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Special Edition on COVID-19

A Foreword from the Editor

As our globalized world faces the largest public health and humanitarian challenge of recent times, our latest issue of *Nilima: A Journal of Law & Policy* brings you a selection of scholarly deliberations and personal reflections around the crisis.

Part of the Studio Nilima team and closely associated with our engagement with the implications of the COVID-19 pandemic, Atreya takes us into an oft-overlooked space: the correctional homes of Assam. His paper analyzes COVID-19's influence on the inmates and argues that many systemic gaps exist in the medical and nutritional facilities, specifically in Assam's correctional homes. These have to be addressed so that the state can effectively deal with the challenges of a post-COVID 19 scenario.

The fears and uncertainties faced by those incarcerated in Assam's correctional homes is clearly expressed by an inmate, Anis Ahmed. His poem is the human face of an institution beset by systemic and infrastructural issues, the plea of one confined in space, but with a broad global vision of what the current pandemic means to the global populace. We are grateful to Ms. Reeta Borbora, Advocate, Hon'ble Gauhati High Court for her generous

support, time and commitment, in producing the English translation of the poem.

Sekhri's article looks at how we shall adapt to post-COVID realities. The bulk of his focus is on how the pandemic has changed the way states govern. He begins by describing the model of crisis governance adopted by India to handle the Covid-19 pandemic that allows for vast discretionary powers with minimal oversight. This leads to his engagement with the question of if and how the country will exit this crisis model of governance. His paper cautions that this might take a heavy toll on the fabric of India's democracy.

At a time when the emergency situation has enabled the government to assume more totalitarian powers, Luthra and Saluja examine how successive governments have used the offence of sedition to muzzle dissent. A relic of the colonial era in India, they find that the law of sedition is abused and misused against those who criticise authority and argue that it has no place in a constitutional democracy. This article is based on a speech delivered on an online platform during the pandemic as the world moves towards online education and virtual communication. D'souza's article, reproduced from the *Raiot* magazine, questions how much this shift will affect education of the future.

As digital means of communication are used more than interpersonal contact, Narrain's article on 'rape videos' and the dangers they pose to victims of sexual assault is a reminder that we need a confluence of media infrastructure and a legal framework to emphasise the distinction between pornography and sexual violence, and between representations of sex and the reality of assault.

Williams' article delves deep into the human dimension of the pandemic to explore meaning making in times of global crises. It explores how personal and collective tragedies are intricately intertwined and emphasizes that meaning making practitioners must salvage these experiences and tragedies from being lost to history.

Reflecting on the personal and social meaning of the pandemic, Kurkalang talks about the many divides between 'us' and 'them' that COVID-19 has highlighted, and also the parallels we need to find for humanity's survival. Jha's article, reproduced from the *Raiot* magazine, sheds particular light on society's 'other': it looks at migrant workers' plight during the COVID-19 exodus, urging for engagement with their subjectivities. Another article reproduced from the *Raiot* 'COVID-19 across Continents: A Reflection' bears testimony to COVID-19 management across different countries, raising similar questions. It concludes grimly that,post-pandemic, 'decisions to let some die will not likely face many repercussions'. I would like to extend my gratitude to *Raiot* for granting us permission to republish the articles.

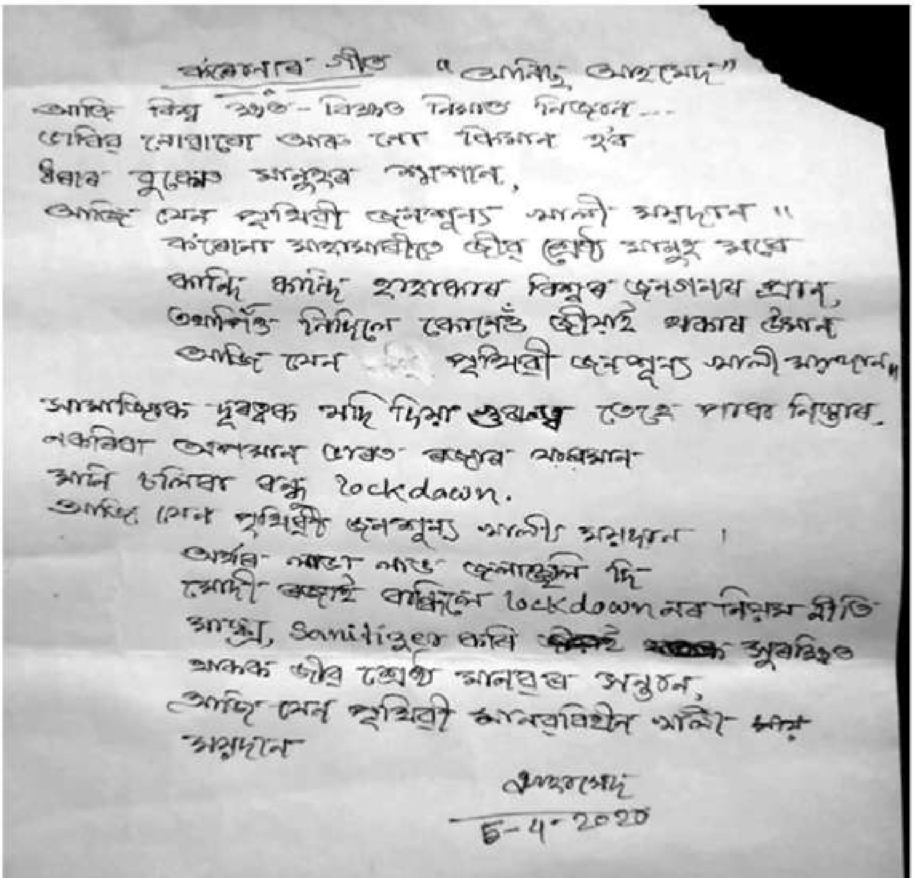
Bringing out this volume was challenging, more so as delays were inevitable due to the continuous lockdown since March 2020. We bring you this edition in October with the hope that the world learns and abides by the valuable lessons the current pandemic is holding up for us, and that we come out stronger on the other side.

Dr. Uddipana Goswami
Editor
October 5 , 2020

Contents

ক'ৰোণাৰ গীত

আনিছ আহমেদ


ক'ৰোনাৰ গীত "আনিছ আহমেদ"
আজি বিশ্ব ৰুগ্ন - বিজ্ঞান নিয়ন্ত্ৰণ নিস্ফল...
ভাবিব নোৱাৰো আৰু কোন দিনবা হ'ব
ইমান বুকুৰ মানুহৰ শ্মশান,
আজি যেন পৃথিৱী জনশূন্য খালী ময়দান ॥
ক'ৰোনা মহামাৰীতে জীৱ শ্ৰেষ্ঠ মানুহ মৰে
কান্দি কান্দি হাহাকাৰ বিশ্বৰ জনগণৰ প্ৰাণ,
তথাপিও নিদিলে কোনেও জীয়াই থকাৰ উপায়
আজি যেন পৃথিৱী জনশূন্য খালী ময়দান ॥
সামাজিক দূৰত্বক মানি দিয়া গুৰুত্ব তেতিয়াহে পাবা নিস্তাৰ.
নকৰিবা অপমান দেশৰ কথাৰ অৱমান
মানি চলিবা বন্ধ lockdawn.
আজি যেন পৃথিৱী জনশূন্য খালী ময়দান ।
ভাৰতৰ আই জনসাধাৰণ দি
মোদী ঘোষণাই বাঢ়ালে lockdown ৰ নিয়ম নীতি
মাস্ক, Sanitizer কৰি সুৰক্ষিত
থাকক জীৱ শ্ৰেষ্ঠ মানৱৰ সন্তান,
আজি যেন পৃথিৱী মানৱবিহীন খালী ময়দান
আহমেদ
5-4-2020

Corona's Melody

Anis Ahmed

The world is ravaged still, silent
Cannot envisage for how long
Earth's bosom has become a graveyard,
As if the world is a deserted open ground.

People are dying in pandemic Corona
Global populace is beset with heartrending tears
Yet there is not an inkling of a soul alive
As if the world is a deserted open ground

Maintaining social distancing is the way to escape
Do not belittle king of India's commands
Adhere to closure, lockdown
As if the world is a deserted open ground.

Leaving aside profit and loss
King Modi has regulated the rules of Lockdown
To let remain secure with mask and sanitizer
Children of mankind, the superior living being
As if the world is a deserted open ground.

The 'New Normal': Correctional homes in post COVID 19 Assam[1]

Anubhab Atreya

Introduction

Assam is seen as one of the better performing states in the country when it comes to fighting the COVID 19 pandemic. It managed to control spiraling rates of infection initially. The government also proactively built capacity within a struggling health care machinery which had been bursting at its seams in the best of times.[2] As in the national scenario, in Assam also doubts were expressed on several grounds such as the low numbers of testing initially, but the health care machinery put up a brave front and battled COVID 19 with much competence.[3]

However, as the history of pandemics show, effectively managing COVID19 will be a longer battle to be fought with sustainable and judicious use of resources. The results will be apparent only in the medium to long run as the state is only now beginning to see a serious rise in incidence of cases as migrants from Assam who were stranded in other states return home. The COVID 19 policy adopted by the state government relies on direct and open communication with the public with 24x7 helplines and daily press briefings by the Health Minister and senior officials. Through

its policy, the legal basis of which lies in the Assam COVID 19 Regulations, 2020 promulgated under the Epidemic Diseases Act, 1897; the Government has been fairly inclusive, with senior officials including the Health Minister addressing individual cases and complaints in real time over social media. This approach has co-existed and worked in tandem with the body of notifications and other subordinate legislation under the Disaster Management Act, 2005 which forms the basis of the Government of India's approach.

Even while addressing the foundational issues of medical infrastructure and personnel, it is important to note that the correctional homes of the state - among the most susceptible constituencies for COVID 19 infection - have slipped the attention of the public policy discourse. While there is sufficient media attention on the release of inmates from the correctional homes as directed by the Supreme Court of India on March 23, 2020 in Suo Motu Writ Petition (Civil) No. 1/2020, there is no substantial analysis of the situation in the correctional homes. Neither is there any overt integration of the public health response within the unique context present in Assam. What this entails is that the inadequate healthcare system of the correctional homes is left to its own devices while dealing with COVID 19. This will lead to an overdependence on the state health system outside the correctional home. While this may not seem like a pressing issue in the current situation, where the state infrastructure has not yet been tested to its full capacity, prevention of potential outbreaks could decide the battle in the days to come. This paper argues that systemic gaps in the medical and nutritional facilities in Assam's correctional homes should be addressed in order to deal with the challenges of a post-COVID 19 scenario.

Existing systemic issues

With a larger number of undertrial prisoners placed at 6571 as on 31.08.2019, 3224 convicts and 1032 declared foreign nationals, Assam's correctional homes have a large floating population and, therefore, a higher rate of ingress and egress of people. Added to this is the number of inmates

who return from leave and parole, general movement of correctional staff, and family members of inmates who frequent the prison. This naturally implies a correspondingly increased risk at times of epidemics and outbreaks of infectious disease. The challenge before the correctional homes has been manageable till now because the number of detected cases of COVID 19 in the state itself is low. However, it will only deepen now with 7492 cases being detected in the state (as on 12:05 pm IST on June 30, 2020) in rapid succession since the first case was declared positive on March 31 (Government of Assam, 2020)

The Assam Prison Headquarters at Guwahati and the correctional homes in the districts, have worked with much spirit and enterprise, inspite of limited resources, in ensuring that the basic protocols such as social distancing, hand hygiene, and special arrangements for quarantine are provided to inmates.

However, the correctional homes of the state have several systemic issues afflicting them when it comes to fighting COVID 19. For one, the correctional homes in the state have an inadequate system of infirmaries or dispensaries which function as 'hospital or medical wards' within the jails. These infirmaries or dispensaries have serious issues with availability of medical staff, with most of them not having permanent doctors.[4] In fact, most of them continue to run on skeletal para-medical staff with no ambulance facilities of their own. There is also a serious lack of medical infrastructure in terms of adequate number of beds and supply chain issues with respect to medicines. This makes correctional homes overtly dependent on the state medical services outside the correctional home which is not easily accessible due to both mandatory security processes like provision of police escort and lack of ambulance services.

A long-standing regulatory issue with the correctional homes of the state is that the Home Department has not adopted the Model Prison Manual 2016, which was directed by the Supreme Court in Re: Inhuman Conditions in 1382 Prisons, W.P (C) 406/2013. This has a direct implication on the

health care and nutrition available to the inmates as the 2016 Manual provides an enhanced mandate for healthcare facilities within correctional homes.

The learnings from countries like Italy and the United States of America which have already borne the worst brunt of the COVID 19 infection tell us that the demand on intensive care increases as the pandemic progresses. Present research indicates that almost 5-15% of patients with COVID 19 infection may require intensive care surveillance and ventilatory support. (Mohlenkamp, 2020).Being a state, which has traditionally been deficient when it comes to intensive care beds, it is imperative that Assam addresses all such constituencies which could transmit infection to the larger community and increase pressure on limited intensive care facilities in the future. Correctional homes are an ideal candidate for such preemptive intervention. There exists another basic argument for an aggressive COVID 19 plan for correctional homes in the state which is that the right to the highest attainable standard of physical and mental health which is guaranteed to every person within the constitutional framework of India should be available to both inmates and correctional staff who share that environment.[5]

With the dawn of the COVID 19 era, it is being increasingly pointed out that systems, including correctional systems, need to cope with the 'new normal'. The 'new normal' essentially means a society with altered norms post a paradigm-shifting event such as COVID 19, where practices such as social distancing, hand hygiene, and a generally more pathogen-sensitive approach will be regarded as socially acceptable behaviour. Similarly, correctional homes should not be an exception to this situation where social distancing, hand hygiene, wearing masks, and so on is considered normal behaviour rather than the exception. These have, of course, been mandated by protocols laid out by international public health organisations like the World Health Organisation (WHO) and the large domestic regulatory framework erected rapidly over the last few months.[6] At the local level, it was set by the actions of the Government of Assam either through policy interventions such as regulations and notifications or through well-publicized media campaigns across multiple platforms.

However, adapting to the requirements of a 'new normal', would require a correctional system which is elastic enough to adapt to such demands. This would require engaging with questions as basic as "Is social distancing possible in Assam's correctional homes?" or "Is it possible to ensure hand hygiene for all inmates in large correctional homes where such amenities such as wash basins are limited?". This flexibility would also necessitate budget and financial considerations as it could demand infrastructural interventions such as construction of wash basins, additional wards, etc.

The correctional homes in their response to COVID 19 are also exposed to some stressors which hold true in the larger community outside prisons. For example, the widely reported misinformation through mainstream media like newspapers which often creates localized panic remains a serious factor even within correctional homes. In fact, the WHO has gone to the extent of terming this phenomenon of spreading malicious misinformation as an "infodemic" (United Nations, 2020). COVID 19 has also had a deleterious impact on mental and psychological health which could equally impact correctional homes. Without the capacity to deal with the mental health concerns of its inmates in-house, Assam's correctional homes are at a disadvantage on this front as well[7] (Studio Nilima: Collaborative Network for Research and Capacity Building vs. State of Assam, 2017).

In addition, there is the natural susceptibility of correctional homes to becoming petri dishes for infectious diseases. The manner in which infectious diseases often magnify and spread within correctional homes and finally spill out into the larger community has been subject of much research and documentation since the 17th century (Howard, 1777; Stanley, 1919). The correctional homes in Assam, are no exception to this problem. The presence of multiple risk factors places correctional homes at a place of heightened vulnerability as they are much more susceptible to infectious diseases such as COVID 19. Over the last couple of months, much research on how marginalised groups such as ethnic minorities are more vulnerable to COVID 19 has appeared across academia. In the absence of substantive

medical data from inmates, definite conclusions cannot be drawn from Assam's correctional homes yet. However, when analyzing the documentation on medical facilities and personnel already available, it can be concluded that the correctional homes remain much more vulnerable compared to the community at large. It is the need of the hour, therefore, that they receive heightened attention.

The paper is presented in four parts. Part I presents a literature review which explores the literature on COVID 19 and incarceration in the months since the pandemic began. It also explores interdisciplinary areas in public health which have an impact on incarcerated individuals and communities. Part II of the paper presents the pre-existing systemic challenges faced by the healthcare delivery mechanism in Assam's correctional homes and the way in which that can become an intrinsic liability in the fight against COVID 19, if not addressed on an urgent basis. Part III of the paper presents the situation relating to nutrition in Assam's correctional homes and the way that can impact COVID 19 mitigation measures. Part IV synthesizes both these tracks of exploration and draws on them to present a case for a prison specific plan complemented by a state-wide policy for COVID 19 mitigation in prisons which is part of the larger public health response of the state government.

Literature Review

There has been a steady flow of literature on COVID 19 and incarceration in the last two months. Within it, is a body of guidance and advisories from organisations like WHO that provide guidelines for combating COVID 19 in carceral and detention settings (IASC, 2020; World Health Organisation, 2020).

This also includes policy briefs and recommendations from organisations such as the Social Science in Humanitarian Action Platform (SSHAP, 2020). However, the larger presence in this strand of literature comprises of opinion pieces drawing on previous research on infectious diseases in prisons and the

current outbreak across prisons, mostly in the USA. They make policy recommendations and advocate a streamlined release of vulnerable categories of inmates and strengthening prison healthcare in the short term and halting mass incarceration in the long term (K. Sivashanker, 2020; Montoya-Barthelemy, 2020 ; Kathryn Nowotny, 2020, Laura Hawks, 2020; Simpson, 2020; Michael Liebrenz, 2020).

On the other hand, there is an emerging body of research in public health where vulnerability to COVID 19 is studied in various settings such as hospitals, healthcare systems such as the United Kingdom's National Health Services and correctional systems (Delan Devakumar, 2020; Elizabeth Williamson, 2020; Stuart A Kinner, 2020).

Several of them find that vulnerable sections of the population such as older persons, persons with co-morbidities, inmates in prisons, ethnic minorities etc are especially susceptible to COVID 19. A gendered reading of COVID 19 has also been attempted through policy briefs and recommendations (World Bank Group, 2020; United Nations Development Program, 2020). It has been pointed out that COVID 19 can have unique and second-order effects on women and children often underlining gendered faultlines in society. Within public health, several studies in relation to food and nutrition in the context of COVID 19 have also been attempted either looking at patients with pre-existing digestive issues or looking more comprehensively at nutrition as a determinant of health (Ren Mao, 2020; A. Laviano, 2020; G. Muscogiuri, 2020). Some studies have also formulated recommendations for the optimum nutritional uptake and support required during COVID 19 (G. Muscogiuri, 2020). These are of particular relevance to the fact that Assam's correctional homes face a challenge when it comes to provision of optimum nutrition and also notes a presence of medical conditions which can be traced to nutrition. (Atreya, Studio Nilima Blog, 2020)

The literature on COVID 19 and incarceration, especially in health and epidemiology has become sizeable in the last few months. Unfortunately,

most of this writing is restricted to public policy recommendations through op-eds in various media portals. The focus for this review is on literature which has firstly looked at inequalities in the spread, scope and treatment of COVID 19 and secondly, at what COVID 19 specifically implies for incarcerated populations across the globe. In several cases, there are policy guidelines by international organisations like the WHO and the International Committee for the Red Cross (ICRC) which provide compilations of the best practices in the field for managing COVID 19 within the walls of correctional homes and detention centres.

