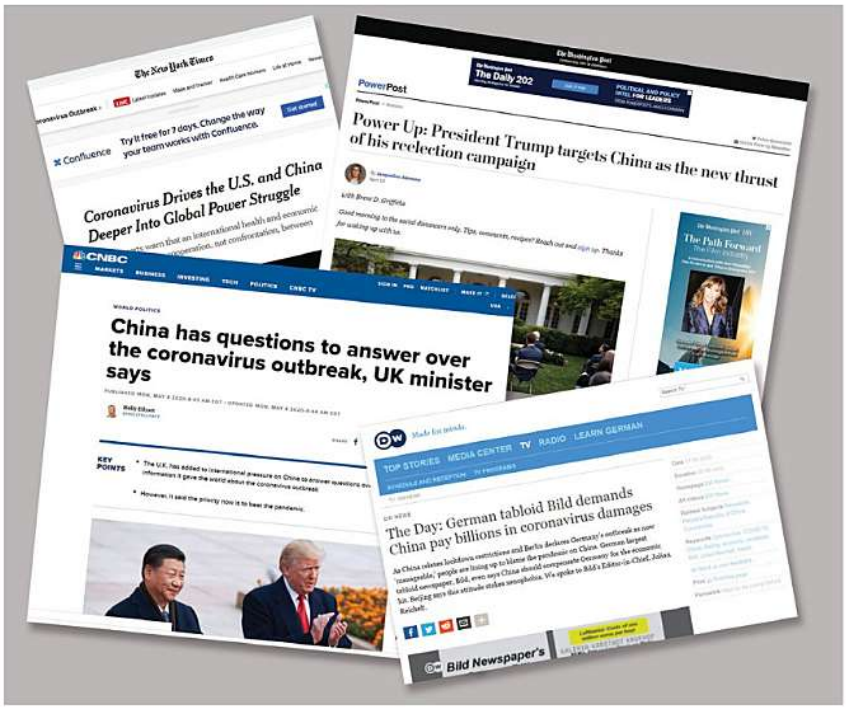
The crisis has already crippled the economically-powerful West and the condition of the developed nations is only worsening by the day. Lockdowns and shutdowns are shattering economies, even those of the most powerful. Almost all countries, including the US, are projected to go into recession because of the collapse of businesses.

Reflecting the worries, Trump recently said the US had the greatest economy in the history of the world, but now it was in a shambles due to the shutdown. Unemployment in the US has risen to worrying proportions, with one in every six American workers finding themselves jobless. To tide over the crisis, the House of Representatives has passed a bailout package of $500 billion.

Ironically, while most of the world is under lockdown, China, where the coronavirus emerged, has restarted normal activities. There are fears now that it could expand its economic prowess, with its companies taking over distressed firms across the world.

European Union Trade Commissioner Phil Hogan has warned that the "strategic assets" of the 27-nation bloc are vulnerable to acquisitions from abroad—a veiled reference to China—and pressed for tightening rules for foreign takeover bids. Countries such as Australia, Germany, and the Czech Republic have already done so.

In India, the government rushed to amend FDI rules on April 17 to prevent "opportunistic" takeover of its companies by firms of countries with which it shares borders, including China. An order issued by the commerce and industry ministry said: "The government has reviewed the extant foreign direct investment policy for curbing opportunistic takeovers/acquisitions of Indian companies due to the current ▶



GLOBAL BACKLASH
Screaming headlines appeared in the media, lashing out at China for the Covid-19 outbreak

Covid-19 pandemic." It said any change in beneficial ownership will also require government approval.

The Indian government's move rubbed China the wrong way. Reacting strongly, the Chinese embassy in Delhi said the move was not in line with India's World Trade Organisation (WTO) and other multilateral commitments. A statement from it a day later said: "The barriers set by the Indian side for investors from specific countries violate WTO's principle of non-discrimination and go against the general trend of liberalisation and facilitation of trade and investment."