The literature on inequity and inequality in COVID 19 traces how pre-existing faultlines and inequalities in societies under racial and ethnic lines are magnified by COVID 19, much like other infectious diseases (F. Ahmed, 2020; D. Devakumar, 2020; K. Sivashanker, 2020; Khalidi, 2020). Ahmed points out that it is the poor who lack access to health services in normal periods who are made most vulnerable by this pandemic while Khalidi argues that inequality influences an individual's predisposition to disease and is not limited to the distribution of health resources. The literature on digital inequalities is also relevant in this regard as technology is increasingly being perceived as a solution for many of the systemic issues being raked up by the new normal post COVID 19. The correctional system in Assam will not be an exception(Elisabeth Beaunoyer, 2020; Urs Gasser, 2020; Paul DiMaggio, 2004).

Methods & Limitations

This study is based on qualitative research. Even though the data sets gathered under the Right to Information Act, 2005 is quantitative in nature, they are used to identify qualitative inputs.[8] The qualitative paradigm has been complemented with inputs from statutes and policies where relevant. This has meant a reliance on the doctrinal method for analyzing elements of the right to health and relevant regulatory models of prison governance like the Model Prison Manual 2016 (Creswell, 2014).The review of relevant literature has an interdisciplinary focus within public health and prison studies.

This was necessitated by the intersectional nature of the correctional system and the public policy impact upon it.

All necessary ethical considerations were followed during the research. There are no standards of professional associations for research applicable in this field. Most of the data was gathered through applications under Section 6 of the Right to Information Act, 2005 and the relevant replies are cited and available on file with the author. The secondary research cited in this article has, however, been verified only by reference.

As regards the selection of sample size, details from all the 31 correctional homes in Assam are included in the data. The research will potentially benefit the subjects of the research and stakeholders in the correctional system of Assam including the inmates themselves and the correctional staff. The author has no conflict of interest with the publication of the research and the ownership of the data remains with Studio Nilima: Collaborative Network for Research and Capacity Building.

The data collected through applications filed under S.6 of the Right to Information Act, 2005 were based on questions and themes finalised keeping in mind the policy and implementation gaps noted in findings of Parked in Lot: Consolidated Report on the Correctional Homes, Assam 2018 published by Studio Nilima: Collaborative Network for Research and Capacity Building (Dutta, 2018). This data was cited previously in articles published in this journal (Atreya, 2020).

Medical facilities and COVID 19 in Assam's correctional homes

In making an argument for a comprehensive yet localized COVID 19 mitigation strategy, the most relevant anchor becomes the issues plaguing the healthcare delivery mechanism inside the correctional homes. The prisons in the country and more particularly, Assam, are in an especially vulnerable position in the fight against COVID 19. It is true that Assam's correctional homes or prisons are better placed nationally with respect to several parameters,

such as the perennial problem of overcrowding that afflicts most Indian correctional homes (NCRB, 2020).But with a dilapidated health infrastructure and heavy shortage of medical personnel, correctional homes in Assam are potentially among the most vulnerable institutions when it comes to health crises.

Policy makers will have to navigate through larger systemic challenges as they prepare a long-term strategy to fight COVID 19 in the coming months. The primary challenge is inadequate medical infrastructure and personnel which is a perennial challenge, and not just during the pandemic. Most correctional homes are limited to basic medical facilities and functional in-house hospitals are conspicuous by their absence. In fact, records accessed through applications under Right to Information Act 2005 by Studio Nilima show that one Central Jail in the state reported availability of "only first aid facilities" and at least two District Jails reported that there were no medical facilities and doctors in the jail hospital. On the other hand, the Central Jail in Guwahati is much better equipped with X-ray facilities, ECG machines, and lab equipment.

Apart from insufficiency and inequity in physical infrastructure, the larger issue afflicting the delivery of basic medical services within the correctional homes is the lack of permanent doctors and medical staff. In districts where a medical officer is not posted in the correctional home, a makeshift arrangement exists by which doctors from the state medical service are deputed on a temporary basis. Often these doctors have additional responsibilities and can only visit the jail for a few hours on certain days of the week. The systemic strain also means that the number of visits doctors make to the correctional homes vary disproportionately between correctional homes. Apart from doctors, other key medical personnel such as pharmacists and nurses are also not available in the required capacity. For example, the data reveals that 12 correctional homes have been operating with only one pharmacist and only two district jails in the state report availability of both a pharmacist and nurse.

Table 1

Analysis of RTI replies regarding availability of key medical personnel in the 31 correctional homes of Assam

Number of replies	22 correctional homes
Correctional homes reporting one nurse/+ one pharmacist/+one compounder	**5 correctional homes** (Guwahati: one lab technician instead of compounder[9]; Silchar: one laboratory technician but no compounder; Goalpara: pharmacist and nurse; Golaghat: pharmacist and nurse)
Only one pharmacist	**12 correctional homes** (Diphu, Hailakandi, Karimganj, Kokrajhar, Majuli, Mangaldai, Morigaon, Tinsukia)
No such appointments	**3 correctional homes** (Hamren, Sonari, Haflong)

Table 2

Analysis of RTI replies to query regarding visits made by doctors to the 31 correctional homes of Assam

Number of replies	22 correctional homes
Not specified	**5 correctional homes** (Guwahati, Goalpara, Hailakandi, Hamren, Karimganj)
Visits once/twice a week	**2 correctional homes** (Majuli, Tinsukia: Medical & Health Officer one on deputation from Joint Director, Health Services)
Visits daily	**13 correctional homes** (Diphu: Monday to Saturday; Golaghat: four days a week on deputation from Joint Director, Health Services; Morigaon: visits twice a day)

The data available and field experience indicate that there is an overwhelming reliance on the medical infrastructure outside of prisons, such as state medical colleges or district civil hospitals. This will become an increasingly inaccessible option for the inmates and staff, as the COVID 19 pandemic progresses. With the state government bracing for a sudden upsurge in COVID 19 cases, most medical colleges of the state and portions of district civil hospitals have been reserved for COVID 19 patients. While other arrangements in the form of subsidizing and reserving private hospitals and clinics have been made, in case of heavy local transmission, the health system will come under stress and access to treatment will have to be prioritized. As the general health needs of inmates cannot be taken care of in-house in the correctional home, they will suffer in the coming months. This state of affairs only strengthens the case for more robust in-house medical infrastructure in the state's correctional homes in the long term as over-dependence on the state medical services can become a liability during health crises.

Apart from such infrastructural issues, there are also several intrinsic features of Assam's correctional homes which make them vulnerable to infectious diseases. Data gathered between January 2018 and August 2019 show that some of the most commonly reported illnesses in Assam's correctional homes were viral diseases such as influenza, skin diseases, respiratory tract infections and chronic gastritis. Several correctional homes also have inmates who have underlying health conditions which make them especially susceptible to COVID 19 such as Type 2 diabetes, renal problem, hypertension etc. Besides indicating co-morbidity for COVID 19, they also indicate deficiencies in terms of sanitization and general health standards (Fang, 2020).

It is also important to note that the diet in the correctional homes is provided as per the Assam Jail Manual and is not especially protein rich, which is essential for a healthy immune system. Taking these issues into account, the Model Prison Manual 2016 adopted by the Supreme Court, provided a revamped diet chart, which unfortunately has not been

implemented in the state as yet (Assam Jail Manual; Model Prison Manual, 2016).

While the correctional homes of Assam are not the most overcrowded in the country, with six of them now containing detention centres for declared foreign nationals, the occupancy rate of the correctional homes in the states stand at a high 122% as on 31.08.2019. With large common wards, where inmates sleep next to each other on the floor and share overburdened common toilets, social distancing is not an option which can be carried out in its actual spirit.

On the other hand, while prisons may be isolated environments in themselves, correctional staff who work in the homes often interact with outsiders in the course of their duty and many are not accommodated within the campus of the correctional home. Apart from this, one of the challenges which most institutions with limited human resources face is, providing for reserve personnel in case of exposure or infection. Security and logistical considerations in administering correctional homes require that a certain number of officers and staff be present on site at all times. This is also one of the reasons why correctional services (prisons) were exempted from the national lockdown by the Ministry of Home Affairs (Ministry of Home Affairs, 2020).But with the limited human resources available in each correctional home, exposure within the correctional home staff may lead to a security and management crisis, as it will necessitate that all the exposed officers and staff be quarantined.

Crises situations can lead to a perpetuation of pre-existing inequities in the correctional homes. Studio Nilima's consolidated report on the correctional homes of Assam, Parked in Lot (Dutta, 2018), observed that women and children, who are lodged in women's divisions or wards are essentially limited to a "jail within a jail".The space available for them is extremely limited and brings along with it an additional set of restrictions. Unfortunately, in many correctional spaces, with the adoption of social distancing norms, it will become even more difficult for women inmates

and children to access common areas such as multipurpose halls or libraries within the prison. It is in recognition of gender specific challenges such as this that guidance documents from international agencies such as the WHO and ICRC recommend that women must be involved in decision making in relation to outbreak management and mitigation policy (IASC, 2020). In this situation, it is necessary that policy makers keep in mind that any pandemic management and mitigation strategy in Assam's correctional homes must be inclusive and representative in nature.

While the Assam government has been working with alacrity, some of the policy recommendations in international guidance documents such as a complete site-specific epidemiological assessment would not be practicable in addressing COVID 19 in Assam's context given the shortage of human resources. What would be practicable, however, is to ensure that the measures being taken are inclusive and sensitive to the needs of vulnerable inmate population such as women and children and even members of the community who are in a minority, like the female correctional staff.

In acknowledgement of the precarious condition in which the country's prisons are placed, faced with the COVID 19 pandemic, the Supreme Court of India through Suo Moto Writ Petition (Civil) No. 1/2020, issued notice to the states and asked them to file replies about the measures being taken in prisons to combat COVID 19 on 16.03.2020. The Supreme Court noted in its order that several factors such as overcrowding, high rates of infection transmission, etc make prisons highly susceptible to the spread of COVID 19. When the matter was next heard on 23.03.2020, the Supreme Court issued several directions to the states including setting up a High-Powered Committee in each state/Union Territory to determine which class of prisoners can be released on parole or on interim bail so as to free up space within the prisons (In Re: Contagion of COVID 19 Virus in Prisons, 2020). Following this, the Assam Prison Headquarters and the state judiciary ensured that 722 undertrial inmates (as on 31.03.2020) of the eligible category are released to ease the burden on the correctional homes (Nath, 2020).

As Assam deals with waves of COVID 19 positive cases, it is an opportune time for stakeholders in Assam's correctional homes to assess our preparedness for a situation which can be countervailed only by obsessive preparation. While the correctional homes themselves are naturally involved in executing preparedness plans, it is imperative that other stakeholders analyse systemic limitations and prepare to mitigate them within our respective roles and limitations. It is increasingly being pointed out that vulnerability in terms of COVID 19 does not merely mean people with co-morbidity or only people who are medically vulnerable (The Lancet, Editorial, 2020). It also means those sections of the population who are disadvantaged in socio-economic terms such as inmates of prisons. It has also been recommended by public health experts that it is high time that correctional homes, detention centres and other such custodial institutions are integrated into the larger public health response of the government to the pandemic (Kinner, 2020). This has a two-fold advantage of providing a chance of ensuring better preparedness to the correctional homes and reducing the pressure on the tertiary healthcare facilities such as medical colleges.

Reviewing nutrition in Assam's correctional homes

The damaging implications of an ailing healthcare delivery system in Assam's correctional homes in the fight against COVID 19 are quite obvious (Atreya, Studio Nilima Blog, 2020). It has been argued previously that the diet available in the correctional homes is provided in accordance with the diet chart under the Assam Jail Manual (Assam Prison Headquarters). In many states, including Assam, these charts had not been comprehensively updated or subjected to scientific review for many years. Taking these issues into account, the Model Prison Manual, 2016 which was adopted by the Supreme Court in the Re: Inhuman Conditions in 1382 prisons case, provided a revamped diet chart, which unfortunately has not been implemented in the state as yet. However, the diet chart in Assam has been modified in some respects to maintain parity with the Model Prison Manual. In addition, the rules have always stipulated that food be served only in certain periods of the

day and that no food can be served after the lock up hour which is quite early in the evening.

As a result, one of the many policy issues which needs to be explored in depth in the face of COVID 19, is the state of nutrition in our correctional homes. Apart from the infrastructural and human resource issues which prove an impediment for the preparation against COVID 19, an important pre-emptive measure could lie in addressing the quality of nutrition available to inmates.

The quality of food served in jails has often attracted media attention but mostly for the wrong reasons (Shaikh, 2016). Fortunately, that is not the case in Assam. Food which is served in correctional homes in Assam is generally of a standard quality and adhere to the norms set by the Assam Jail Manual. However, as they say, we must not let any crisis go to waste.[10] The COVID 19 pandemic is an opportunity for action which lets us examine and draw both public and state attention to systemic issues which are plaguing our correctional system. The systemic improvement of nutrition levels in our correctional homes is certainly one systemic issue which should occupy prime place in this effort.

With the COVID 19 lockdown moving into its fourth phase, the supply chain crisis in the country has deepened. Food supply in various domains has already become a challenge in the last few days. Apart from pre-existing standards laid down by national bodies such as the National Institute of Nutrition, the importance of nutrition in the fight against COVID 19 has been underlined through the many advisories on the subject from the WHO. The ICRC has noted that often places of detention imply limited access to health care and also access to lesser food than would be nutritionally ideal. Added to this are the chances of higher transmission through overcrowding, lack of ventilation etc which make prison health a particularly challenging area. In an interview, Elena Leclerc, the coordinator of the ICRC's health in detention program, refers to the fact that one of the interventions vis-à-vis the Ebola outbreak had been to introduce malnutrition treatment programmes in detention centres as nutrition is a determinant of health (Leclerc, 2020).

In various documents, WHO Europe refers to the fact that nutrition helps in preventing development of infections and that vulnerable population groups within the correctional set-up have specific dietary requirements (WHO Regional Office for Europe). Weak immune defence systems among inmates due to poor levels of nutrition has also been noted by the WHO. This, along with several other factors of incarceration, make inmates more susceptible to infections of various kinds. WHO Eastern Mediterranean, on the other hand, has gone a step further, by introducing advisories on nutrition for COVID 19 with specified diet recommendations for adults and children (WHO Regional Office for the Eastern Mediterranean).

The still emerging scientific literature on the subject reflects how nutrition has relevance in determining the outcomes of COVID 19 patients. For example, a high Body Mass Index or malnutrition has been identified as a negative prognostic factor in patients (Laviano, 2020). It also outlines the importance of taking care of nutritional habits and following balanced nutrition practice with high amounts of minerals, antioxidants, and vitamins in the diet (Muscogiuri, 2020).

In Assam, the average person residing in rural areas consumes 2170 kcal of calories (per day capita) in a day while the average person in urban areas of the state consumes 2110 kcal of calories (per day per capita)(NSSO, Ministry of Statistics and Program Implementation, 2014). The Model Prison Manual 2016 formulates a diet chart which provides a standard on the basis of calorie estimation (Chapter VI: Maintenance of Prisoners). Some states like Odisha have taken the cue from this and moved towards a calorie estimation for diet instead of continuing with the colonial era weight-based determination based on the recommendations of the Indian Council for Medical Research (ICMR)(Express News Service, 2018). Unfortunately, this is not available for the diet chart used in Assam's correctional homes. This essentially means that it is not possible for an independent observer to gauge accurately if the nutrition norms are being met in accordance with the guidelines.

Table 3

Diet Scale for C-Division Convicts and 2nd Class Undertrials in Assam's Correctional Homes. (Assam Prison Headquarters)

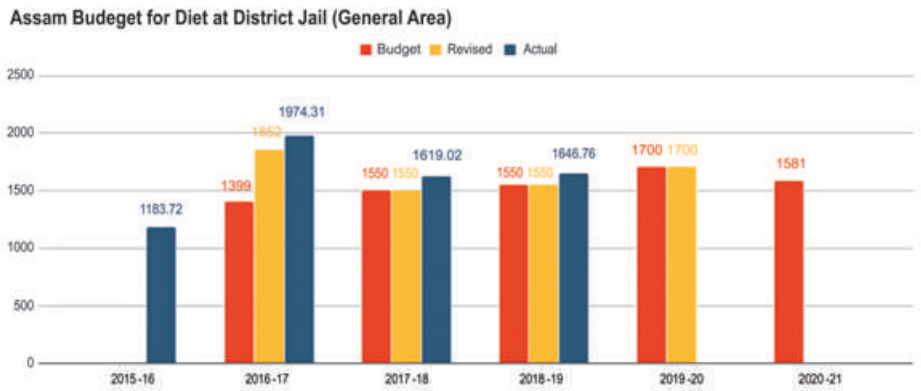
	Articles of Diet	Labouring	Non-Labouring
	For Morning Meal		
(i)	Atta	120 gm	90 gm
(ii)	Gur	30 gm	30 gm
(iii)	Tea-leaf	3 gm	3 gm
(iv)	Milk	20 ml	20 ml
(v)	Sugar	10 gm	10 gm
	For Mid-day & Evening Meals (combined)		
(vi)	Rice	600 gm	540 gm
(vii)	Dal	120 gm	120 gm
(viii)	Vegetables (including potato)	330 gm	330 gm
(ix)	Mustard Oil	20 ml	20 ml
(x)	Salt	20 gm	20 gm
(xi)	Onion	10 gm	10 gm
(xii)	Turmeric	2 gm	2 gm
(xiii)	Coriander	1 gm	1 gm
(xiv)	Chillies (Dry)	2 gm	1 gm
(xv)	Lemon or Tamarind (when Lemon is not available)	½ No. 10 gm	½ No. 10 gm
	As additional Item (in two meals a week)		
(xvi)	<u>Non-Vegetarian</u>		
	(a) Fish/Meat	110 gm	110 gm
	or egg	2 Nos	2 Nos
	(b) Potato	30 gm	30 gm
	(c) M/oil	5 ml	5 ml
	(d) Salt	5 gm	5 gm
	(e) Onion	5 gm	5 gm
	(f) Turmeric	1 gm	1 gm
	(g) Coriander	1 gm	1 gm
	(h) Chillies (Dry)	½ gm	½ gm
(xvii)	<u>Vegetarian</u>		
	(a) Milk	250 ml	250 ml
	or Curd	200 gm	200 gm
	(b) Sugar	20 gm	20 gm

While the amount of food available to the average inmate is in accordance with the standards set out in the Model Prison Manual, the problem is one of quality as opposed to quantity. Engagement with the correctional homes has occasionally revealed grievances about the quality of the food available and the raw materials such as rice, meat, etc (Dutta, 2018). It is also quite difficult to comprehend if variety in vegetables and other raw materials, which is essential in ensuring adequate minerals, antioxidants, and vitamins is ensured.

In addition to this, there is a larger systemic issue about the budget allocations for diet in the district jails. An analysis of the budget allocation for diet in jails in the State Budget from 2015 onwards reveals several gaps. There is a trend of consistent under-budgeting for correctional homes which hints at a lack of communication with the correctional homes and understanding of the ground realities at the policy level. More importantly, such systemic gaps have the potential of directly affecting living conditions in the correctional homes where inmates bear the brunt of such flaws in policy. Similar patterns are found in Open Air Jails; and district jails in Karbi Anglong and North Cachar (Civic Data Lab, 2020).

Figure 1

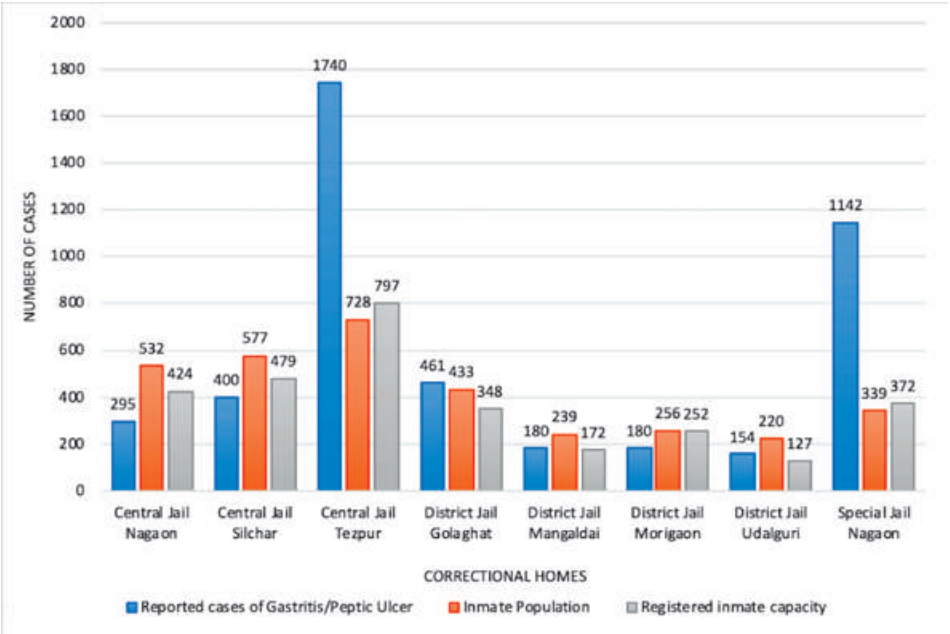
Assam Budget for Diet in District Jails (CivicDataLab)



The data for most commonly reported illnesses provided under the Right to Information Act, 2005 reveal that the highest numbers of cases across correctional homes were gastrointestinal diseases such as gastritis and peptic ulcers. This hints at the fact that it is might be necessary to have a relook at the mode and means by which nutrition is provided across the correctional homes in the state. Deficient levels of general health, which our data indicates, can be worrying when faced with a pandemic of the present scale.

Figure 2

Prevalence of Gastritis across correctional homes in the State between January, 2018 and August, 2019



Note: The data for inmate population and registered inmate capacity is current as of 31.08.2019. Inmates have been released across several correctional homes in the last month in the wake of the Supreme Court's order and the current occupancy rates will be updated once it is available in the public domain.

Our experience and the data indicate that there are inherent issues with the diet being provided in the correctional homes. While it may be adequate for sustenance and survival, it is certainly not equipped with the capacity to strengthen immune systems and fight infections. At this stage, it is in the public interest to contemplate introducing supplements or new elements to the diet in the correctional homes so that the inmates who are at higher risk of infections like COVID 19 have a fighting chance against the disease. Apart from ensuring improved levels of general health among the inmates, it will also ensure that the correctional services are better placed to combat COVID 19 when the need arises as it will lead to stronger immune responses.

Analysis

The state of medical facilities and nutrition within correctional homes underline the fact that correctional homes are highly vulnerable in the face of the pandemic. In the absence of any vigorous executive intervention in this regard, the Supreme Court of India intervened by way of a suo moto petition which provided several specific directions to the states to mitigate COVID 19 in prisons.

The Supreme Court's direction through its Order dated 23.03.2020 apart from constituting a high-powered committee to determine inmates who were eligible to be released on parole or interim bail, also provided certain directions on public health measures to be taken within correctional homes (In Re: Contagion of COVID 19 Virus in Prisons, 2020). It noted that prisons must ensure maximum possible distancing among inmates and directed that prison specific readiness and response plans must be developed in consultation with medical experts. It also directed that a monitoring team at the state level should be set up so that the directives issued about prison and remand homes are complied with 'scrupulously'.

The Supreme Court's template of preparing both localized response plans specific to each correctional home while also maintaining a state level synchronization was broadly based on the recommendations in the "Interim

guidance on Scaling-up COVID 19 Outbreak in Readiness and Response Operations in camps and camp like settings" which has been developed jointly by several international agencies like the WHO(IASC, 2020).It has the potential of addressing the systemic gaps apparent in our case studies. However, it is important that these plans are also infused with the right amount of long-term vision instead of a purely ad-hoc approach. As policy makers begin approaching these directions, it is important to ensure that the principle of inclusivity and equality which is enshrined in our constitutional framework remain unhindered.

As we move forward toward the post COVID 19 world, it is evident that most systemic challenges will be sought to be solved by introducing technology driven solutions. Some of the primary challenges in adapting to the new normal post COVID 19 will be in access to healthcare and access to justice. The criminal justice machinery had already begun relying on technology by automating processes such as production for remand and client consultation across states. In such a scenario, it is quite possible that as with most responses to COVID 19, policy makers and framers will have to increasingly rely on technology-driven solutions in addressing both these areas. This approach may receive further support as basic technology infrastructure such as computers and video-conferencing facilities are installed in most correctional homes in the state even though internet connectivity remains an issue.

Thus, one of the solutions to the lack of medical personnel within correctional homes could be introducing telemedicine consultations on a regular basis. While such provisions are already available in Assam, they are not being used equally across all districts due to the relatively different rates of internet penetration. It is not only geographical factors which affect internet penetration but also existing differentiations in society such as gender and age. For example, it has been reported that the population of female internet users is half of the male internet user population(Nielsen, IAMAI, 2019). Or the fact that more than two-third of users are within the limits of 12-29 years of age. It is essential therefore, that technology driven solutions within

correctional homes remain mindful of digital inequality and are rolled out with a concerted emphasis on inclusivity.

In the fast-paced regulatory environment around COVID 19, the aspect of correctional homes as workplaces also need to be considered as correctional staff often spend long hours of duty within the homes. The Ministry of Home Affairs has released the 'Guidelines on preventive measures to contain spread of COVID 19 in workplace settings' on 18.05.2020 along with several other policies which have been issued from time to time (Ministry of Health & Family Welfare, 2020). While the infrastructural challenges within the correctional homes may make it difficult, it is important that any mitigation policy or programme take into the account the health and well-being of correctional staff.

The 'new normal' for the correctional homes post COVID 19 will have to be faced with a regulatory overhaul which is more long term than the present ad-hoc mitigation strategies. Firefighting measures will have to eventually metamorphose into holistic policy making. While there are multiple systemic issues within the correctional homes in which COVID 19 will have a direct impact, this article uses two indicators, that of medical facilities and nutrition, to make a larger argument for a policy shift when it comes to the fight against COVID 19 in Assam's correctional homes. There is a strong human rights and public policy argument in favour of consciously integrating correctional homes into the COVID 19 response in the state as "prison health is part of public health"(Kinner, 2020).The COVID 19 pandemic presents an opportunity for strengthening the healthcare infrastructure and personnel within the correctional homes and setting them on a path of self-dependence. This will ensure the health and safety of the community within the correctional home and the well-being of the larger local community.

Endnotes

[1]This article was written in the month of May. Since then, based on a letter written by Studio Nilima: Collaborative Network for Research and Capacity Building, the Gauhati High Court has taken up a suo moto writ petition numbered PIL (Suo Moto) 4/2020 where the Court has directed the State of Assam to provide the best of measures available for treatment of inmates suffering from COVID 19. It has also directed the Inspector General of Prisons to file an affidavit on certain questions pertaining to the prevalence of COVID 19 in correctional homes.

[2]For the basic health indicators of the state, see https://hfw.assam.gov.in/frontimpotentdata/health-indicators-of-assam. For a more granular analysis using district level data, see District-Level Inequity in Selected Indian States, Chapter in Brijesh C. Purohit, "Inequity in Indian Health Care", India Studies in Business and Economics, Springer, 2017. Detailed statistics regarding the present state of health infrastructure and capacity across the state can be found in Rural Health Statistics 2018-19, Government of India, Ministry of Health and Family Welfare, Statistics Division, available at https://main.mohfw.gov.in/sites/default/files/Final%20RHS%202018-19_0.pdf

[3] Official announcements from the Health Minister of the Government of Assam indicate that Assam has completed 55862 COVID 19 detection tests as on 24.05.2020.

[4] For a more in-depth analysis of the state of medical facilities available in the correctional homes, see Discrimination and Inertia: Exploring the Right to Health in Assam's Correctional Homes, Nilima: A Journal of Law and Policy, Special Volume on Correctional Homes with focus on Assam, Vol. III Issue I, January 2020. For a comprehensive documentation of the issue, see (Dutta, 2018, p.52)

[5] Apart from the constitutional framework of India, this right is contained in Article 12 of the International Covenant on Civil and Political Rights, which was ratified by India on April 10, 1979. Article 12.1 of the Covenant recognises the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

[6]The regulatory framework determining the COVID 19 response is primarily under two statutes, the National Disaster Management Act and the Epidemic Diseases Act, 1897.

[7] Litigation initiated by Studio Nilima: Collaborative Network for Research and Capacity Building concerning the treatment and living conditions of mentally-ill inmates within the correctional homes remains pending before the Gauhati High Court where several orders have already been passed since 2017. (Studio Nilima: Collaborative Network for Research and Capacity Building vs. State of Assam, 2017)

[8]The Right to Information Act, 2005 was brought into effect on June 15, 2005 after being enacted by Parliament with the intent to provide a practical regime for citizens to access information under the control of public authorities. Through the scheme laid out under the Act, citizens may submit applications to public authorities seeking information within their control, subject to certain specific restrictions laid out in the Act.

[9] "Compounder" traditionally referred to a doctor's assistant in the Indian healthcare system and in its modern- day connotation refers to posts which are staffed by trained pharmacists who work alongside physicians in India's public healthcare delivery system.

[10] The expression "Don't waste a crisis" has been attributed to Winston Churchill and also M.F Weiner's article in *Medical Economics* titled "Don't Waste a Crisis- Your Patient's or your Own". Most recently, it has been famously attributed to Rahm Emanuel, who served as Chief of Staff to President Barack Obama.

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Learning to Live with COVID-19: Exiting Crisis Governance in India after the Pandemic[1]

Abhinav Sekhri

India went under a nationally declared "lockdown" on the midnight of March 25, 2020; an effort to curb the spread of Covid-19.[2] While it is confirmed that the suspension of normal life is bound to continue for some time the Indian political brass has begun reciting a *mantra* that politicians across the world have frequently invoked of late: We must learn to live with the Coronavirus (GOI Press Information Bureau, 2020; Mathur, 2020; Laborde, 2020). This global homily has many layers to it — Covid-19 has changed how we work, socialise and be with our loved ones and a collective effort to curb the spread of the virus will probably require adapting to these social changes forever. Besides the changes to our social life, though, the pandemic has also changed how states govern.

Countries across the world have assumed crisis powers, and India has been no different (Verfassungblog, 2020; Ginsburg & Versteeg, 2020). Much like in any emergency, this crisis has also witnessed vast power being concentrated in executive bodies, and its peculiar epidemiological issues have amassed support for hitherto unimaginable restrictions on fundamental freedoms to travel, work, assemble and question the government. Must we also learn to live with this form of crisis governance till the state decides we

do not need to? (Gross, 2020). This is the specific question that I wish to engage with in this paper.[3]

Part One begins by describing the model of crisis governance adopted by India to handle the Covid-19 pandemic, focusing on how it allows for vesting vast discretionary powers within select offices, with minimal oversight mechanisms. While these features might be necessary in the short-term, their design renders them incompatible with democracy in the long run. The specific steps taken by the central government during the Covid-19 pandemic so far buttress this theoretical critique. They have also made apparent the dark-side of governments using a crisis as opportunity: the trust reposed in the executive to steer the country back to normalcy is being utilised to introduce measures that will radically alter the *status quo ante* that we might return to.

This prompts our question of how the country might exit this crisis model of governance, which is the focus of the next two sections. In Part Two, I first take a look at India's historical record of exiting from crises/emergencies of similar scale — the public order crises at independence, Wars in the 1960s, and the internal Emergency of 1975-77. These prior incidents of the central government assuming extraordinary powers at a national level offer valuable insight as they show how (i) extraordinary powers were rarely only used for extraordinary purposes, (ii) their prolonged and indiscriminate use led to a normalisation of extraordinary laws and shifted the *status quo ante*, and; (ii) minimal/non-existent oversight mechanisms exacerbated these issues and led to protracted exits from emergencies. Part Three returns the focus to the present and about exiting the current model of crisis governance. I argue that India's past experiences, the peculiar legal basis of the extraordinary powers used during the Covid-19 pandemic and the judicial abnegation of responsibility that has been on display thus far, all make it reasonable to assume that these powers are not going to be relinquished any time soon.

I conclude with a note of caution. Prolonged use of emergency powers during the past have always taken their toll on the fabric of India's democracy.

The Covid-19 pandemic will be no different unless we correct the course early. There is greater scope to do so in this instance, as unlike an Emergency, this time the courts are, theoretically, in a position to exercise oversight. If lasting damage to the democratic fabric of India's polity is to be prevented, courts must step up to ensure that the use of exceptional powers is restricted to preserve and strengthen the constitutional tapestry of liberty, equality and fraternity, and not as a ruse to radically alter it.

Part One: Governance in the Covid-19 Pandemic

Indian law offers constitutional "Emergency Provisions" to address different kinds of crises that might be faced by the country or any part therein and permit temporary suspension of the fundamental freedoms (Constitution of India, 1950).[4] Constitutionally provided emergency clauses have been used by many countries to handle the Covid-19 pandemic.[5] However, India's constitutional clauses are not clearly applicable to medical/biological emergencies (Ghosh & Jetley, 2020; Bhatia, 2020). This arguably contributed to the Central Government avoiding this route to address the crisis. Instead, it encouraged states to invoke powers under the Epidemic Diseases Act of 1897 (Kumar Rai, 2020)[6] and itself invoked powers under the Disaster Management Act (DMA) of 2005 (Bhatia, 2020).[7]

The DMA Framework

Covid-19 marks the first use of the DMA since its enactment in the aftermath of the Tsunami that hit Indian shores in December 2004 (Chauhan, 2020).[8] The Act seeks to provide a clear chain of command to help disaster management efforts. This is seen in the form of a centralised Disaster Management Authority assisted by an Executive Committee at the national, state and district levels, which author directives to react to a disaster and prevent a threatening disaster situation.[9] Section 35(1) of the DMA confers a *carte-blanche* upon the Central Government and requires that it *"shall take all such measures as it deems necessary or expedient for the purpose of disaster management."* Sections 10, 24, 30, 35, 38, among others, show how positive

obligations are, in turn, placed upon other bodies at the state and district levels, which also have necessarily broad powers and establishes a hierarchical setup for implementing plans and providing resources to the Central Government.

The execution of this broad mandate leads us first to Section 62, which confers powers on the central government to issue directions to all state agencies to "*facilitate or assist in the disaster management*". It then brings us to Section 10, which confers broad powers upon the National Executive Committee to pass directions/guidelines to discharge the responsibility placed by the Act. What gives these directions serious bite is that they are backed by a threat of criminal sanctions within the DMA itself, under Sections 51—60, as well as other general laws (IPC, 1860),[10] and that officers are conferred immunity from prosecution for all good faith acts done while discharging their duties (DMA, 2005).[11]

Thus, the DMA confers an enormously broad mandate upon the Central Government. It does so without specifying any legal limits either upon the invocation of such powers, or for how long they can subsist. While it is commendable that the administrators tasked with formulating and executing plans are given the flexibility to hire experts, make sub-committees and freely delegate powers (Sections 9, 10, 68, 69, DMA 2005), the total absence of any checks and balances in this regard makes it all too easy for this flexibility to enable a concentration of powers and shut out opinions. The lack of any mandatory requirements to publicly disclose power delegations and engagement of experts also makes it easy to obfuscate the chain of command and evade accountability.

The absence of safeguards to narrowly tailor the use of emergency powers conferred by the DMA makes it easy to forget the conservative ideal guiding any conferral of emergency powers and instead use the crisis as an opportunity to carry out an agenda (Gross, 2020). This technocratic model of governance can lead to *good* outcomes, of course, but it achieves end results in a manner that is entirely antithetical to the values of a democratic setup. History has

borne witness that technocratic rule insulated from popular opinion and oversight can have a dark side and time and again, the dilatory tendencies of democracy have emerged as the best means to keep these tendencies in check (Arendt, 1958). The wholesale devolution of power upon technocratic administrators under the DMA without sufficient oversight renders its governance framework especially exposed to these risks.

DMA and Covid-19: Subjects over Citizens

In context of Covid-19, decrees issued by the National Executive Committee have been the primary legal basis for governance and have colloquially been referred to as the "lockdown" (GOI Orders). One thrust of these decrees has been to suspend exercise of fundamental freedoms to work, travel and assemble, for all persons generally and institute a system of permissions at the ground level which strictly regulates the exercise of these freedoms — all under the threat of criminal sanctions (Bhatia, 2020 (i)). Additional restrictions and protocols are in place for persons suffering the disease or at high risk of contracting it and for persons living in areas with a higher risk of the disease spreading, which involve *prima facie* infringements of the right to privacy (GOI Orders, 01.05.2020).

The harshness of the measures has been disproportionately felt by the underprivileged sections of the population who now face interminable job security and food security issues due to the prolonged suspension of the basic freedoms to work and travel that were ushered via decrees (Pandey, 2020; Kazmin & Singh, 2020; Padmanabhan, 2020). While assessing whether this governance by fiat has helped India effectively contain the spread of the pandemic is beyond the scope of this paper, the migrant exodus begs the question of whether such measures would have been possible in a setup where the aggrieved had the freedom to question or protest against the measures. In the lockdown, there was no scope for dissent and police ruthlessly brought down any protests (Kazmin, 2020; PTI, 2020; Singh & Verma, 2020). The lockdown-era suppression/restriction of fundamental freedoms under threat of criminal sanctions has enabled

state agencies to assert claims without facing questions, seek/place curbs on the press, and offer limited information as deemed fit (Sharma, 2020; Jain, 2020; Bagla, 2020; Palla, 2020; Sebastian, 2020). Besides contributing to a disinformation crisis and discouraging transparency, the DMA decrees also exacerbates the rent-seeking tendencies of state agencies by vesting in them wide discretionary powers to control daily life (Vaishnav, 2017). Backing these powers with criminal sanctions also casts a wider chilling effect, for it ensures that the inevitable regulatory gaps that emerge when these decrees are executed become rooms for abuse of state power rather than an exercise of liberty (Schauer, 2013).

Ultimately, though, these are *effects-based* criticisms and they can be rebutted by arguing that even the best policies have unintended effects. This is a fair point that reinforces the need for oversight mechanisms within the DMA framework, however and a need for positive obligations upon the government to function transparently; features that the statute currently lacks. At the same time, it is also significant to think that the absence of specific provisions mandating transparency in the DMA does not necessarily mean that it must be missing from how the government acts. What we have then, is a *choice* that the Executive has made in favour of opacity and subject-hood rather than transparency and partnership.

Centralisation of power without oversight mechanisms and opaque functioning, coupled with a coercive approach to secure compliance, are governance problems with the potential for serious legacy effects. Things go beyond mere "potential" for serious legacy effects in the case of some specific decisions that have been taken in context of combating the pandemic. Chief among these were the brief flirtation with mandatory installation of an App called "Aarogya Setu", which has also been decreed *via* the DMA (GOI Orders; Bhatia, 2020 (ii).[12] The App lacks statutory basis, collects vast amounts of personal data, does not disclose who owns it and uses it for purposes that go beyond informing people if they are at risk of catching Covid-19. It also extends to sharing data with third parties for "improving appropriate health responses" and with research institutes, presumably for

a fee (IFF, 2020; LiveLaw, 2020). In normal course, it would have been very difficult for such a development to occur, given the absence of any data protection laws in India. However, the crisis has enabled the government to override questions of legality and secure 100 million downloads of the App (D Cruze, 2020) and to possibly share personal data for unspecified purposes, with unknown entities, for an uncertain period of time.