Analysts feel that it is not only on the economic front that China will try to expand its footprint now but militarily too. The Chinese military has been overactive in its neighbourhood and beyond. In recent weeks, a number of Chinese naval and air intrusions have been noticed in Taiwan and Japan. In early February, PLA fighter jets and bombers made sorties around Taiwan, whose airforce had to scramble its own fighters to shadow the Chinese aircraft. In a tweet, Taiwan's foreign affairs ministry asked China to stop threatening Taiwan militarily, and instead focus on the coronavirus. Taiwan's Mainland Affairs Council said that "provocations by PLA warships and planes which have frequented the vicinity of the Taiwan Strait in recent years to seek unification through military force gravely undermine the status quo in the Taiwan Strait and heighten regional tensions".



The UK under PM Boris Johnson is reportedly planning to punish China and one way of doing so could be scrapping of the 5G programme of Chinese company Huawei, according to reports.

US Assistant Secretary of State for Political-Military Affairs R Clarke Cooper also slammed China for the manoeuvres. "It was completely inappropriate of China to take such an aggressive act," he said. "There should be responsible behaviour to make sure that the region is free and open—not just for navigation but also for trade and for relationships. Such coercive, aggressive behaviour is counter to having a free and open Indo-Pacific region," he said.

However, China's air intrusions into Taiwan continued in March and April. These aircraft came close to Taiwan's Air Defence Identification Zone. Taiwan's Ministry of Defence said it had to respond to Chinese fighters which flew above the waters southwest of Taiwan, conducting night-time exercises. "After our air reconnaissance and patrol aircraft responded appropriately, and broadcast (an order) to drive them away, the communist aircraft flew away from our Air Defense Identification Zone," it added. Towards the end of March, Taiwan again stated that there were as many as four "targeted" drills by China around Taiwan, which are "concrete evidence of provocations and threats".

China's hostility towards Taiwan is not new. But the latest military actions



@PeijinZhang@twitter

RAISING DOUBTS
While most of the world is under lockdown, Wuhan has restarted normal activities

come against the backdrop of Taiwan seeking to expose China over the coronavirus crisis. Taiwan has often said that it had written an email to the WHO on December 31, alerting it about the virus being detected in mainland China and the possibility of it being transmitted from human to human. But WHO, based on information provided by China, remained in denial mode.

It was on January 13 that the WHO reported that a person in Thailand, who had visited Wuhan, was afflicted with the novel coronavirus, a strain that had not been previously identified in humans. "WHO reiterates that it is essential that investigations of the novel coronavirus continue in China to identify the source of the outbreak and any animal reservoirs or intermediate hosts," the global health body tweeted that day.

At the same time, WHO warned that the possibility of novel coronavirus cases being identified in other countries was not unexpected and called for "active monitoring and preparedness" in other countries. It also issued guidance on how to detect and treat persons infected with the virus. The next day, WHO said that preliminary investigations conducted by Chinese authorities had found "no clear evidence of human-to-human transmission" of the novel coronavirus identified in Wuhan. Six days later, on January 20, the WHO said China confirmed 139 new cases of coronavirus in Wuhan, Beijing and Shenzen. "This is the result of increased searching and testing for 2019-nCoV among people sick with respiratory illness," the WHO tweeted. All the patients were believed to have visited Wuhan.

India, which has halted the use of poor testing kits from China after complaints from various places, has so far been only a mute spectator to the growing war between the West and China.

On January 22, China confirmed that the deadly virus can be passed from human to human. It stated this while reporting that many people had died and more than 440 had fallen ill due to the virus. One patient was believed to have infected as many as 14 medical staff in one hospital, suggesting the disease could be spread far more easily than previously thought. Coronavirus cases were also detected in Taiwan, South Korea, Thailand, Japan, and the US, with reports of potential cases in Australia.