Summing Up

The idea that emergency situations require an "act now, talk later" approach is often noted as the reason behind most democracies consenting to concentrate power in the Executive branch during a crisis. However, a key idea legitimising such concentration of power is a recognition that it is used for a *conservative* purpose: to guarantee that the crisis did not overrun the country and ensure a speedy return to normal democratic processes. This is what makes the bitter pill of governance by fiat palatable in the short-term (Greene, 2019; Ferejohn & Pasquino, 2020). The longer a return to normalcy takes, though, the more difficult it becomes to cleanly separate the extraordinary from the ordinary and prevent irreversible changes to the *normal* fabric of society (Galli, 2012; Greene, 2019, p. 45-63; Gross, 2020).

India's current form of governance by fiat might be palatable in the short-term considering the pandemic. With each passing week, though, the finish lines are getting more blurred, discontent is rising and the government has begun to openly claim a need to accepting "living with the Coronavirus". The undemocratic features of the DMA governance model, along with the government aggressively pursuing radical policies with *penumbral* connections to the crisis at best, has made it imperative to ask whether besides the social distancing, constant hand-washing, and thermal scanning, will we *also* have to live with the coercion-backed crisis form of governance brought upon us by the pandemic? This question will be taken up next, by turning first to India's history of dealing with crises.

Part Two: Exiting the Crisis and Lessons from History

Independent India has faced significant national crises in the past. Partition meant that the first few years of the republic were extremely volatile. In the next decade came border wars between India and different nation-states. And then came the Emergency that overlapped with a war and lasted 23 months. There are many valuable lessons to be learnt from these experiences.

The Communist/Communal Scourge and Preventive Detention

Employing laws which exclude judicial review and enable the executive to serve as judge, jury and executioner, marked preventive detention as an egregious law employed by the colonial administration in British India. However, the crisis accompanying India securing independence transformed preventive detention from a repressive law to a necessity for India's new handlers. It became a popular tool to tackle the scourge of communalism and communism which were seen as deadly threats to India's national security and unity (GOI Lok Sabha Debates, 1950).

It is telling that the adoption of the Constitution on January 26, 1950 was accompanied by passing the Preventive Detention (Extension of Duration) Order 1950. Designed to prevent the release of hundreds of detainees associated with the communist movement, the order declared that any detention authorised prior to the commencement of the Constitution, even if void under the Constitution, will remain valid for a period of three months thereafter (GOI Parliament Debates, 1950, p. 874—877, 909—10).[13] Much before this grace period elapsed, however, the Provisional Parliament passed the Preventive Detention Act of 1950. This was portrayed as a temporary measure to help avert an emergency and so the statute had been given a limited life of one year only.[14]

The Preventive Detention Act did not go away at the end of that one year, or the next. Nor was it solely used to contain threats to national security or unity (Bayley, 1964). It did not matter that the numbers of persons

detained each year kept dwindling; different lawmakers propped up the same logic of crisis and painted detention powers as a necessary deterrent if the situation got worse. This was dryly noted by the Indian Civil Liberties Union: "*If the detentions increase, then obviously the situation has become so bad as to be uncontrollable, except by the use of the Act; if, on the contrary, they decline, then again, equally obviously, the Act has served its purpose of restraining the evil-doers and must therefore be kept.*" (ICLU, 1956, p. 126). Indeed, by 1963, when the law had been extended for an eighth time in thirteen years, commentators noted that the extension of this law had been reduced to a meaningless ritual and that the law should be now acknowledged as being a "permanent part of India's democratic experiment." (Bayley, 1964, p. 235—36).

The normalisation of preventive detention over the first decade of India's independence is a classic example of how governments with large political majorities can spin the crisis narrative to extend extraordinary powers, even those which permit interference with liberty with minimal oversight (Ludsin, 2016).[15] Since the government is presumed to know most about national interest, with access to confidential information, any arguments contesting the existence of threats to national interest can simply be avoided by the government saying "But I know more than you ever will". The same logic makes it equally difficult to deny the state from having all the means necessary to combat a threat or crisis at its disposal.

Preventive detention's history also offers a good example of how the crisis logic supports the creation of broad extraordinary powers, but their long-term retention can lead to the system forgetting the initial purpose and transforming them into powers for general use. The broad scope of the Preventive Detention Act 1950 was justified by claiming that one could not predict the perils that might plague the country (Gopalan v India, 1950). However, nothing in the Preventive Detention Act *itself* anchored this purported purpose-restriction, which meant that individual liberties were left at the mercy of a well-mannered executive. Oppressive by itself, this illusory safeguard naturally proved insufficient as detention was often ordered

in cases unconnected with any significant threats to safety but to settle political scores or quickly deal with anti-social elements (Bayley, 1964, p. 240-42, 245-50). The failure to incorporate purpose-restriction in preventive detention law made it easy for widespread abuses of this power during the internal Emergency of 1975 (Ludsin, 2016, p. 111-20).

This history of failures to exit preventive detention has contributed to such powers being normalised in India to levels unimaginable for a democracy (Ludsin, 2016, p. 195-96). Today this power is still used to silence political opponents, but it is also normal to employ this tool to combat "video-piracy" (Ludsin, 2016, p.219-221; Karnataka Bootleggers Act, 1985). It has also become normal to use preventive detention orders in regular criminal cases as a means to frustrate release on bail or otherwise avoid prosecutions where there is a lack of evidence (Sekhri, 2019). The most damning evidence of just how ineffectual a Parliament-based model of restraining extraordinary powers can be, however, comes from the Constitution itself. Despite important amendments having been passed in 1978 to provide stronger safeguards against preventive detention, these amendments are yet to be notified. In the ensuing 40 years, many governments have promised to exercise restraint, but not a single one has signed off to make these promises a reality (44th Amendment, Constitution of India).

Wars and Emergencies from External Threats

The "Emergency Provisions" of India's Constitution allow the President to declare a state of Emergency on the aid and advice of the cabinet. Till 1978, this included declaring an Emergency while facing, or being under "imminent danger" of facing, external aggression or internal disturbance[16]. To help tide over the crisis, the state of Emergency effects three primary changes to the legal system: (i) It vests great powers in the Executive to rule by decree during this period as it is no longer required to regularly convene Parliament; (ii) It allows the central government to pass laws in respect of matters ordinarily under control of the states, and; (iii) It triggers the suspension of the fundamental freedoms guaranteed under the

Constitution, allowing the government to suspend the right of persons to enforce violations of their fundamental rights (44th Amendment, Constitution of India).[17]

These clauses effect grave alterations to the normal form of government and they caused serious misgivings during the framing of the Constitution (Austin, 1965/1999, p. 92—94, 257—69). Since proclamations of Emergency cannot be ordinarily challenged in court (Makhan Singh v Punjab, 1964),[18] the only safeguard is to make them temporary with any extensions requiring legislative approval.[19] But as we saw through the experience of preventive detention, Parliament-based models of restraint are not guaranteed to put a timely end to use of extraordinary powers; a government with a large majority and strong beliefs could easily brush aside criticism and continue ruling by fiat where law required the same government to be *satisfied* of the existence of threats (Greene, 2019, p. 48-63).

Something very similar happened with the use of Emergency powers between 1962 to 1968. Two proclamations of Emergency were made between 1962 and 1971 in the face of external threats to India's security, as the country saw three cross-border wars during this period. The first-ever proclamation of Emergency under Article 352 came on October 26, 1962, as escalating tensions between India and China ended in a cross-border war. This was followed by orders under Article 359 in November suspending the rights of persons to enforce the rights secured by Articles 14, 21 and 22 in court (Schoenfeld, 1963, p. 221—230).

Even though hostilities had ceased before the end of November 1962, the Emergency proclamation was not revoked nor was the suspension against enforcing fundamental rights lifted. Criticisms levelled against the continued use of Emergency laws over the next couple of years inside and outside Parliament demonstrated that powers assumed to defend the country against external threats were being used for other purposes, such as settling political scores and managing routine law and order problems. The use of

extraordinary laws to address hoarding and strikes by industrial workers prompted M.C. Setalvad, a former Attorney-General, to publicly condemn repeated extensions of the Emergency and bemoan that India now suffered a "constitutional dictatorship" (Koppell, 1966, p. 290–96; Int'l Commission of Jurists, 1967).

While the din of criticism had quietened during the escalating hostilities with Pakistan between April and September of 1965, it returned with a new vigour in the next year. This time, even the Supreme Court could not help but criticise use of Emergency laws to tackle issues such hoarding of kerosene (Sadanandan v. Kerala, 1966).[20] A powerful open letter to the Prime Minister, signed by several eminent persons including three former Chief Justices, called for an urgent revocation of the Emergency. The language employed is significant:

> "The provisions of the Constitution under which the Proclamation was made envisage a grave situation threatening the security of the country by war or external aggression or internal disturbance. Leaving aside the short period following the Chinese aggression and the period of the recent conflict with Pakistan, could it seriously be suggested that the country was in a state of such grave emergency as is contemplated by the Constitutional provisions? **The emergency provisions in the Constitution are meant in our view for use in periods of real danger to the country. It would, it appears to us, be exposing these provisions to ridicule if we continue to use them after the real danger has passed and merely in apprehension of a danger which may supervene at any time hereafter. A grave emergency lasting over three years and resulting in the exercise of arbitrary powers by the executive over such a long period has, we venture to state, not been known in any democratic country.** ..." (Emphasis supplied) (Int'l Commission of Jurists, 1967, p. 31—32).

However, it took two more years for the government to finally revoke the Emergency proclamations in 1968 and restore the right of persons to enforce violations of their rights (Lelyveld, 1968).

This lengthy excursus is necessary to understand just how strong the pressure was against the continued retention of Emergency powers by the central government. Despite this, the government did not revoke the Emergency proclamations and the orders suspending enforcement of fundamental rights. Its responses to criticisms focused on isolating examples of misuse cited by the opposition and claiming that they did not represent the true picture, combined with providing figures to show that the alleged misuse of powers was not as frequent as made out to be. Or, it invoked the periodic rise of discontent as being an internal source of threat to national security which required the continuation of Emergency. What confirmed the normalisation of the extraordinary were references, both implied and explicit, by the government of an Emergency "Policy" which it claimed would be modified based on the criticisms to restrict use of extraordinary powers for matters *directly* connected to national security (Koppell, 1966, p. 292, 298).

Once again, the model of relying upon Parliament reining in extraordinary powers had come unstuck. Even though the external aggression justifying the invocation of these extraordinary powers had long ceased to be of concern, the lure of keeping Emergency powers in reserve to manage against risks or problems, with little fear of judicial review, was such that the government did not even willingly debate the matter in Parliament, let alone relinquish its power in a timely fashion.

"The" Emergency

The previous two examples reflect upon how techniques to terminate extraordinary powers that rely upon appealing to the better angels of the nature of legislators can often fail and end up prolonging the life of such measures long after the crisis has been averted. Rather than return to the normal system — which entails discussion, dialogue and delay — retaining concentrated power in the executive seems an easier way of governance. The same logic of political will arguably applies to help explain the story of protracted exits from the Emergency of 1971 (which also followed a war

that had ended in 1971) and the Emergency declared in June 1975 (which did not follow a war but responded to "internal disturbance").[21] Indeed, much of the efforts made in the aftermath of the Emergency to curb abuses of Emergency power addressed this issue — periodic six-monthly reviews of Emergency Proclamations were instituted; the vague term "internal disturbance" was removed for "armed rebellion" and limits were placed on the suspension of rights (44th Amendment, Constitution of India; Siwach, 1979).

These are useful measures that would certainly help exiting from any future declarations of Emergency under Article 352. But at the same time, it would be careless to assume that absence of political will is the only thing prolonging an Emergency. This argument is buttressed by a look at the archival material available on the Emergency which ended in 1977, which shows that engineering an exit is heavily reliant on another set of actors and their efforts: the bureaucrats. Thus, while the Prime Minister made an announcement on January 18, 1977, that elections would soon be held and Emergency curbs would be relaxed (Weiner, 1977), all the details were yet to be decided (MHA Note, 1977). The job of drafting these plans fell upon the bureaucrats, the "steel frame" of India's governance.

Following the Prime Minister's January declaration, intense deliberations began within Cabinet and the Home Ministry on whether it required a *revocation* of the Emergency or if a relaxation of curbs would suffice (MHA Note, 1977; MHA Note, 1977 (i); MHA Note, 1977 (ii)).[22] The initial opinion of the bureaucrats in a report dated February 3, 1977 was unequivocal in supporting a relaxing rather than revoking the Emergency as the best course of action. It appears that this opinion did not find favour with the political brass and the secretaries had to go back to the drawing board. Multiple notes followed, and they largely reiterated the support for retaining Emergency powers, all the while proposing different relaxations to allow for smooth electioneering and managing any political backlash. It would seem that no satisfactory decision had, in fact, been reached till the time the central government's hand was forced by an election defeat and it decided to revoke

the Emergency proclamations and orders suspending enforcement of fundamental rights (MHA File Noting, 1977, p. 14—16).

What is fascinating in these notes is the repeated stress by the bureaucrats that they are only expressing what they thought was the "administratively desirable" option, and that the "political implications" of any decision would need to be considered (MHA Note, 1977, p. 51—67). Whether bureaucrats can ever, in fact, disavow political factors is certainly moot; but it cannot be denied that an administrative perspective casts issues in a different light than the political perspective (Lynn & Jay, 1989). In this specific context, where the Prime Minister might well be affected by criticisms about centralisation of power and a suspension of fundamental rights and their enforcement, the archives suggest these issues were hardly a spot of bother from an administrative perspective. Fundamental rights were seen as issues relevant only to the intelligentsia and educated middle classes, but not the rural masses, who were imagined as being happy with Emergency so long as some excesses were curbed as their economic prospects had improved (MHA Note, 1977; Weiner, 1977, p. 2—10). The archives betray not the slightest hint of urgency amongst administrators in restoring *status quo ante* in terms of the legal position. Instead, they support the Emergency for it offered an opportunity to get things done. It had facilitated passing useful legislation, including serious constitutional amendments, enabled better execution of laws, and did all this without any pesky judicial interference (MHA Note, 1977 (ii)).

From the administrative viewpoint, then, retaining Emergency was certainly necessary to maintain the fragile sense of order that had been restored. But a much more important reason to continue the Emergency was its *transformative* potential. As an immediate revocation of the proclamations would cast a cloud of uncertainty over the legality of the useful laws and practices that the Emergency had helped to usher through, it was not administratively desirable to give freedoms and rights back just yet (MHA Note, 1977 (iii).[23] Emergency powers, imagined as a *conservative*

measure to conserve the constitutional fabric when it faced serious threats, were understood by the administrators as a *radical* measure which allowed them to avoid or alter the same constitutional fabric that was theoretically supposed to be protected, arguably in the pursuit of what they saw as good governance.

Summing Up

It is fair to say that the Central Government in independent India does not have a good record in terms of relinquishing extraordinary powers assumed to combat crises. Regular laws, as well as constitutional clauses, have followed similar strategies of adopting vague phrases to secure broad powers for the government to pre-empt any potential hurdles from realising necessary goals. The safeguards provided against abuse of these powers have primarily been to entrust this job to Parliament and allow courts to come in where there are excesses.

The failure to secure accountability through Parliament has been demonstrated time and again. This measure seems most inept when the government comprised of large single-party majorities and a strong mandate which allowed it to push its weight around and ignore criticism. Currently, India is in the throes of another crisis and Parliament is led by a central government with a commanding majority. Its approach has not been to either pass new laws which excludes judicial review or declare a formal state of Emergency to assume powers. Instead, as already discussed, it has worked through the framework of the DMA 2005, which has ushered in dramatic centralisation of power with paltry oversight. The next section considers how difficult exiting this system might prove to be.

Part Three: A Gloomy Prognosis

Governance through the DMA 2005, though far from ideal, has not been nearly as coercive as the Emergency regime that the Constitution provides

for. However, as was discussed in Part One, this framework also has serious shortcomings which render it unfit for prolonged use. This brings us to consider what, if any, might be the exit strategies to help revert to the normal forms of governance.

No Statutory Exit Strategy

The short answer that the DMA itself offers is that there is no exit strategy. Unlike the early Preventive Detention laws and the Emergency clauses in the Constitution, there is no sunset clause to place temporal limits on any invocation of powers, nor is there any system of periodic reviews during the period that governments exercise their mandate under the Act. Presumably, the government is trusted to slowly usher us back to normalcy when it sees fit. As we now know, this has not worked well in the past. If anything, this lacuna to install periodic reviews appears more glaring considering the Emergency of 1975. While Parliament took steps to fill this gap in Emergency proclamations to prevent their misuse, astonishingly, these lessons were forgotten when it came to a regular statute.

The DMA also reflects another problematic design feature in the Emergency clauses and other extraordinary laws which make it easy to hold on to power: they lack specificity in defining the conditions which enable using the powers under the Act. The definition of "disaster" is broad, and the concept of "disaster management" lays emphasis on this being a continuous process which includes, *inter alia*, taking measures for the prevention and mitigation of risks.[24] While there are particular references to what the measures can be, this delineation of power comes with clauses which expressly save all generality of the powers vested in authorities, as seen through Section 10, DMA. Vague contours of this sort which allow the government to spin the narrative make it impossible to effectively argue against continued retention of powers under the DMA. When we consider this in context of Covid-19 and how little is still known about the Coronavirus, it makes it very likely that the "disaster management" can easily apply till the creation of a vaccine and its deployment.

An extraordinary law such as the DMA can normalise use of such powers (Singh, 2007). In such situations, the oversight must come from outside the statute, in the form of Parliament and the Courts. The limitations of the Parliament in situations where the government carries a vast majority have been sufficiently expressed, and so the only source of checks comes from judicial review.

Absent Judiciary?

The largely complaisant approach of the judiciary up till this point, two months into the lockdown, has made for grim reading and dimmed expectations of oversight from the courts. Restrictions upon physical movement made it impossible for courts to function normally. To its credit, the judiciary quickly improvised to setup a digital alternative to continue hearing cases with urgency (PTI, 2020; Krishnan, 2020). How these hearings have happened, though, has contributed greatly to exercise of unchecked power rather than encourage restraint. Trial courts have adopted pernicious practices where bail hearings have been denied as being sufficiently urgent matters, which effectively suspends personal liberty for the time being — something, as Bhatia (2020 (iv))argues, goes beyond even the terms of Article 359 as it stands today and has offered perverse incentives to arrest and prolong custodial remands (Mander & Verma, 2020).

Most damaging for many observers, however, has been the conduct of the Supreme Court, which is perceived as intervening often to secure the public interest.[25] Contrary to this institutional image, in almost every petition challenging executive action during the lockdown, the Court has greatly deferred to executive wisdom and refrained from questioning government policy. Indeed, in a specific case challenging the executive policy in relation to suspension of 4-G internet connectivity in Jammu & Kashmir, the Court ordered creation of an extra-judicial executive committee to decide the legality of executive actions (FMP v J&K, 2020). The Court's extreme reluctance to pass orders critical of government policy in petitions seeking interventions to alleviate the hardship caused to migrant workers by the lockdown, in sync with brazen government claims of the crisis being under control while

thousands walked back to their homes, has stood out as a particularly low point. The delays occasioned in hearing these petitions of public interest stood in stark contrast to the speedy justice rendered to specific private individuals (Bhushan, 2020).