The virus spread like wildfire, catching countries, including those with the most modern healthcare infrastructure, off-guard. Europe and the US were especially affected and the catastrophe continues to ravage the world, with no end in sight. ■

Death Penalty Declines

While the number of executions in Middle Eastern countries showed an upward surge, the Asia-Pacific region for the first time in a decade showed a decline, including in India

By Asif Ullah Khan

CHINA remains the "world's top executioner", followed by Iran, Saudi Arabia, Iraq and Egypt, even as there has been a decline in executions worldwide. These were the findings of Amnesty International in its 2019 global review of the death penalty published recently.

The human rights watchdog recorded 657 executions in 20 countries in 2019, a decrease of 5 percent compared to 2018 (at least 690). This is the lowest number of executions Amnesty has recorded in at least a decade. In India, the number of death sentences decreased from 162 to 102.

However, Amnesty expressed concern over China, which "continued to execute and sentence to death thousands of people". Official figures were not available for China as the numbers remain classified. China carries out executions by lethal injection. "Figures on the use of the death penalty continued to be classified as a state secret, making it impossible to independently assess trends and any claims by state officials of limiting this punishment to a small number of cases," the report said. "The death penalty remained applicable for 46 offences, including some non-violent acts which do not meet the threshold of the 'most serious crimes' to which the use of the death penalty must be restricted under international law and standards." The majority of cases appeared to involve murder and drugs offences, according to sources and court rulings.

The other worrying trend was that the number of executions in Middle Eastern countries showed an upward surge. Iran, which also tries to keep the true figures hidden, executed at least 251 people last year, followed by Saudi Arabia, with a record 184 executions in 2019 as compared to 149 in 2018. In Iraq, the number of executions almost doubled to more than 100 due to action against supporters of the Islamic State, Amnesty said.

It said that Saudi Arabia executed 178 men and six women in 2019, just over half of whom were foreign nationals. The report said it was the highest number ever recorded in a single year in the country. The majority of executions were for drug-related offences and murder. "Saudi Arabia's growing use of the





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FIGHTING A LAW
A campaign against the death penalty by Amnesty International in the US. It has recorded 657 executions in 20 countries in 2019



Clare Algar, Amnesty International's Senior Director for Research, Advocacy and Policy, said that many countries go to great lengths to try and hide the practice of death penalty.



Lynn Maalouf, Middle East Research Director at Amnesty International, said the mass execution is a chilling demonstration of Saudi Arabia's callous disregard for human life.

death penalty, including as a weapon against political dissidents, is an alarming development," Clare Algar, Amnesty International's Senior Director for Research, Advocacy and Policy, said.

Amnesty also documented the increased use of the death penalty against the Shia minority in this country. On April 23, 2019, there was a mass execution of 37 people, of whom 32 were Shia men convicted on "terrorism" charges following trials that relied on false confessions extracted through torture, it said, and which violated international fair trial standards. The families were not informed about the executions in advance and were shocked to learn of the news. Individuals were brought before Saudi Arabia's Specialized Criminal Court, which was set up in 2008 to try those accused of terror-related crimes but is increasingly used to suppress dissent, according to Amnesty. Lynn Maalouf, Middle East Research Director at Amnesty International, said the mass execution is a chilling demonstration of the Saudi Arabian authorities' callous disregard for human life. It is yet another gruesome indication of how the death penalty is being used as a political tool to crush dissent from the Shia minority.

Coming to the Asia-Pacific region, Amnesty said that for the first time in almost a decade, there was a decline in the number of executions and executing countries. Only seven countries carried out executions during the year. The report, without quoting the figure of Vietnam, said the number of recorded executions (29) in the region showed a slight decrease due to drops in Japan (from 15 to three) and Singapore (from 13 to four).

However, it said that this regional total, as in previous years, did not include the thousands of executions that were believed to have been carried out in China as well as in North Korea and Vietnam.