What little judicial oversight has occurred over executive programs has been from some of the High Courts across the country. The Kerala High Court intervened when the state government took steps to launch and compel use of a mobile application for helping to combat Covid-19; it sought clarity over the data storage and retention practices which led to the state government to acknowledge the program's flaws and the court passing guidelines to help safeguard user privacy (Raghukumar, 2020). The same Court also actively stepped in to stall a salary cut for government employees as it lacked any clear statutory basis (Wason, 2020). The Allahabad High Court issued notice in a petition challenging a slew of U.P. State Government orders to amend labour laws, and this itself prompted the government to withdraw its controversial order raising the working-hour shifts to 12 hours (The Statesman, 2020). These sporadic interventions must be acknowledged for what they are, though: slivers of hope in a very dark sky.

Summing Up

Thus, the chances of a timely exit from the DMA framework are unlikely given the absence of inbuilt safeguards in the framework to negotiate an exit. This is coupled with the overwhelming majority of the Central Government in Parliament and the lack of any effective judicial review over executive actions taken to purportedly manage the crisis. All of these factors have contributed to a situation where the only arm of state in control of engineering a return from the system of Rule by Decree back to some form of the constitutional Rule of Law, is none other than the Central Government itself. The predicament of this position cannot be expressed better than in the words of H.V. Kamath who said about the Emergency clauses in the Draft Constitution: "*We trust the executive implicitly. God grant our trust be justified.*" (CAD, 1949, p. 546)[26]

Conclusion

This paper has argued that the governance framework adopted by India to address the Covid-19 pandemic is an Emergency framework in everything but its name. The DMA entrusts very broad powers upon the Executive in a bid to counter a crisis; unfortunately, it does not clearly determine when such devolutions of power might be required, or for how long and does not enable any review or oversight of how the executive exercises its broad powers. This has meant a model of governance led by technocrats, empowered to issue life-changing policies with no risk of being held accountable by the people. The hardships caused by these means to secure a positive end-result have cast doubt over the wisdom of such a form of governance. Far more troubling, though, are the legacy effects of this crisis-governance. This makes it necessary to consider how India might exit the DMA framework once, as the politicians have said, we have learnt to live with the Coronavirus.

In this regard, I argued that the DMA framework is non-conducive for facilitating a transition from crisis to normality. The design flaws in the DMA are reminiscent of everything that has led to India suffering protracted exits from crises of a similar scale in the past: an exit strategy of trusting the government to do what is right. Time and again, India has seen that when the central government wields a broad popular mandate, this approach leads to denigrating democracy in favour of adopting technocratic modes of governance where citizens are reduced to subjects for whom the government "knows what's best". Considering how little is still known about Covid-19 and that there is no vaccine anywhere in sight, everything is in place for the DMA framework of crisis governance to remain till at least the first reliable vaccines come through.

To ensure that this prolonged concentration of vast executive power does not deal fatal body-blows to the constitutional setup — especially the values of liberty, equality, and fraternity that the Preamble espouses — the only feasible oversight mechanism, in theory, is the courts. While the DMA has reduced many features of an Emergency-era lifestyle, it has not led to any

formal suspension of the right to move courts. Indeed, it has been convincingly argued that the exceptional governmental actions of the times render individuals equally exceptionally vulnerable to serious violations of basic civil liberties, which requires courts to be extra-vigilant in doing justice (Wiley & Vladeck, 2020). Indian courts have not stepped up to this challenge. They have mostly turned a blind eye to civil liberties violations that have caused untold suffering to ensure the executive has leeway to pursue its policies. High levels of deference from courts are, of course, not uncommon during crises, and an optimistic person would hope that the reticent attitude of the courts could change as the pandemic lingers on. For the rest of us, there is only gloom as summer ends, in the knowledge that winter is coming.

Endnotes

[1]This article was written in the month of May.

[2] Government of India, Ministry of Home Affairs, Orders dated 24.03.2020, 15.04.2020, 01.05.2020, 17.05.2020 [Ref. No. 40-3/2020-DM-I(A)].

[3]Here, a caveat. The scope of this paper is *not* about the legality of emergency powers or the various issues posed by a setup where emergency powers are part of the normal legal framework.

[4]Part XVIII, Constitution of India, 1950. Note, that throughout the paper, this reference to Emergency powers or Emergency is excluding references to Article 356 and the problem of breakdown in the constitutional machinery of a state. A more detailed consideration of Emergency powers is the focus of Part II, *infra*.

[5]According to the Verfassungblog, as of April 26, 2020, over sixty countries had reportedly invoked some form of emergency powers to help govern during the Covid-19 Pandemic. (*See* Joelle Grogan, 2020)

[6] Act No. 3 of 1897 ["EDA"]; (Rai Kumar, 2020)

[7] Act No. 53 of 2005 ["DMA"].

[8](Chauhan, 2020)

[9] The powers and functions of the National Disaster Management Authority and its Executive Comittee are laid out in Chapter II, DMA. Those of the corresponding State level bodies are laid out in Chapter III, DMA, and those of the corresponding District level bodies are laid out in Chapter IV, DMA.

[10] Section 188, Indian Penal Code, 1860.

[11] Section 73, DMA.

[12] The legality and mandatory imposition of the Aarogya Setu App has been challenged before the Kerala High Court by way of separate petitions. However, during pendency of the petitions, the Government of India issued a fresh order dated 17.05.2020 retreated from its earlier position and no longer mandated use of the Aarogya Setu App for any persons.

[13] Preventive Detention (Extension of Duration) Order, 1950. The order was rushed through because existing laws regulating preventive detention in India would have been incompatible with the minimal limits required by the new Constitution and thus rendered void upon the Constitution coming into force. This could have potentially set free hundreds of detainees across the country. (*See* GOI Parliament Debates, 1950, p. 874—877, 909—10).

[14] Section 1, Preventive Detention Act, 1950.

[15] The Preventive Detention Act only lapsed in 1969, when the government did not have a sufficient majority in Parliament to push through its crisis narrative once more,*see* Ludsin, 2016.

[16] The phrase "internal disturbance" was replaced by the phrase "armed rebellion. Section 37, Constitution (Forty-Fourth Amendment) Act, 1978.

[17]Part XVIII, Constitution of India, 1950. The scope of the suspension of enforcement of rights was limited subsequent to 1978. *See*, Section 3, Constitution (Forty-Fourth Amendment) Act, 1978.

[18] The Supreme Court confirmed that a court could not review the basis for declaring an Emergency, and the only grounds of challenge could be demonstrating *mala fides* or to show that the President had failed to consider the aid and advice of the Cabinet. *See*, *Makhan Singh Tarsikka* v. *State of Punjab*, AIR 1964 SC 381 (Supreme Court of India).

[19] This clause originally required a one-time legislative approval but was amended in 1978 and now Emergency Proclamations under Article 352 require periodic review every six months.

[20] G. Sadanandan v. State of Kerala, AIR 1966 SC 1925 (Supreme Court of India) ("In conclusion, we wish to add that when we come across orders of this kind by which citizens are deprived of their fundamental right of liberty without a trial on the ground that the Emergency proclaimed by the President in 1962 still continues, and the powers conferred on the appropriate authorities by the Defence of India Rules justify the deprivation of such liberty, we feel rudely disturbed by the thought that continuous exercise of the very wide powers conferred by the Rules on the several authorities is likely to make the conscience of the said authorities insensitive, if not blunt, to the paramount requirement of the Constitution that even during Emergency, the freedom of Indian citizens cannot be taken away without the existence of the justifying necessity specified by the Rules themselves. The tendency to treat these matters in a somewhat casual and cavalier manner which may conceivably result from the continuous use of such unfettered powers, may ultimately pose a serious threat to the basic values on which the democratic way of life in this country is founded. It is true that cases of this kind are rare; but even the presence of such rare cases constitutes a warning to which we think it is our duty to invite the attention of the appropriate authorities.").

[21] The dominant narrative surrounding the exit from the Emergency in 1977 has indeed been a focus on political will, with it being suggested that the call for elections and relaxing Emergency was only to seek a mandate for the measures, making it difficult to say with certainty whether a re-election for the government which imposed the Emergency would not result in the re-promulgation or restoration of Emergency laws. *See*, *e.g.*, Weiner, 1977, p. 2—10.

[22] *See*, Government of India, Ministry of Home Affairs, "Note on Relaxation of Emergency" (February 12, 1977), 51—67; Undated Note, 78—93; "Note" (February 28, 1977), 112—121 (File No. 21/92/77-T, National Archives of India). These papers suggest that, at least as of February 28, the decision was to not revoke the Emergency.

[23] This is captured well in the note prepared for the Home Minister's use in Parliament. *See*, "Note for Minister's use Regarding Discussion in Rajya Sabha on 28th February, 1977 on the Call Attention Notices from Shri Bhupesh Gupta and Shri Sanat Kumar Raha calling his attention to the popular demand for lifting of Emergency and Government's Reaction thereto.", 122—133 (File No. 21/92/77-T, National Archives of India).

[24] Sections 2(d) & (e), DMA.

> "(d) 'disaster' means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;"
>
> "(e) 'disaster management' means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—
>
> (i) prevention of danger or threat of any disaster;
> (ii) mitigation or reduction of risk of any disaster or its severity or consequences;
> (iii) capacity-building;
> (iv) preparedness to deal with any disaster;
> (v) prompt response to any threatening disaster situation or disaster;
> (vi) assessing the severity or magnitude of effects of any disaster;
> (vii) evacuation, rescue and relief;
> (viii) rehabilitation and reconstruction"

[25] The accuracy of this representation of the Supreme Court's past is, of course, subject to contestation.

[26] This remark came as a critique of excluding judicial review during an Emergency. The full quote reads: "We trust the executive implicitly. God grant that our trust be justified. But if our executive demands our trust, why should not the executive trust the judiciary, why should it not repose confidence in Parliament? Is our judiciary, bereft of all wisdom, integrity and conscience that the executive should snap their fingers at them? This is a most disgraceful state of affairs. I do not see how we can build up an egalitarian or democratic State on such a foundation."

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Sedition and Freedom of Speech and Expression*

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Introduction

The offence of sedition was initially created to muzzle dissent against the government. In India, it was included in the India Penal Code 1860 in the year 1870 to restrain natives (freedom fighters and nationalists etc.) and to prevent rebellion against British rule. After almost 150 years, the offence of sedition continues to be a part of the Indian Penal Code. Unfortunately, the law of sedition is abused and misused against those who criticise authority to subject them to arrest.Britain(from whom this draconian law was imported to India) abolished the offence of sedition in 2009. This article questions whether the offence of sedition has any place in a constitutional democracy. It examines if the law is relevant in the present information age and finds that it has become obsolete and ought to be removed from the Indian Penal Code.

More than three decades ago, Lord Denning (1984, p.295) had said that the offence of seditious libel was obsolete and that:

> *"It used to be defined as words intended to stir up violence, that is, disorder, by promoting feelings, ill-will or hostility between different classes of His*

Majesty's subject. But this definition was found to be too wide. It would restrict too much the full and free discussion of public affair…so it has fallen into disuse for nearly 150 years ago."

Democracy is a government by the people via open discussion. A democratic form of government demands that its citizen actively and intelligently participate in the affairs of the community. Democracy can neither work nor prosper unless people share their views.[1] It is also not necessary in democracy that everyone should sing the same song.[2]John Stuart Mill (2008, p. 21) sharing his thoughts on Liberty and Utilitarianism advocated *"Liberty of Thought and Discussion"* and expressed the importance of freedom of speech and discussion. His conclusion was that it is not permissible to prohibit the expression of any opinion, however marginal, however pernicious.

Freedom of speech often poses a difficult question of the extent to which the State can or should regulate individual conduct (Sivakumar, 2015, p.18-20). No doubt, in India, the State has power to impose reasonable restrictions on the exercise of such rights in the interest of sovereignty and integrity of the country, the security of the State, friendly relations with foreign states, public order, decency and morality.[3] However, such restrictions do not extend to suppressing open criticism of the Government, unless it has the tendency to incite hatred and violence against the Government. Unfortunately, one such tool of the colonial era is the offence of 'sedition' which has been repeatedly used to muzzle dissent and criticism.

The offence of sedition can be traced to the Statute of Westminster 1275 when the King was considered the holder of Divine Right. The offence of sedition was initially created to prevent speeches inimical to a necessary respect to government (Law Commission of India, Consultation paper 2018). Sedition under Section 124-A of Indian Penal Code ("IPC") is the doing of an act, which would bring a Government into hatred or contempt or which excites disaffection against it.[4] Not only the actual commission of a seditious act but even an attempt to commit a seditious act is punishable. Any person who tries to bring in hatred or contempt or disaffection is

punishable under this Section[5] under Chapter VI[6] – titled *"Of offences against the State"* which describes provisions for waging war, conspiracy and collecting arms etc to wage war as acts which have a propensity of violence. The offence u/s 124-A of IPC is cognizable, non-bailable, non-compoundable and triable by Sessions Court. It is punishable with imprisonment for life and fine or imprisonment for 3 years and fine, or fine which allows for variable sentencing.[7] The IPC has other offences related to Sedition, such as S. 153-A (Promoting enmity)[8], S. 153-B[9](Imputation, assertion prejudicial to national integration), S. 295-A[10](Acts intending to outrage religious feelings and beliefs) and S. 505 (Statements conducive to public mischief)[11].

Historical Examples

A historical example of the use of sedition is the trial of Socrates held in Athens in 300 B.C. Socrates taught the youth of Athens to take 'reason' as the supreme judge of everything. This did not go down well with the prevalent moral standards and traditions set in Athens and he was put to trial before 500 Jurors in the City Assembly Court on charges of '*Corrupting the youth*', '*practicing religious novelties'* and '*neglecting the Gods'* whom the entire city worshipped (Plato, 2018, p. 3-21). During his trial, Socrates repelled the charges, but failed to convince the Jury. Of 500 jurors, 361 voted to give the penalty of death to Socrates by drinking a cup of hemlock.

Socrates was a man before his time. His ideas are immortal, yet he was decreed to death since he refused to adhere to the prevailing moral standards and was considered a threat to his society. During his trial, Socrates is stated to have said that "I would rather die having spoken after my manner than to speak in your manner and live" (Plato, 2018, p. 25)

A more recent example is the trial of John Peter Zenger (August 1735) in America. During the first half of the 18th Century, there were stringent restrictions on the press and publishers in America (then a colony) regarding commenting on the actions and policies of the administration of the British Royal Governor. John Peter Zenger had, in 1733, brought out a newspaper

titled "*The New York Weekly Journal*" in which he wrote a satire against Governors and Councils. Zenger was arrested and put in prison for sedition. At his trial, Zenger pleaded in his defence that citizens should have the right to both expose and oppose arbitrary power by speaking and writing the truth. The jury acquitted Zenger of all charges, though by that time he had already undergone 9 months in prison (Gill, 2007, p.23).

Statistics

According to the Indian National Crime Record Bureau (NCRB), 47 cases of sedition were reported in the year 2014 (NCRB statistics, 2014)and 30 cases were reported in 2015 (NCRB Statistics, 2015). In 2018, the number increased to 70 (NCRB Statistics, 2018).

More recently, in January 2020, more than 3,000 protesters against the Citizenship Amendment Act (CAA) were charged with sedition though the challenge to the CAA is pending in Court on most of the grounds of protest. (Scroll, 2020). In 2019, more than 3,300 farmers were charged with sedition for protesting about land disputes (Amnesty International India, 2020). Interestingly, since 2016, only four sedition cases have seen a conviction in court (Deccan Herald, 2020).

In addition to these offences, NCRB, starting in 2017, introduced a new category of crime: incidents of violence by "anti-national elements". These individuals categorized as anti-national elements – are bucketed into four groups: north-east insurgents, 'Jihadi' terrorists, Naxalites and other terrorists. In 2018, there were 1,012 cases registered against them (NCRB, 2018). In the cases of Balwant Singh[12] (1995) and Bilal Ahmed Kaloo[13] (1997), it was upheld that mere shouting slogans against the Government is not sedition.

Historic Development of the Law of Sedition in India

Section 124 A was framed by the Indian Law Commissioners in 1887, the enfranchisement of the Press having taken place in 1835. In 1839, it was

proposed to insert the section in the draft Penal Code.[14] However, by mistake the offence of Sedition did not find its way into IPC when it was enacted in the year 1860 (Law Commission of India, Consultation paper 2018). In 1870, to curb Wahabi activities aimed at overthrowing the British, the offence of sedition was brought in. About the same time, the Viceroy, Lord Mayo, and Justice Norman of the Calcutta High Court were murdered, which precipitated the situation further (Lohiya, 2018).

> Originally S. 124-A IPC in 1870 (till it was amended in 1898), read: "*Whoever by words, either spoken or intended to be read, or by signs, or by visible representations or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, which fine may be added, or with fine.*
>
> ***Explanation***- *Such a disapprobation of the measure of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause*". (Gaur, 2011 p. 227)

The Colonial British Government introduced the offence of sedition to restrain natives (freedom fighters and nationalists) and to prevent rebellion against British rule (Lohiya, 2018). Historically, sedition has been used by the Governments as a tool to suppress opposition or criticism. Prominent cases in India were the trial of Bal Gangadhar Tilak (1897)[15] and Aurobindo Ghosh (1908) (Lohiya, 2018). Recently, the use of the offence of sedition in the JNU protests (2016) stirred up protests when Kanhaiya Kumar was charged under S. 124-A IPC for shouting 'anti-national' slogans.

The first Indian state trial for sedition was of Queen Empress vs. Jogendra Chandra Bose,[16] also known as the 'Bangobasi' case. 'Bangobasi' was the

name of a weekly vernacular newspaper in which seditious material was published. The proprietor, editor, manager, and printer of the newspaper were accused of committing sedition. Articles were published in the newspaper criticising the age of consent bill, which had been passed only a week before the publication, as posing a threat to the Hindu religion and civilisation. The articles accused the British of conquering and Europeanising India, using brute force, and causing a negative impact on India economically. All the four accused were put to trial. The jury could not reach a unanimous verdict and the case was set down for retrial. However, in the meantime, the accused tendered an apology and the proceedings were dropped, but the Court in its judgement, laid down the distinction between 'disaffection and disapprobation' expressed in S. 124-A IPC.

Queen Empress vs. Bal Gangadhar Tilak,[17] relates to the first trial of Tilak who was one of the first mass leaders in the freedom movement charged under S. 124-A. He had published two articles in the magazine *Kesari* of which he was the proprietor and publisher. These two articles published in the issue of 15 June 1897 were (a) a poem titled "Shivaji's utterances" and (b) a report on a meeting held on 13 June 1897. The week following the publication, Rand and Ayerst (two eminent British officials) were murdered. Tilak was charged for 'exciting the feeling of disaffection against Government established by law in India'.[18] This case was the starting point of a critical interpretation of S. 124-A IPC and the term 'disaffection'. It was held that under S. 124-A IPC, the term 'disaffection' would mean exciting 'feeling of disaffection' towards Government and would include hatred, enmity, dislike, hostility, contempt, and all forms of ill-will. It expanded the scope of the offence by holding that it was not the gravity of the action or the intensity of disaffection, but the presence of such a feeling that was paramount.

After Tilak's case, the meaning of 'disaffection' and 'disapprobation' were interpreted in Queen Empress vs. Ramchandra Narayan.[19] The first accused was the editor and the second accused was the proprietor, printer, and publisher of a weekly newspaper called *Pratod*, which was printed and published in Satara District. They were charged for exciting feelings of

disaffection towards the British Government in India. The prosecution was based on an article *titled* 'Preparations for becoming independent'. The author referred to Canada and Canadian citizens who were also under the British rule and law and were preparing for independence.