Many countries go to great lengths to try and hide the practice, while others carry them out "without any advance notice to the families, lawyers, or in some cases the individuals themselves", said Algar, naming Japan as one of them. The report said that the number of executions in Japan was down from 15 in 2018, when the country reported its highest figure since 2008, to three in 2019. Two Japanese men were executed on August 2 and a Chinese national was executed on December 2. All the men were convicted of murder.

In the US, three fewer executions were recorded in 2019 (22) as compared to 2018. Six US states carried out executions by lethal injection, while Tennessee resorted to electrocution following legal challenges to its lethal injection protocol. More than 40 percent of all recorded executions were carried out in Texas, which remained the leading executing state in the country. Missouri carried out one execution in 2019 after none the previous year. Conversely, Nebraska and Ohio did not put anyone to death in 2019 after carrying out executions in 2018.

Although no country abolished the death penalty in 2019, the report said that positive signs were recorded which indicate that the desire for retention of the death penalty was dwindling among countries that are yet to abolish the punishment. In the US, the number of death sentences in 2019 (35) decreased by 22 percent compared to 2018 (45) and by 68 percent compared to 2010 (110). New Hampshire became the 21st state to abolish the death penalty, while the governor of California—the US state with the largest death row population—imposed a moratorium on executions. Public support for the death penalty continued to decline in the US. In 2019, for the first time, a majority—60 percent—of respondents chose life sentences over the death penalty, according to a Gallup poll.

Indonesia has been observing a moratorium on executions since 2018 after the government under President Joko "Jokowi" Widodo executed 18 inmates convicted of drug-related offences, including foreigners, in three batches between 2015 and 2016. In 2019, Amnesty reported that 48 people, including 15 foreigners, were on death row. Countries like Kazakhstan, the Russian Federation, Tajikistan, Malaysia, Gambia and Brunei continued to observe official moratoriums on executions.

However, the report said that the death penalty continued to become more geographically isolated in 2019. Only 28 nations out of more than 3,000 countries (fewer than 1 percent) imposed a death sentence this year—one of the lowest figures in a decade.

That is some good news in these dark times. ■



Dr Rajat Mitra

A Beautiful Mind

As everyday life undergoes a change, mental problems may also increase. But out of the chaos and disorder, alternative support systems can be created in India to provide safety and bonding



Amitava Sen

MANY years ago, as a psychologist working in Delhi's Tihar Jail,I had asked the inmates if their sleep was disturbed and if so, how much. All of them said that their sleep was severely disturbed. Many also had nightmares. Most of them slept for just a few hours every night with recurrent nightmares and remained awake the rest of the time. It remained like this as long as they were inside the prison. Was it linked to the crime they had committed? When I asked them why they couldn't sleep, one of them suggested that I sleep in my own home with the door locked from outside. I did as he said as an experiment and then understood what he meant. I could not sleep the entire night and when I woke up, I felt a lack of control over myself.

There is a lesson inherent in the above story—control is a basic issue for all humans. We take certain structures as given in our lives and we have control over these. We go through our daily routine as if we will always remain the same. Any interference and our structured lives spin out of control. Our mental health, identity, sense of well-being receive a jolt and start orbiting in a world of chaos and disorder.

While working with marginalised groups, societies that face persecution, refugees who ran away and survivors of genocide and natural disasters,I have found that retaining control over one's life is a core issue that defines stability. However, Covid-19 has turned our daily lives upside down as we are unable to step out of our homes, we are restrained from getting close to others and have to maintain social distance. Proximity has become the new dirty word and something we took for granted earlier.

> We create bonds faster than anywhere else. The lockdown is a cultural issue too in India and trying to see it from a western paradigm where individuality matters most would be problematic.

In India, we love proximity or nearness. We create bonds faster than any where else and start conversing, talking, getting inquisitive and asking personal questions. Take any train journey. By the time it ends, we know everything about each other. At any bank or railway counter, we gather around, our hands over each other. Our traffic is also bizarrely close with everyone trying to

avoid each other at the same time. Co-existence some would call it, while others would find it difficult to survive in such a situation. So the lockdown is a cultural issue too in India and trying to see it from a western paradigm where individuality matters most would be problematic.

As I speak to friends in Europe and America, mostly professionals in mental health and social sciences, they share feelings of being disturbed. I don't hear the same sense of alienation from my local friends. Are we Indians then responding to the lockdown differently?

Many years ago, Dr George Kohlrieser, author of *Hostage at the Table* and an internationally known authority on human bonding, had visited India. This former professor of mine had travelled extensively all over the country. A few months after his visit, when I had asked him about his travels, he replied after a moment's reflection that the whole time he was here he didn't hear a baby cry. Whenever he saw one cry, someone would come and pick it up. While going back, he stopped at Amsterdam airport and he noticed a baby crying. People passed by without anyone bothering to check on him. His mother was busy shopping. "That's when I realised that your society has this ability to create proximity and bonding. It can also become your biggest strength in times of crisis."

Today, my professor's words ring true in my ears as I watch people bonding once again. This time it is happening in the confines of our homes. There is a bewildering array of initiatives as to how we must deal with this time period. In the last week alone, I have attended half a dozen webinars on dealing with coronavirus. One said develop a hobby, another advised reading books, while a third said we should become more productive and a fourth said try meditation. But perhaps the best answer was given by a patient of mine who said: "During this period, my parents and I are talking to each other. It is the first time that I felt that we were bonding, a bonding that never was. We have become friends and I never thought we would do so."



"...your society has this ability to create proximity and bonding. It can also become your biggest strength in times of crisis."

—Dr George Kohlrieser, author of *Hostage at the Table*

In our time-starved lives, all of us have become distant from each other. Living in a digitalised world, feelings and emotions had taken a backseat. Can we use this period to think of relationships that would be different if we started talking with each other?

At an individual level, the lockdown is doing different things to us. While it is bringing to the fore what is lying dormant in us, for those who are anxious and depressed, it makes them even more so. Will certain mental health problems increase now? They may, but these can be brought under control just the same way they were earlier, maybe with innovation and creativity.

The other day, I heard a child cry out in pain in an apartment close to mine. In no time, several lights in nearby apartments were switched on. Neighbours came out to check and knocked on the door. The father had slapped his kids. Their mother was not at home and he hadn't been able to cook properly and the children were hungry. In no time, two of our neighbours turned counsellors and calmed him down. *Rotis* and vegetables along with a chocolate sprang up from nowhere and several neighbours decided to cook by turn for them till the mother came back. It is a story I will remember all my life.

Yes, there may be issues like incest, pedophilia and domestic abuse that may increase during this period. Depression and schizophrenia may show an increase too as those support systems may not be available now. Alternative support systems can be created. Chaos and disorder can give way to new structures that provide safety. Greater awareness and interventions like the above can make us more responsible citizens.

In wars, epidemics and natural disasters, we learn to fall back on ourselves to find answers for the problems confronting us. The lessons are deep and lifelong and as the saying goes: "The world teaches its own lessons no one else can." Covid-19 has become the world and is teaching us new lessons both for our survival and the things we took for granted. We will find new ways to co-exist and may one day look back upon the present period, not so much with terror, as with gratitude. ■

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Vivek K Agnihotri

Easy Way Out

Though the pandemic played havoc with the poll schedules of many places, the decks have been cleared for Maharashtra CM Uddhav Thackeray to get elected as an MLC and gain legislative legitimacy

THE road appears to have been cleared for the election of Uddhav Thackeray, the chief minister of Maharashtra, as a member of the Legislative Council. The Election Commission has announced the schedule for the election to nine seats of the House which fell vacant on April 24, 2020.

It will start with the filing of nominations from May 4 and conclude with polling and counting on May 21. The entire election process is expected to be completed by May 26, just a day ahead of the May 27 deadline.

Thackeray was sworn in as the chief minister on November 28, 2019. He was not a member of either House of the legislature of Maharashtra at that time. Article 164 (4) provides that a minister who for any period of six consecutive months is not a member of the legislature of the state shall, at the expiration of that period, cease to be a minister.