In Queen Empress vs. Amba Prasad,[20] the proprietor, publisher and editor of a newspaper called the *Jami-ul-ulam* published in Moradabad was accused of publishing an article titled 'Azadi band hone ki Kabalnamuna', for which he was tried at Moradabad under Section 124-A of the I.P.C.

In the above four cases, four different definitions were offered for the term 'disaffection'. Because of this confusion in the meaning of the word 'disaffection', the legislature decided to repeal and substitute the Section, as it stood then, with a new Section 124-A IPC in 1898. The Section was amended by the Indian Penal Code (Amendment Act 4 of 1898) and because of the amendment, the existing explanation to the Section was replaced by separate explanations as they stand now.

The most noted trials, post the 1898 amendment of this Section, were those of Mahatma Gandhi (1922) (Gill, 2007, p. 119), Bal GangadharTilak (third trial in 1916), Annie Besant (1919), Maulana Abdul Kalam Azad (1922) and the trial of Sheikh Abdullah (1946).

There was a difference in the opinion of the Federal Court in India in Niharendu Dutt Majumdar v. Emperor[21] and of the Privy Council in England in Emperor v. Sadashiv Narayan Bhalerao[22]on the interpretation of S. 124-A of IPC. In the Niharendu Dutt Majumdar case, the appellant was a member of the Bengal Legislative Assembly who delivered a speech at a meeting wherein he attacked the Ministry and the Governor of Bengal for their acts and omissions in the matter of the Dacca riots. He accused the Ministry of misusing the police forces and the Governor for failure to maintain law and order. He further demanded that the Ministry and Governor should pay compensation to sufferers at Dacca. He was convicted by the Additional Chief Presidency Magistrate at Calcutta for offences under sub-paragraphs

(e) and (k) of paragraph (6) of R. 34 of the Defence of India Rules, and was sentenced to be detained till the rising of the Court.

The interpretation in Niharendu Dutt[23] was that the offence of Sedition under S. 124-A IPC was to be seen from a broad perspective and incitement to the violence is mandatory to invoke the offence of sedition. However, this view was overruled in the Sadashiv judgment[24] of the Privy Council before whom the decision of Niharendu Dutt was challenged

Development of the Law Post-Independence

Discussions on the law of Sedition were taken up in the Constituent Assembly Debates which, initially in the Draft Constitution, had included 'Sedition' and 'Public Order' as two grounds on which the right to freedom of speech and expression could be curtailed by the State by framing laws. However, both 'Sedition' and 'Public Order' did not find any place under Article 19 in the final draft of the Constitution. The sole reason for dropping the word 'Sedition' from Article 19(2) of the Constitution of India was that the framers of the Constitution were aware of the manner in which Sedition had been used to restrict the right to Freedom of Speech and Expression in the past, and the manner in which it could be used for the said purpose in the future as well.

Shri K.M Munshi in his speech (Pal, 2016, p. 16) before the Constituent Assembly explained the reason for omission of sedition, which reads as under:

> *"A hundred and fifty year ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will toward the government was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remembered in a case a criticism of district magistrate was urged to be covered by S. 124-A. But the public opinion has changed considerably since then and now that we have a democratic government a line must be drawn between criticism of Government which should be*

welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted."

Article 19(2) of the Constitution of India before the first amendment (Pal, 2016, p. 49) stood as under:

"Nothing in sub- clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the State."

The validity of S. 124-A IPC was questioned on three different occasions: (1) Romesh Thappar vs. State of Madras,[25] (2) Tara Singh vs. State[26] and (3) Ram Nandan vs. State.[27]

In the case of Romesh Thapar, *Crossroads* was, for all practical purposes, a communist publication and Romesh Thapar was its publisher. It had been first published in the year 1949, the year the Madras government declared the Tamil Nadu, Andhra, Kerala, and Karnataka communist parties as unlawful organizations. Thapar took the Madras government's action to the Supreme Court under Article 32 of the Constitution. On 26 May 1950, the court decided the *Crossroads* case by ruling the Madras Maintenance of Public Safety Act 1949 as unconstitutional. The majority ruling said that 'unless a law restricting freedom of speech and expression is directly solely against undermining the security of the state or to overthrow of it, such law cannot fall within the reservation of clause (2) of Article 19 of the Constitution of India.' (Austin, 2017, P.42)

Tara Singh's case,[28] related to two prosecutions pending against him, were under Sections 124-A and 153-A of the I.P.C. and Section 24 (a) of the East Punjab Public Safety Act and related to two separate speeches delivered by him. The issues in question were the validity of Sections 124-A and 153-A of the I.P.C. and Section 24 (a) of the East Punjab Public Safety Act. The

petitioner challenged their validity on the ground that the provisions imposed a restriction on the Fundamental Right of Free Speech and Expression set out in Article 19(1)(a) of the Constitution and were not saved by Clause (2) of the said Article.The Court gave a decision in favour of the Petitioner and held that Section 124-A of the I.P.C. had become unconstitutional as it curtailed the right to freedom of speech and expression set out under Article 19(1)(a) of the Constitution. The court quashed the proceedings initiated against the petitioner on the ground of unconstitutionality.

The effect of these decisions was that the Government suggested amending the Constitution. Home Minister Sardar Patel thought that the Romesh Thappar decision 'knocks the bottom out of our penal laws for control and regulation of press'. Accordingly, Prime Minister Nehru wrote to Law Minister BR Ambedkar expressing the views that the Constitution's provision pertaining to law and order and subversive activities needed to be amended (Austin,2017, p.42).

Though initially the Home Ministry was not in favour of inserting 'reasonable' before restriction, after vehement resistance by Law Minister BR Ambedkar, President Rajendra Prasad, and Shyama Prasad Mookerjee of the Hindu Mahasabha, the Parliament passed the Bill by a vote of 288 to 20, whereby the First Amendment empowered the Government to impose 'reasonable restrictions' on the freedom of expression 'in the interest of the security of the State, friendly relation with the foreign States, public order, decency or morality or in relation to contempt of court, defamation, or incitement to an offence'. (Austin 2017, p.45-47). The initial inclination of Nehru and others had been to outlaw certain kind of speeches, and the amendment in the language made prosecution easier. However, insertion of word 'reasonable'strengthened the right of judicial review. (Austin,2017, p.50)

Subsequent to these Constitutional Amendments, the validity of S. 124-A of IPC was challenged before a five-judge bench in Kedar Nath vs. State of Bihar[29] on the ground that S. 124-A is contrary to Article 19 (1) (a)

of the Constitution of India. The Court looked at the pre-legislative history of this Section and noted that Sedition had specifically been excluded as a valid ground to limit the Freedom of Speech and Expression even though it was included in the draft Constitution. This was, therefore, indicative of the legislative intent that Sedition was not to be considered as an exception to Freedom of Speech and Expression. The insertion of the words 'in the interest of' before 'public order' in Article 19(2) of the Constitution (Amendment) Act, 1951,[30] was seen in the light of the wide amplitude of power to the State for curtailment of free speech. Consequently, it was seen as a validation of the law of Sedition.

This interpretation given by the Supreme Court is followed till date. In Common Cause vs. Union of India,[31] the Petitioner brought to the notice of the Court, the misuse of the law of sedition. However, the Court did not interfere with the same, but directed the authorities to follow the principles as laid down in Kedar Nath Singh's case (Supra).

In Arun Jaitley v. State of U.P,[32] the Allahabad High Court has held that a critique of a judgment of the Supreme Court on National Judicial Appointment Commission does not amount to sedition. It was merely fair criticism. While interpreting Section 124 A IPC the court observed: **"**Hence any acts within the meaning of S: 124 A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence".

That we are thin skinned as a nation is demonstrated by the indiscriminate use of the offence for the lightest of cases. In 2019, in Manipur, Kishor Chandra Wangkhem was detained for allegedly criticizing the Government through a post on Facebook. He was taken into custody and was released on bail after four months.[33]Recently, a Bengaluru journalism student Amulya Leona Noronha, 19, was charged with Sedition for raising

'Pakistan Zindabad (Hail Pakistan)' slogans against the Citizenship (Amendment) Act. She was taken into judicial remand for the same (India Today, 2020). Earlier this year, a 22-year-old student-activist was charged for offences of sedition for allegedly shouting slogans in support of jailed JNU student at an LGBTQ event at Azad Maidan in Bombay.[34]

In V.A. Pugalenthi v. State,[35] the allegation was of distributing pamphlets containing seditious and defamatory statements. The Madras High Court held that calling out the public to demonstrate and agitate against the Central and State Governments on the issue of NEET Examination would constitute the offences of sedition and defamation.

Sedition and its Interplay with Freedom of Speech and Expression

In 1989, a film *Ore Our Gramathile* reflecting reservation policy of the government on the basis of economic backwardness was denied a certificate for exhibition of the film. The Supreme Court directed the grant of certificate and held that "open criticism of the government policies and operations is not a ground for restricting expressions."[36]

The Court interpreting the relationship between a democratic society and freedom of speech in Re. Harijai Singh[37] opined that in a democratic set up active and intelligent participation of the people in all spheres and affairs of their community as well as the State is necessary. In S Khusboo vs. Kanniamal,[38] the Supreme Court held that that free flow of ideas in a society makes citizen well informed, which in turns result into good governance.The right to information rests upon the right to know, which ultimately was an inseparable part of the freedom of speech guaranteed under Article 19 (1)(a).[39]

Thus, advocating a new cause, however unpopular or uncomfortable cannot be curbed by invocation of sedition laws until and unless the speech incites hatred against the Government. Unfortunately, the law of sedition is abused and misused and the people who criticise those in power are arrested by police under this law. The consequence of which may be that a person

against whom the said offence is invoked may lose his government job without any interim relief and the trial may go on for a long period of time causing undue harassment to the person who dared to raise a voice.

An Obsolete Law

The Law Commission of UK in 1977 (Law Commission of UK, 1977), realised that there is no requirement of the Law of Sedition in a democratic society and recommended the deletion of offence of Sedition from the Criminal Code. This recommendation was accepted in 2009 and the offence of sedition was abolished through the Coroner and Justice Act 2009 (Library of Congress, 2012). One of the reasons given for abolishing seditious libel was:

> *"Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today… The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom… Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech."*[40]

When in Britain (from whom this draconian Law was imported to India) has abolished sedition, to not follow suit in a democratic society as ours, would result in continued curtailment of Freedom of Speech and Expression of the citizens of India. In this era of constitutional law and democratic governments, a legitimate question arises whether sedition is at all relevant. After all, the Government represents the people and the concept of nationhood. In a nation which is driven by the constitutional principles and has myriad races, communities, castes, and religions under the umbrella of the Constitution (which provides for the right not only of life and liberty[41] but of freedom of speech and expression[42]), can sedition at all be in consonance with this democratic ideal?

The Press is considered as the fourth pillar of democracy. We enjoy greater freedom of press than ever during British Rule. The fifth limb of

democracy is social media. One of the purposes of enactment of the Sedition law during British times was to restrict publication and distribution of any speech or writing which criticized the government. However, with the RTI, press reporting every activity of the Government and social media where views can be easily expressed, sedition in the IPC can only act as a deterrent against the Press to report freely.

Chapter VI of IPC which provides for punishment against 'Offences against the State' (S. 121 to S. 130) and Chapter VIII (S. 141- 160) which provides for punishment for 'offences against the Public Tranquility' are sufficient to deal with crimes of sedition, violence, and public disorder. There is no need for a separate provision to deal with seditious offences which was the basis for the UK to abolish the sedition law. Section 66-A of the Information Technology Act which was introduced to curtail free speech on the internet having been quashed in Shreya Singhal vs. Union of India,[43] that it arbitrarily, excessively, and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions, sedition cannot be sustained as constitutional. The Law Commission of India in 2018 issued a consultation paper asking for views on revoking sedition as an offence (Law Commission of India, Consultation paper 2018).But the Commission's term ended before it could deliver its recommendations (Livemint, 2020). Hopefully, its recommendations will be considered by future Law Commissions and by our legislators sooner than later.

For we must not forget Pandit Nehru's words while addressing Parliament[44] on 29 May 1951:

> *"Take again Section 124-A of the Indian Penal Code. Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing, as it is, should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it."*

Endnotes

*This paper is based on speeches delivered at Lloyd Law College (2016) and webinars attended at SSR Law Office Madurai and Hemalatha Law Office (2020).

[1] S. Rangarajan vs. P Jagjivan Ram (1989) 2 SCC 574

[2] *Ibid*

[3] Article 19 (2) of the Constitution of India, 1950

[4] Kedar Nath Singh vs. State of Bihar, AIR 1962 SC 955

[5] [**124 A. Sedition.—**"Whoever, by words, either spoken or written, or by signs, or by visible representation,

> or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, [***] the Government estab-lished by law in [India], [***] shall be punished with [104] [im-prisonment for life], to which fine may be added, or with impris-onment which may extend to three years, to which fine may be added, or with fine.
>
> **Explanation 1**.—The expression "disaffection" includes disloyalty and all feelings of enmity.
>
> **Explanation 2.**—Comments expressing disapprobation of the meas-ures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
>
> **Explanation 3.**—Comments expressing disapprobation of the admin-istrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

[6] Indian Penal Code, 1860

[7] Supra n.vi.

[8] [**153 A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—**

> *"(1) Whoever—*
>
> *(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different reli-gious, racial, language or regional groups or castes or communi-ties, or*
>
> *(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2[or]*

[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the partici-pants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious wor-ship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]"

[9]***[153B. Imputations, assertions prejudicial to national-integration.—***

"(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, ra-cial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or commu-nity, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or region-al group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the perform-ance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]"

[10]**295A. Deliberate and malicious acts, intended to outrage reli-gious feelings of any class by insulting its religion or reli-gious beliefs.—**

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 4[three years], or with fine, or with both.]"

[11][**505. Statements conducing to public mischief.**

"(1)] Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any offi-cer, soldier, 3[sailor or airman] in the Army, 4[Navy or Air Force] 5[of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to 6[three years], or with fine, or with both. 7[(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different reli-gious, racial, language or regional groups or castes or communi-ties, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.—Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

(Exception)—It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it 8[in good faith and] without any such intent as aforesaid.]"

[12] Balwant Singh vs. State of Punjab, (1995) 3 SCC 214

[13] Bilal Ahmed Kaloo vs. State of A.P, (1997) 7 SCC 431 (Later overruled in Mohd Amin vs. CBI (2008) 15 SCC 49)

[14]Queen Empress vs. Jogendra Chandra Bose ILR (1892) 19 Cal 35

[15] Queen Empress vs. Bal Gangadhar Tilak, ILR (1898) 22 Bombay 112

[16]Supra n. xiv.

[17] Supra n. xv

[18] The Empress vs. Bal Gangadhar Tilak 1897 observation. The observation contains Shivaji Utterance in Marathi and its translation in English. Retrieved fromhttps://dspace.gipe.ac.in/xmlui/bitstream/handle/10973/21702/GIPE-084074.pdf?sequence=3&isAllowed=y

[19] ILR (1898) 22 Bombay 152
[20] ILR (1898) 20 ALL 50

[21] AIR 1942 FC 22

[22] AIR 1947 PC 82

[23] Supra n. 21

[24] Supra n. 22

[25] AIR 1950 SC 124

[26] 1951 CrLJ 449

[27] AIR 1959 ALL 101

[28] Supra. n. xxvi

[29] AIR 1962 SC 955

[30]2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

[31] 2016 SCC Online SC 903

[32] 2016 1 ADJ 76

[33]Kishorchandra Wangkhem vs State of Manipur, W.P (Cril) No. 18/2018, order dated 04.03.2019

[34]Urvashi Chudawala vs. State of Maharashtra, Anticipatory Bail No. 342/2020, Order dated 11.02.2020

[35]Crl. O.P No. 21463 of 2017

[36] S. Rangarajan vs. P Jagjivan Ram, (1989) 2 SCC 574

[37] AIR 1997 SC 73

[38] AIR 2010 SC 3196

[39] CPIO vs. Subhash Chandra Agarwal 2019 (16) SCALE 40
[40] Criminal Libel and Sedition Offences Abolished", Press Gazette (Jan 13, 2010)

[41] Article 21 of the Constitution of India,1950

[42] Article 19 of the Constitution of India,1950

[43] (2015) 5 SCC 1

[44]Parliamentary Debates of India, Vol. XII, Part II (1951) p. 9621 pp. 81.

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Will on-line education change everything?

Rohan D'Souza

George Packer, journalist, novelist and a frequent contributor to *The Atlantic*, acidly concluded in a recent polemic that the "coronavirus didn't break America". Rather, the virus simply "revealed what was already broken".[1] For Packer, the global pandemic in all its relentless fury actually laid bare Trump's dysfunctional government within an already corroding and ailing society. The Covid-19 rampage, hence, was more messenger than the message.

Online education, likewise, should be seen as a portentous messenger of things to come and not the message in itself. Even before the physical classroom and face to face academic interactions were deemed a viral hazard, the contemporary university system was already down with a high fever and looking for ways to cool off from their dependence on brick and mortar teaching.

The boom in *Zoom*[2] or the shift to the virtual, consequently, is not a hurried Band-Aid response. The big moves for online teaching can, in fact, be contact traced to evolving developments within the education technology sector (EdTech), which, frankly speaking, has been chomping at the bit for more than a decade now. For EdTech enthusiasts, online teaching is and has

always been but the 'front paw' for their already imagined revolution. A revolution that first begins not by overthrowing the university administration but by rebooting the idea of the student.

It bears remembering here that the first studentsof the modern university – birthed in early nineteenth century Europe – were primarily prepared and inspired for the roles of citizenship. And in the expectations of one of its founding visionaries, the Prussian philosopher and diplomat Wilhelm von Humboldt (1767-1835), the public university was to cultivate a national culture while occupying a space between the state and the market.[3] The student of higher education, hence, above all else, was the product of nation-making.

By the late 1980s and early 1990s, however, economic globalization, neo-liberalism and aggressive market logics combined to gut the Humboldtian university ideal. In country after country, like falling dominoes, public universities were toppled and higher education was surrendered to the corporate university, which lost little time in substituting the student-citizen with the customer-consumer.[4] The immediate fallout: ever rising student loan debts (SLD). In the United States, the most exemplary possible example, the SLD for 2019 stood at $1.5 trillion, owed by 45 million borrowers.[5] In India, in the opening year of 2000, loans amounting to roughly ⊂ 3000 million (Indian Rupees) were disbursed for higher education. By 2016, higher education loans hit the mark of ⊂ 720,000 million.[6] But in November of 2019, a sudden drop to approximately ⊂ 669,020 million in the SLD occurred. This slight fall, however, remained well within the curve of the market, brought on by the fact that banks were losing their appetite to lend in a context where student loan defaults were escalating in India.[7]

The sordid saga of exploding student debt, however, is not the only tremor that is destabilizing higher education. In recent years, the metrics for university rankings have rapidly gone from bizarre to banal. Added to which is the alarming rise in faculty attrition, caused by competitive pressures for publishing and turning the quest for tenured positions into gladiatorial contests.[8] Increasingly, the corporate university model, the world over, is

fraying and becoming unsustainable.

Clearly, it is hard to ignore the fact that online teaching in the time of Covid-19 has walked into a pre-existing condition. But can such a crisis-condition be sorted out by what Evgeny Morozov describes as 'solutionism' deploying technology to avoid politics ?[9]

In a recent interview, the Noble laureate Abhijit Banerjee opined in an even handed manner that online teaching was here to stay and its successful diffusion mostly depended on how quickly professors could be encouraged to give up their 'prejudices'.[10] The professor as an inherent 'technology laggard' or a natural suspect, against the online, in fact, appears so convincingly self-evident.[11] In a second type of solutionism, on the other hand, the argument runs in reverse. Given that the online will mostly bypass the less privileged and the poor, the struggle for education also becomes a vigorous demand for internet inclusion and bandwidth capacity.[12]

But if a magic wand did indeed solve all problems of access, could we still sidestep the complexities of power, politics, manipulation and control that are baked into digital infrastructure? Here, it is critical that we decode the Edtech vision and the notion of the platform university.