Uddhav Thackeray was sworn in as the CM on November 28, 2019. He was not a member of either House of the legislature of Maharashtra. He had time until May 28 to become an MLA or MLC.

Thus, the Constitution allows a non-legislator to occupy a post in the council of ministers, including the office of the chief minister, only for six months. That gave Thackeray time until May 28 to become an MLA or MLC, and he was hoping to get elected to the Maharashtra Legislative Council. The members of the Maharashtra Legislative Assembly were scheduled to elect nine MLCs on March 26, but the election was postponed indefinitely due to the Covid-19 pandemic.

In view of this development, the state cabinet met on April 9 under the chairmanship of Ajit Pawar, the deputy chief





CLEARING THE PATH
Maharashtra Governor BS Koshyari (above) wrote to the EC to hold polls for the nine vacant seats of the Legislative Council to enable CM Uddhav Thackeray's election

minister, and recommended to Governor Bhagat Singh Koshyari that he nominate Thackeray to the Legislative Council against one of the two vacancies of nominated members available due to the resignation of two NCP legislators who had joined the BJP before last year's assembly polls.

Article 171 (5) of the Constitution allows the governor to nominate to the Legislative Council a certain number of "persons having special knowledge or practical experience in respect of such matters as the following, namely—literature, science, art, co-operative movement and social service".

The governor took his time to decide the matter, creating a bit of uncertainty and even panic as D-Day was approaching with no sign of the pandemic abating. Perhaps the reason for the governor's reluctance to take a decision was the fact that he had earlier turned down the request of the NCP to fill the two vacancies in December 2019 on the ground that the residual term (which was to end on June 6, 2020) of those seats was less than six months. Therefore, to now fill one of those vacancies for a period of just over a month by nominating Thackeray would not have been in order.

After consultations at various levels and a request from the chief minister himself, the governor and chief secretary of Maharashtra wrote to the Election Commission that it was feasible to hold the elections, the pandemic notwithstanding. They requested it to fix a fresh date for the election to the nine Legislative Council seats.

A chief minister, or even the prime minister for that matter, upon being appointed and searching for a seat to get into the legislature/parliament, is not a singularity in India. As far as prime ministers are considered, in 2004, Dr Manmohan Singh, the surprise candidate for the post, was not a member of either House of Parliament. He was, in due course, elected to the Rajya Sabha from Assam. More than a decade earlier, PV Narasimha Rao, on account of a sudden turn of events, found himself in the same unenviable position. He was subsequently elected to the Lok Sabha from Nandiyal, a seat vacated by a party loyalist.











FOR A SECURED REGIME
(Clockwise from far left) Kamal Nath had to get elected to the legislative assembly after becoming the CM in 2018; UP CM Yogi Adityanath, an MP, later became an MLC; Bihar CM Nitish Kumar has always been an MLC; as CM of UP (2007-12) Mayawati was an MLC; in 2012, Akhilesh Yadav was an MP when he was appointed CM of UP

As far as chief ministers are concerned, there have been many such instances. Most recently, Kamal Nath, the former chief minister of Madhya Pradesh, was an MP when he was called upon to head Madhya Pradesh in 2018. He sought to get elected to the state Legislative Assembly in 2019 from Chhindwara constituency, helpfully vacated by his party MLA. The current chief minister of Uttar Pradesh, Yogi Adityanath, too was an MP and was later elected to the state Legislative Council.

In 2012, a similar situation arose when Akhilesh Yadav, a Lok Sabha MP from Kannauj, was appointed chief minister of Uttar Pradesh. He chose to become a member of the state Legislative Council. Mayawati, the chief minister before him (2007-12) too was a member of the Legislative Council. Nitish Kumar, three times chief minister of Bihar, has all along been a member of the state Legislative Council. And now, Uddhav Thackeray has decided to take the same route to legislative legitimacy.