Platforms are here to stay

The platform heralds a significant strategic shift in contemporary capitalism. The big four of Amazon, Google (Alphabet), Facebook and Apple, for example, not only make up the leading platform firms in the world today[13] but when combined their wealth, power and domination over our everyday living is most certainly unparalleled and unprecedented in recorded history.[14] Platforms, for Nick Srnicek, simply put, refers to the digital infrastructure that serves to 'intermediate between different user groups'. A type of intermediation that, unlike traditional business models, is profoundly based upon the extraction and control of data. The platform, hence, essentially boils down to the 'ownership of software (the 2 billion lines of code for

Google or the 20 million lines of code for Facebook) and hardware (servers, data centres, smartphones etc.).[15]

In a more pointed elaboration by media studies scholars Dijck, Poell and Waal, the platform's architecture is described as being 'fuelled by data, automated and organized through *algorithms* and *interfaces*, formalized through *ownership* relations driven by business models and governed through *user agreements*'.[16] Rigged and programmed thus, the platform then steers 'User interactions' towards generating 'data exhaust', which is the digital trail that Cukier and Schonberger, in their best seller titled *Big Data,* refer to as being the 'byproduct' that people leave in the wake of their online interactions.[17] Data exhaust, hence, is the raw material that is extracted from the User by the platform.

For Shoshana Zuboff in her much acclaimed and authoritative *The Age of Surveillance Capitalism*, data exhaust is conceptualised as 'behavioural surplus', which is extracted through online interactions to feed the production of 'machine intelligence' or what is often referred to as 'Artificial intelligence' (AI).[18] The AI by being able to automate a huge number of correlations and patterns can then essentially be purposed to anticipate and predict User behaviour. Prediction, in effect, enables the modification and control of the User's behaviour through a vast range of techniques such as the 'nudge, coax, tune' and the herding towards outcomes. We as the User, consequently, are the 'objects from which raw materials are extracted' and therefore become, as Zuboff argues,the *'means to others' ends'*.[19] The platform, in other words, does not simply connect the service provider to the User nor does it naively set about organizing digital interactions. Rather, it is fundamentally wired up as 'machine intelligence' that is programmed through a suite of algorithms to extract, modify, steer, modulate and inevitably control human behaviour.

The persuasion that EdTech as a platform holds for its advocates, investors and enthusiasts, hence, goes much beyond trying to develop capacities for online teaching. The online teaching platform, more pointedly, intends to be a 'disruptive technology'. Its grand scope is no less than trying to

'Uberize' higher education by delivering a death blow to the remaining detritus of the Humboldian ideal and by fatally downsizing a wobbling corporate university model.

The many Persuasions of EdTech

EdTech, in fact, on the surface, offers both a convincing critique and a compelling set of solutions to the crisis that now engulfs higher education.[20] It correctly understands that student debt has not only become unsustainable but is also eroding the corporate university's initial claim that markets could help 'massify' higher education by broadening access.

There is a growing disconnect, moreover, between the degree that was paid for and the actual financial returns on the jobs that are available. In sum, degrees from the corporate university are not only pricing themselves out of the job market but in the context of rapid technological change the very notion of competence and employability are undergoing significant shifts: the demand seems to be veering towards the need for a regular upgradation in skill-sets rather than from an intense three or four year degree programme.

EdTech has the capacity to radically cheapen higher education. For starters, the online can entirely sidestep the huge costs involved in maintaining brick and mortar legacy infrastructures such as libraries, dormitories and lecture halls. Tens of thousands of students can be simultaneously connected to an online module, as opposed to a relatively miniscule number that can be packed into a single classroom. In a similar vein, virtual instruction can dramatically abandon the need to maintain an expensive student-teacher ratio by carrying out instructions via pre-recorded lectures, interactive Apps and with on demand digital content.

In 2012, two Stanford computer science professors Andrew Ng and Daphne Koller assembled an online teaching and e-learning platform called *Coursera*, which they designed for offering massive open online courses (MOOC). The Coursera strategy involves partnering [like Uber] with

existing universities, colleges, governments and corporates and as of December 2019 their total number of collaborations are listed as comprising roughly 200 across 29 countries.[21]

According to Dijck, Poell and Waal, the Coursera and the MOOC in general are aimed at entirely upending existing academic conventions and designs. Instead of the curriculum-based diploma or degree programs, the platform offers the 'course – a single unit that can be "unbundled" and "rebundled" into an online "product"'. That is, instead of the current focus on completing a comprehensive two or three year program that is made of several linked and connected courses, the User-student can now simply partake of a slice of the education experience by attempting a single course. Akin to what, as the author's tell us, Facebook and Google have done to the newspaper industry by un-packaging them in a manner that allowed the circulation of single articles, feature pieces and news feeds. These unbundled courses, furthermore, can be accredited by the award of certificates of completion and proctored exams – versions of micro-degrees or nano-degrees that can be earned for acquiring specific skills.[22]

The Edtech platform as a decentralized, virtual and low-cost higher education model, however, already reveals inherent dangers. For one, the User-student's data (behavioural surplus), generated through digital interactions, can be repurposed by the platform for a range of unstated outcomes. An individual's learning curve, emotional states, psychological dispositions and learning abilities, for example, could be minutely mapped and tracked through the trail of data exhaust. Every digital indent, in the form of a like button, emoji use, a quiz, a survey or a simple click, could be graphed to sized up as a behavioural analysis that, in turn, could be then be conveyed as a score to a potential employer or authority.

Secondly, by dispensing with the '*aura*' of classroom solidarity, the online grinds away at attaining individualized and personalized outcomes. The gradient for learning is thus individual centric and steered by predictive analytics – algorithms that can replace the teacher's professional judgement with

'learnification'. The learnification paradigm is the 'idea that learning can be managed, monitored, controlled and ultimately modified in each student's personal mind.' In effect, the User-student will be encased within a filter bubble, a self-referential niche that will be digitally reinforced by corroding social solidarity, public value and knowledge through collectives.[23] In sum, the undermining of political citizenship and the devaluing of democracy.

We don't need no Learnification

But how will the loss of the Humboldtian ideal and the corporate university actually play out? The impacts of EdTech might, in fact, be far more perverse with the platform university consolidating a new type of social and economic hierarchy that is built around different levels of educational inequalities. The always perceptive and future looking, Scott Galloway, Professor of Marketing at the prestigious NYU Stern School of Business, in a stock taking interview on the future of higher education in a post Covid-19 world, offers us an unnerving assessment. For Galloway, the shift to the platform university will first begin manifesting as:

> …a dip, the mother of all V's, among the top-50 universities, where the revenues are hit in the short run and then technology will expand their enrolments and they will come back stronger. In ten years, it's feasible to think that MIT doesn't welcome 1,000 freshmen to campus; it welcomes 10,000. What that means is the top-20 universities globally are going to become even stronger. What it also means is that universities Nos. 20 to 50 are fine. But Nos. 50 to 1,000 go out of business or become a shadow of themselves. Ultimately, universities are going to partner with companies to help them expand. I think that partnership will look something like MIT and Google partnering. Microsoft and Berkeley. Big-tech companies are about to enter education and health care in a big way, not because they want to but because they have to… The strongest brands are MIT, Oxford, and Stanford. Academics and administrators at the top universities have decided over the last 30 years that we're no longer public servants; we're luxury goods.[24]

Clearly, the Galloway prophecy is that higher education of the pre-Covid-19 world will become virtually unrecognisable in the not too distant future. The big brand universities are going to gobble up the small guys, online education will massify access and finally expect a defining role for Tech giants such as Google and Microsoft in shaping the platform university. Despite this dramatic churn, however, Galloway still believes that the four-year liberal arts-campus experience might survive, but only because it will be populated by the really rich. Brick and mortar higher education, hence, will spur a caste system, the triumph of aristocratic entitlement over malodorous merit.

In all likelihood the coming years will see the continued frictions, tensions and abrading wars between the Humdoltdian ideal, the corporate university and the EdTech driven platform. Three souls will haunt and agitate campuses: that of the student-citizen, the customer-consumer and the User-student. The winner, for sure, will not take all.

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Shameless Speech: 'Rape Videos', Media Infrastructures, and the Law

Siddharth Narrain

The term 'rape video' has come to signify videos of sexual assault that are filmed without the consent of the survivor/victim which are then circulated amongst the perpetrators or reach a wider audience through the internet. The threat of circulation of the videos is then used to blackmail survivors of sexual assault ensuring that they do not file formal complaints, and sometimes leads to sexual abuse over a prolonged period of time. As there is a market for these videos, many of these are sold over the counter, but without being openly advertised, along with other pornography (Ashraf, 2016). These videos are sometimes copied when the perpetrator takes his mobile phone to a shop for repairs and transferred directly to the customers' phones when they are sold (Ashraf, 2016).

In India, the term rape video became part of public conversation in February 2015 when a Hyderabad-based activist, Sunita Krishnan, who works for an anti-trafficking organization called Prajwala, uploaded an edited version of a rape video on YouTube. The video showed a group of men sexually assaulting a woman, a crime that is defined as gang rape in the 2013 amendment[1] to the Indian criminal law and carries a maximum punishment of life imprisonment.[2] This was one of nine videos that Krishnan came across

being circulated as MMS clips over mobile phones (Nair, 2015). Horrified by these videos, Krishnan edited them, removing the faces of the women, and asking viewers to identify the perpetrators. This led to the #ShametheRapist Campaign and widespread outrage and debate in the media. Krishnan then received more videos from people across the country prompting her to approach the Supreme Court through a PIL asking for a Central Bureau of Investigation (CBI) enquiry.

The Supreme Court ordered the CBI to step in, after which some of the perpetrators in the videos submitted to the court have been identified and arrested (Nag, 2015). In March 2017, the Supreme Court appointed an expert committee with representatives from government and internet platforms to look into the matter. The committee gave a number of recommendations on two categories among the rape videos they were dealing with, abbreviated as CP (child pornography) and RGR (rape and gang rape). These recommendations focused on better methods to identify such content including expanding the list of keywords that search engines use to include rape and gang rape, and investing in Artificial Intelligence/Deep Learning/ Machine Learning based techniques to identify content at the stage of uploading to enable real time filtering.[3] The Supreme Court continues to hear this matter, having gradually expanded the scope of its enquiry into matters such as whether a National Sex Offender's Registry should be set up and whether the government could use provisions of the Information Technology Act and the Prevention of Children from Sexual Offences Act (POCSO), to curb the circulation of such videos.

Consent, Sexual Assault, and Law in India

The debate around these videos must be seen in the larger backdrop of a nationwide debate around sexual violence sparked by the brutal gang rape of a young woman in Delhi in 2012 that led to nationwide protests. It led to a vibrant debate around the role of media representation in the continuance of various forms of gender-based violence in the country. The UPA government at the time formed the Justice J.S. Verma Committee, which

consulted with many civil society groups and proposed changes to the criminal law. These proposals included the introduction of gang rape as a separate offence with higher penalties and recognized other offences such as 'voyeurism' and 'stalking' which were not defined earlier in the Indian Penal Code (Justice J.S Verma (Retd), 2013).

The Information Technology (IT) Act, the main legislation which deals with online offences, had already been amended in 2008 to introduce section 66E which made it an offence to capture, publish, or transmit images of the 'the private area of any person without his or her consent'.[4] In doing so, it introduced the element of consent into the IT Act explicitly for the first time moving away from a mere 'obscenity' based framing which is based more on subjective considerations. In addition, the amendments to the criminal law following the J.S. Verma Committee recommendations have introduced section 354C of the Indian Penal Code that criminalizes voyeurism, defined as 'watching or capturing the image of a women engaging in a private act in circumstances where she would usually have the expectation of not being observed by either the perpetrator or by any other person on the behest of the perpetrator.' The section also makes the dissemination of such an image a crime (Justice J.S Verma (Retd), 2013).

The emergence of the debate around rape videos in India is linked to changes in internet infrastructure and the emergence of relatively affordable smartphones with internet access that enabled the use of popular social media platforms such as Facebook and WhatsApp. Along with this are factors such as government investment in internet-related infrastructure such as optical fibres, lower prices of data plans, and a vernacularisation of the medium (Neyazi, 2019) that has led to a steady increase in the number of people who have access to the internet and to social media platforms where such videos can be easily circulated.

The media scholar Dana Boyd states that social media is a term that connotes both technological (sites and services that emerged globally in the 2000s including social networking sites, video sharing and blogging platforms

that allow users to share and post their content) and cultural aspects (the cultural mindset that emerged in the mid-2000s as part of the technical phenomenon called Web 2.0 citation) (Boyd, 2014). The rape video then is a term that is linked as much to these technological and infrastructural changes, as it is to deeply embedded gendered notions of shame that the filming and threat of circulation draw upon. These notions are reflected in popular culture, particularly in films such as *Dhrishyam* and *Masaan* in which the female protagonists are faced with the dilemma of what to when a video of them having consensual sex or being subject to sexual assault or non-consensual sexual acts was taken without their consent.

The DPS MMS Episode and its Legal Repercussions

The filmmaker and rights activist Bishakha Datta describes three stages of violations of consent in rape videos: the first is the overriding of consent during the sexual act, the second is the lack of consent while filming the act, and the third is the circulation of the video without the consent of the survivor (Datta, 2018). The third aspect of consent, which is specifically to do with circulation, was initially debated publicly in India after the DPS MMS episode when a video of a young school going couple in Delhi went viral and was uploaded on commercial sites such as Bazee.com.

The DPS case involved a two-and-a-half-minute video of a school going couple in Delhi engaging in oral sex being uploaded through MMS (Mobile Messaging Service) (Padte, 2018). The male partner was the one filming so it is only the female who is visible in the video. The video was leaked by the male partner as an act of revenge porn (Malhotra, 2011) and then circulated widely online and even put up for sale on sites such as Bazee.com by persons not directly connected to the couple. The public scandal and outrage around this incident eventually led to the arrest of the person who uploaded the video on Bazee, as well as the CEO of Bazee, and the person in the company responsible for uploading the content. The CEO of Bazee, Avnish Bajaj, challenged his arrest before the Delhi High Court.

The court, applying the strict liability rule, held that Bajaj was liable for the content uploaded on its site whether he knew that such material was on the site or not.[5] The government, reacting to concerns from the IT industry, amended the IT Act in 2008 to protect internet intermediaries from liability for all content on their sites, bringing it in line with international standards. The amendment introduced a 'safe harbour' provision in section 79 of the IT Act,[6] which led to a softer due diligence standard, that protected internet platforms from prosecution as long as they had exercised due diligence and did not have 'actual knowledge' of the content being on their site (Arun, 2015). In 2015, the Supreme Court has interpreted 'actual knowledge' to mean that there should be a court order.[7]

Violence, Mobilizing Shame, and Human Rights Discourse

The rape video defies traditional views around shaming perpetrators by filming, recording, and exhibiting their actions. The scholar Thomas Keenan, in the context of war crimes by Serbian soldiers in Macedonia and the 'humanitarian intervention' in Somalia, describes incidents where the camera instead of acting as a deterrent, acts as an instigator of acts of violence (Keenan, 2004). Keenan refers to an account of Serbian civilians looting the deserted homes of residents of Kosovo during the 1999 war who turn to wave to the camera of a BBC crew filming what they were doing (Keenan, 2004). Keenan argues that these acts challenge conventional notions of mobilizing shame in human rights discourse based on the assumption that perpetrators of rights abuses will be shamed by documenting and publishing the crime. Shame, as Keenan points out, is usually reserved for perpetrators of violence whose conscience is not enough to act as a deterrent (Keenan, 2004).

Publicity and exposure are meant to shame perpetrators, but increasingly, in a media saturated environment, perpetrators are exhibiting themselves and their actions brazenly and openly (Keenan, 2004, 438). This underlying 'shamelessness' (Sen, 2014) can be seen in the instance of rape videos; perpetrators of sexual violence are aware of the camera and this does not deter them in any way, and nor is there any attempt to hide their identities.

In fact, far from trying to conceal their actions, the perpetrators seem to be enacting the act of sexual assault for the camera, aware that these video recordings will be circulated and watched by a wider public. The mass circulation of these videos through cell phone enabled technology and their ease of access online is intertwined with existing cultural stigma attached to victims or survivors of sexual assault, which is highly gendered, and deeply entrenched in disturbing ideas around masculinity.

While rape videos have emerged as a serious concern that has to be addressed, any legal or policy response must distinguish between non-consensual media material and a form such as sexting, which can be seen as a form of media production over which the content producer has ownership and control (Hasinoff, 2012). The circulation of videos is at the core of another term – 'revenge porn' – which used to denote videos of consensual sexual acts that filmed with the consent of the persons involved but circulated by one person after the relationship ends or during a break-up. Increasingly, for both consensual and non-consensual sexual acts, sexual intercourse and sexual assault can no longer considered an independent realm, but as implicated in the media, technological infrastructure, politics of the time (Liang, 2016).

The emergence of rape videos is at a time when there is renewed interest in the work of radical feminists like Catherine MacKinnon and Andrea Dworkin who advocated for legal proscriptions against pornography (C. MacKinnon, 1998) in the wake of the #MeToo moment. Their work drew upon writings of feminists like Susan Brownmiller who argued that hardcore pornography that showed women being degraded, humiliated, and subjected to violence should not be given constitutional free speech protections (Brownmiller, 1979). The rape video, by blurring the boundaries between content that is made as staged or enacted scenes of sexual violence, and videos of sexual assault that, without the consent of the survivors/victims, finds their way into the market for commercial pornographic content, challenges pro-free speech feminist positions that emphasise the distinction between pornography and sexual violence, and between representations of sex and reality (Ghosh, 2017).

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"Like the Beginning of the End of the World": Salvaging the Meaning of the COVID-19 Pandemic

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Introduction

As of this article's writing in June 2020, more than 10 million people are known to have contracted SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2). Of those 10 million, more than 500,000 have died from COVID-19, the disease it causes.[1] So many of the deceased entered cold, impersonal hospital rooms, never to come back out alive. They left the world as loved ones watched from phone and tablet screens, robbed of the comfort of community at their story's end for fear of the pandemic's swift and deadly spread.

As the departed transition into that place of memory, their countless relatives, friends, and colleagues are left behind to grapple with the meaning to be made from this tragedy. They struggle with their personal sorrows even as the pandemic raises those ever-present, global questions of who gets saved and who does not. The answer to these questions is determined so often by structures that already consign so many people around the world to tragic, unnecessary fates—namely, economic inequality, racial inequality, health inequality, political oppression and violent conflict.

So far, I am one of the lucky ones. I have neither contracted the virus (to my knowledge), nor have I lost anyone I hold dear. I have the ability to work from home and savings enough to weather—for a while, at least—any economic hardship that might be on the horizon. Yet I know that these things can change suddenly and painfully. I know because of what I hear from friends who have lost family members. I know because of what I read as I endlessly scroll my Twitter feed, seeking connection at a distance. And I know because I have, locked away in a fireproof safe, a family story of the pain a pandemic can bring.

It is contained in a letter written by my great-great-uncle Bruno to my grandmother. On the front of the letter is a scanned obituary of another of my great-great-uncles, and below it, is a message to my grandmother, written in blue ink. On the back of the paper, included as an afterthought and yet still important enough to write down, is my great-great-uncle's attempt to set a record straight.