Thus, it would appear that chief ministers have a penchant for indirectly entering the portals of the state legislature rather than contesting elections to the state legislative assemblies. But this option, or luxury so to speak, is available only to a very few. Till recently, only ▶

Till recently, only seven out of 29 states had a bicameral legislature—Andhra Pradesh, Bihar, J&K, Karnataka, Maharashtra, Telangana and UP. The J&K Legislative Council was abolished in 2019.





Andhra CM YS Jagan Mohan Reddy (left) had taken a leaf out of the book of the late NT Rama Rao, the founder of TDP, by recommending the abolition of the Legislative Council in January 2020. Ironically, his father, YS Rajasekhara Reddy (right), had revived the Council.

seven out of 29 states had a bicameral legislature, namely, Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, Telangana and Uttar Pradesh. The Legislative Council of Jammu and Kashmir was abolished in 2019 when the state was bifurcated into two Union Territories, bringing down the number of states to 28.

Article 169 of the Constitution provides for the creation and abolition of Legislative Councils in states. It lays down that Parliament may by law provide for the creation of a Council in a state where one does not exist or for the abolition of the existing Legislative Council if the Legislative Assembly of the state passes a resolution to that effect by a special majority. Such a majority will be of the total membership of the assembly and not less than two-thirds of the members of the assembly present and voting.

It is ironical that while, on the one hand, several chief ministers are and have been members of Legislative Councils, the ruling parties of various states have often chosen either not to establish Legislative Councils or abolished them post-haste. After Independence, Legislative Councils were abolished, following initial establishment, in Punjab (1970), Tamil Nadu (1986) and West Bengal (1969).

In 2010, subsequent to the passing of a resolution by the Legislative Assembly of Tamil Nadu for the revival of the Legislative Council, Parliament enacted a law for the purpose. However, before the Act could be notified, the new Legislative Assembly (with a change in the ruling party) passed another resolution in 2011 seeking the abolition of the proposed Legislative Council.

Accordingly, the Tamil Nadu Legislative Council (Repeal) Bill, 2012 was also introduced in the Rajya Sabha on May 4, 2012, as a measure of abundant precaution, perhaps. Tamil Nadu, therefore, at present, does not have a Legislative Council.

The case of the Legislative Council of Andhra Pradesh is, of course, an example par excellence. When, on January 2, 2020, the state assembly adopted a statutory resolution recommending abolition of the Council to Parliament, ironically, YS Jagan Mohan Reddy, the chief minister of Andhra Pradesh, had taken a leaf out of the book of late NT Rama Rao, the founder of the Telugu Desam Party, which is the main party in the Opposition at present. A greater irony lay in the fact that the Legislative Council was subsequently revived in 2007 by no other person than YS Rajasekhara Reddy, father of Jagan Mohan Reddy.

Be that as it may, the Covid-19 pandemic has played havoc with the election schedule in different parts of the world, apart from Maharashtra. Local elections have been halted in France and Indonesia. Bolivia's electoral court has announced that it would postpone the country's election, due in May 2020, following the 14-day national quarantine due to Covid-19.

The campaigns of various candidates in the race for the post of US president (election to which is due later this year) have been cancelled. It has even been insinuated that China has unleashed the Covid-19 pandemic in order to scuttle US President Donald Trump's chances for a second term. On the other hand, South Korea held elections for 300 seats of its National Assembly in April 2020 without a hitch. Voters wore masks and stood at least a metre apart. They had their temperatures taken, disinfected their hands and wore plastic gloves.

However, as far as Maharashtra is concerned, it was ironical that the elections to the vacancies in the Legislative Council were considered crucial for the management of the same pandemic, which had been the cause of its postponement. However, as the proverb goes: "It ain't over till the fat lady sings." Covid-19 has literally knocked at the door of Matoshree. ■

—The writer is a former Secretary-General, Rajya Sabha, and a retired IAS officer of the AP cadre



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