"The obit is missing 2 names," Bruno's letter reads. Only nine of the eleven siblings of the deceased had been identified, and so it was Bruno's job to make sure the other two did not go forgotten. One of the missing was Stanley, "who died about the age of 7." As for the other missing sibling, Bruno initially called him "Joseph" before hastily scratching out the misremembered name. "Richard," he wrote, "who died in infancy." And then, in parentheses, the cause of death: "Flu epidemic."

I had forgotten about this letter until a few months ago. Then, nearly a month to the day after my office went to'work-from-home,' I found the letter while searching for something else in the safe. Suddenly, a piece of information I had known but never assimilated into my own story—that a great-great-uncle had died in the 1918 flu pandemic—held an entirely new weight.

This is how we make meaning in a crisis. When confronted with disorder, we grasp at any purchase we can find, and then we hold on for dear

life. Of my own family's history with the 1918 flu, I don't have anything concrete to hold onto beyond the knowledge that a great-great-uncle perished from it. And still my imagination tries to fill in the gaps. I picture a house I have never seen, not even in photographs, and a Rust Belt town I have only ever driven through once. I imagine the fear of contagion. I imagine the agony of loss. And I imagine the relief—for there *must* have been relief—that none of the seven children who had been born before Richard, nor their mother, nor father, followed the two-year-old into the grave.

While scholarship on the history of the 1918 pandemic exists, the current pandemic has laid bare just how little of its lived experience is understood. This lack is made all the more puzzling given that the pandemic claimed at least 50 million lives (Hall, 2020). According to John M. Barry, who has studied the historical record of the 1918 influenza outbreak, the reason for this relative lack of in-depth scholarship is because, "until a couple of decades ago, historians wrote only about what people did to people," rather than about natural events (quoted in Heim, 2020). In addition, according to Barry, the scale of World War I, as well as censorship and propaganda efforts surrounding the conflict, meant that newspapers relegated only limited space to the influenza's victims, even though the pandemic eventually far surpassed the war's death toll.

Oral histories of the period provide some insight into how the pandemic was experienced by the everyday public. However, they often carry the limitation of having been recorded decades after the pandemic happened, a fact that leads to both the smoothening of narratives and the loss of details too difficult or painful to remember. Recent blog posts and articles that revisit many of these oral histories in the context of COVID-19 cite recordings from the 1960s, 1970s, 1980s, and early 2000s (Burnett, 2020; Hall, 2020). Even the earlier oral history projects documenting the impact of the pandemic required their subjects to recall events from at least two decades prior (Hall, 2020).

Nearly a century later, these incomplete histories are resurrected in order to offer some meaning around the current moment, rather than to

authentically reflect upon the meaning made by those who experienced the 1918 pandemic. For example, these histories are brought up to remind readers that "[a]s horrifying and tragic as some of these stories are, they are the stories of survivors, those who were lucky, resourceful, and somehow positioned well enough to help themselves or to help others" (Burnett, 2020), or to serve as "a reminder of the courage of ordinary people facing a disease that no one understood very well and from which they had little protection" (Hall, 2020).

Yet there something missing in this reading. In her book *The God of Small Things*, which is not about a pandemic but does relate many other personal and collective crises, Arundhati Roy writes that to one of her characters, one of the crises in question "could have seemed like the beginning of the end of the world" (1997, p. 241). "[I]n a way, it was," Roy continues, and in so doing, encapsulates what it looks like for meaning to be made" in the midst," rather than "in the aftermath," of crisis.[2]

To my great-great-grandmother and great-great-grandfather, courageous though they may have been, I cannot know whether Richard's death felt like the end of the world.There are no records left (to which I have access, anyway) of what it felt like to suffer such loss, and anyone who could tell me that story—Bruno included—is gone. As regards my baby great-great-uncle and as regards his parents and his siblings and the pandemic that reshaped their lives, I have nothing left but the whisper of meaning I assign to a brief memory passed down by its keeper, a memory that itself just barely survived a century-long chain of transmission.

With regard to the current pandemic, we are certainly still very much "in the midst. " It has already claimed half a million lives worldwide, and it is expected to claim many more before a vaccine is released for widespread use. Even then, by the time it becomes contained, it will likely have changed the shape of our world in ways that will only become clear as the years pass. Yet, despite many unknowns during these early months, there is an opportunity to create a record of the kind that is missing from the 1918

pandemic, not only because we are still "in the midst" but also because the tools available to us for recording the history of this pandemic are now more widespread and public-facing than ever. The advent of social media in particular makes documenting public meaning around the pandemic possible to an extent that was unfathomable in the early 20th century.

The example of the 1918 flu and its overshadowing in public history until recent decades provides a cautionary tale for how not to remember a pandemic and its toll. The rest of this article explores the parameters, urgency, and utility of meaning making in the midst of this current crisis. First, it sets the scene through a case study of the crises in Arundhati Roy's 1997 novel *The God of Small Things*, which provides a meditation on the intertwining of collective and personal tragedy and the resulting meaning making process. Building on the insights gleaned from this case study, this article then delves into the literature on meaning making in crisis situations. Finally, this article synthesizes lessons learned from the case study and the meaning making literature to provide a preliminary framework for how meaning making practitioners can salvage the meaning of the COVID-19 pandemic in such a way as to prevent its loss to history.

Confronting Crisis in *The God of Small Things*

"[T]he secret of the Great Stories is that they *have* no secrets," writes Arundhati Roy in her 1997 novel *The God of Small Things* (p. 218, italics hers). According to Roy, who offers this reflection as part of a scene describing the art of the kathakali dance form,

> Great Stories are the ones you have heard and want to hear again. The ones you can enter anywhere and inhabit comfortably. They don't deceive you with thrills and trick endings. They don't surprise you with the unforeseen. They are as familiar as the house you live in. Or the smell of your lover's skin. You know how they end, yet you listen as though you don't. In the way that although you know that one day you will die, you live as though you won't. (p. 218)

Roy's own novel proves itself to be one such Great Story. Less then four pages into *The God of Small Things*, readers know how the story will end and yet, they are enticed to keep reading.

The story begins with an untimely death and to impart its tragedy, readers are confronted with a stark image: a nine-year-old girl in a coffin, and her seven-year-old cousins struggling to grapple with the circumstances that led to her death. Gathered to mourn Sophie Mol are her divorced parents—Chacko, an Indian from Kerala's Syrian Orthodox community and Margaret Kochamma, an English woman—as well as her grandmother, Mammachi, and her "baby grandaunt," known as Baby Kochamma (p. 4). Her aunt Ammu and cousins Rahel and Esthappen Yako (Estha for short) are also present.These latter three, Roy writes, have been "allowed to attend the funeral" but "made to stand separately" (p. 7). It is this detail that gives readers the first indication that the circumstances around Sophie Mol's untimely death were not only tragic but also linked, in some way, to the actions of this branch of the family.

The novel's narrative structure is dynamic, jumping back and forth between Rahel's return to Ayemenem as an adult, the days leading up to the arrival of Margaret Kochamma and Sophie Mol in India, the brief period that Sophie Mol and her mother spend amongst their extended family in Kerala, and the aftermath of the circumstances surrounding Sophie Mol's death.Yet so deftly does the narrative slip back and forth along the events that have transpired at various points in lives of Rahel and Estha—the novel's protagonists—that each scene feels like the present and the past at once. Like one of Roy's "Great Stories," the novel can be entered at any point and still impart a sense of deep meaning.

The God of Small Things covers much ground. It is a novel about Rahel and Estha: about their childhood; their unique relationship as twins; their experiences of both personal tragedies and collective crises. It is about the "public turmoil of a nation," that "Big God" that howls "like the wind" and demands "obeisance," against which the "Small God (cozy and contained,

private and limited)" comes away "cauterized...resilient and truly indifferent" (p. 20).

It is also a novel about Rahel and Estha's family—about their grandmother and grandaunt and the trials they faced at the hands of an abusive father; about Chacko and the tension between his political leanings toward Marxism and his lived experience as the head of the family's pickle factory; and about Ammu and her struggle to create a path for herself outside of the suffocating expectations placed upon her as a divorced mother.

Finally, the novel is also about Velutha, a man who loves Ammu and is loved by her; a man who works at the family's pickle factory while embedded in Kerala's local communist politics; a man who, as a Paravan, cannot escape a rigid caste system that eventually steals away his life just hours after Sophie Mol loses hers.

Yet, as it expounds upon themes of religion and caste, politics and protest, domestic abuse and sexual assault, colonialism and indigeneity, familial love and romantic love and community belonging and self-actualization, what *The God of Small Things* ultimately does is serve as a meditation on meaning making in the midst and aftermath of crisis.

Meaning making is rarely a process that takes place in the moment, especially when that moment involves trauma. Such circumstances can break the logic required of meaning making, causing the suppression of memories and the interruption of coherence (Puvimanasinghe, Denson, Augoustinos, & Somasundaram, 2015). It is only in the aftermath that the tools to create meaning can be picked up once again and what results is not an exact remembrance of the event itself, but instead a recreation of it, salvaged from memory but molded to fit the context in which the meaning makers find themselves at the moment said meaning is being made. Roy's central characters—Ammu, Rahel and Estha—experience this blockage of meaning firsthand in the days following Sophie Mol's funeral and Velutha's death.

A complex set of circumstances leads to and ties these two deaths together. Just before Sophie Mol's death, the romantic relationship between Ammu and Velutha—so forbidden within the town's social system that it is Velutha's own father who reveals the situation to Ammu's mother and aunt, vowing that he will go so far as to kill his own son to make up for the transgression—has caused Ammu to be locked away by her own family. In her rage, she lashes out at her twins, accusing them of robbing her of the freedom with which she might otherwise have lived a life according to her own desires. In the midst of both their mother's pain and their own hurt, the twins resolve to run away via the river behind their family's home, a plot that contains that unique mix of whimsy and utter seriousness that only the actions of children can embody. In the dead of night, Rahel, Estha and their cousin Sophie Mol take a boat onto the river's waters. When it capsizes, the twins survive, and Sophie Mol drowns. The twins, unable to find their cousin, manage to reach the far bank of the river, where they take refuge in the "History House," a run-down, former British colonial residence.

Meanwhile, as these events are transpiring and following the revelation of Velutha and Ammu's relationship, Baby Kochamma has gone to the police. Unable to rationalize that her niece would willingly enter into a sexual relationship both outside of marriage *and* with a Paravan, Baby Kochamma tells the police that the relationship was not consensual but instead a case of rape. By this point in time, Velutha has refused to flee Ayemenem despite the warnings and demands of Mammachi and Baby Kochamma. He has sought out aid from the local communist party leader only to be refused his help. Finally, tired from both the night's events and the ever-present weight of violent social hierarchy and stymied self-actualization, he has also taken refuge, unbeknownst to the twins, in the History House.

It is at the History House where Velutha and Ammu spend secret evenings, the barriers between them suspended as only the discretion of night can allow. It is at the History House where the police find Veluthaon the

morning following Baby Kochamma's false police report, beating him so brutally that he will die hours later in a prison cell. And it is at the History House where Rahel and Estha, at first unseen by the police, will witness the murder of a beloved friend, one who had days earlier helped them restore the very boat in which they had attempted to run away.

By the time Velutha is being beaten by the police, Sophie Mol's body has already been recovered by Mammachi and Baby Kochamma. In the following days, the twins will take refuge with Ammu in their mother's room as Chacko tries to tear down the door, beset by grief at the loss of his daughter and convinced that the blame lays at the hands of his sister, niece, and nephew, rather than at the feet of brutal casteism, postcolonial malaise, and toxic patriarchy. It is an experience so traumatic for Rahel that it causes nightmares for her in the years afterward, but in the midst of the event, the momentousness of it lacks shape for the twins.

"At the time, there would only be incoherence. As though meaning had slunk out of things and left them fragmented," Roy writes (p. 215). As Chacko rages, the twins are only able to focus on small things, "[i]solated things that didn't *mean* anything," like the "glint of Ammu's needle" and the "color of a ribbon" (p. 215). "What they had done would return to empty them," Roy writes. "But that would be Later" (p. 215).

Meaning making is inherently a process of looking backward and drawing from memories to generate a sense of coherence out of what, in the moment, might be too jumbled, chaotic, or painful to confront. In their research into the narratives of Sierra Leonean and Burundian individuals who have settled in Australia in the aftermath of violent conflict, Puvimanasinghe et al. (2015, p. 84) find that flashbacks in the telling of their narratives of displacement and resettlement are often indicative of meanings being made in real time.

By the time the reader of *The God of Small Things* reaches the scene in which Ammu, Rahel and Estha, beset by Chacko's rage, are struggling to

make meaning out of their traumatic experiences, the novel itself has already traversed enough of the story's plot—both in terms of the before and after of Sophie Mol's death—for the reader to see how Rahel and Estha go on in adulthood to grapple with the meaning of this childhood trauma. Even as Ammu and her twins struggle in the moment to make sense of the deaths of Sophie Mol and Velutha, the reader already knows that the meaning lies in themes of patriarchy, casteism and colonialism. The novel's back-and-forth structure becomes a stand-in for memory as dynamic process, one that "allows the past to be selected, filtered and restructured in accordance with present needs and future goals" (Puvimanasinghe et al., p. 70).

The meaning of the death of Velutha in particular begins to solidify for Ammu and her twins when Ammu and Rahel bid farewell to Estha, who, it has been decided in the aftermath of Sophie Mol's death, might be better off living with his father in Assam. At the time of parting, Ammu and Rahel stare up at Estha in his train window, "all three of them bonded by the certain, separate knowledge that they had loved a man to death" (p. 307).

"It took the twins years," Roy writes, "to understand Ammu's part in what had happened." As the twins age, they come to understand Velutha as the God of Small Things, keeper of both their personal joys and personal tragedies, consumed and ultimately wiped out by the Big God whose actions and structures swallowed up their every personal crisis into the greater ails of a nation.

The Dimensions of Meaning-Making in the Aftermath of Crisis

The tension between discrete, personal tragedies and the collective context in which those tragedies take place is an essential component of meaning making in the aftermath of crisis. Reconciling personal adversity with one's membership in society is the core around which meaning making turns, prompting the meaning maker to increase their "ability to describe how an adverse life event occurred and attribute causality to the event, thereby helping integrate it into one's global meaning system" (Kopacz, Lockman, Lusk,

Bryan, Park, Sheu, & Gibson, 2019, p. 78). In such processes, individuals will draw what they understand from the world around them and their life up until the moment of the meaning making to create a "situational meaning" of the event in question so that it can be smoothly assimilated into the story they tell about themselves and others (Kopacz et al., 2019).

The meanings made from these processes are purposive and cohesive (Rovenpor, O'Brien, Roblain, De Guissmé, Chekroun, &Leidner, 2019), allowing the individuals making the meaning to tell compelling stories about what they have been through and about who they are because of these events (Nelson, 2001). The more durable the meanings made after stressful life events are, the more likely they will be drawn upon in future meaning making processes. But meanings are not static once made. Meaning making is an iterative and cumulative process that builds upon both the personal and collective histories to which individuals belong (Brabeck, Lykes, &Hershberg, 2011). It is also an inherently social process, one that is "reflexive, complex, and continuous" (Manning & Kunkel, 2014, p. 435). As part of this process, individuals seek to make sense of their circumstances not only through an evaluation of their own personal experiences but also through their interaction with others as regards those experiences. Such processes are shaped by interpersonal communication with family, friends, colleagues, and community members, and by broader discourses found across traditional media and social media platforms (Flores, 2017).

The end result of this meaning making process—the so-called 'meaning made'—can ultimately be adaptive or maladaptive (Kopacz et al., 2019), with the former allowing individuals to incorporate a constructive sense of meaning into their broader personal narratives, while the latter, in contrast, is characterized by either the presence of negative meaning or the ultimate inability to create any meaning at all (Rovenpor et al., 2019). It is important to note here that the literature on meaning making in crisis discusses adaptive and maladaptive 'meanings made' in a largely personal sense. To the question, "For whom is the 'meaning made' positive or negative?", the answer is often taken to be the individual at the center of the meaning making process.

However, as noted above, the meanings that individuals make around their own, personal crises cannot be separated from the broader social and historical contexts in which they are made—and neither can the impact of the meanings made by individuals be considered as having bearing solely on their own personal narratives. An adaptive meaning that allows an individual to create (or maintain) a constructive sense of self can nevertheless have dire consequences for others. For example, there is evidence to show that adaptive meanings drawn from situations of violent conflict can contribute to the continuation of said conflict (Rovenpor et al., 2019). Studies of Iraq and Afghanistan war veterans, in particular, raise questions of how individuals create, maintain and use meaning in the aftermath of crises in which they are as much the agent of crisis as the subject of it. In a study of Norwegian veterans of the War in Afghanistan, soldiers' adaptive meaning making processes were found to include a strategy of "separate[ing] the job effort [of deployment] from its consequences, which allowed them to interpret the relevance of their deployment within defined boundaries of responsibility" (Gustavsen, 2016, p. 27). As part of this process, the site of the "mission" was "perceived as an arena that provided the veterans with a valuable work experience and allowed them to practice their job under 'real' conditions" (Gustavsen, 2016, p. 27). This study fails, however, to interrogate the broader impact that such adaptive meanings might have had (and continue to have) on those who were killed, maimed, or otherwise traumatized in the course of what the soldiers, in an effort to create adaptive meaning, allowed themselves to see as simply another "job."

In her study of the collective meanings made around the resilience of Soviet children during the Second World War, Kirschenbaum (2017) cautions against taking an overly individual-focused view of meaning making in crisis situations, as such an "emphasis on individuals' capacity to adapt in extreme circumstances" can obscure the social elements of crisis (p. 527). While there are some crises that are more inherently collective than others—a war for example, or a pandemic, as contrasted with a car accident or a cancer diagnosis—the experiences of all crises, and thus, the meanings made from them, cannot be separated from the networked world in which humans live.

The social feature of human life means that meaning making moves constantly along a continuum of personal and collective narratives. Individuals bring their global beliefs to bear on their individual sense-making processes. They then use the meanings made from those processes to inform how they will act on the global scale. This process can lead to very different outcomes, as in the case of Iraq War veterans choosing to use the meanings made from their involvement in the invasion of Iraq to engage in activism both *for* and *against* the war (Flores, 2017).

In fact, it is the intertwining of the personal with the collective that itself can be the catalyst for meaning making. It can, for example, make a personal experience of crisis seem heroic or romantic, as in the case of efforts to transform the adverse and tragic experiences of Soviet children into stories of resilience (Kirschenbaum, 2017). In such cases, the collective allows a greater sense of personal purpose to emerge, presenting the opportunity for an adaptive meaning to be made. However, as the experiences of Rahel and Estha show us in *The God of Small Things*, collective crises can also obscure personal crises, thus robbing the latter of consequence. For Rahel in particular, because the experiences of her childhood—in which she, her brother, and her mother loved a man to death, because such love went against the "Love Laws" of casteism, patriarchy, and colonialism (Roy, 1997, p. 33)—occurred in the shadow of the greater social ills of her society, a maladaptive meaning was formed. In the face of such laws—in the face of this Big God—what consequence could a Small God have? Here, Rahel, like the Soviet children, becomes resilient, but it is no longer an adaptive experience. She weathers the trauma of her childhood at the cost of her own consequence. Hers becomes a resilience in which "[n]othing much mattered. And the less it mattered, the less it mattered. It was never importance enough, Because Worse Things had happened" (Roy, 1997, p. 20).

Salvaging the Story of the COVID-19 Pandemic

To understand the meaning of the COVID-19 pandemic requires understanding that such meaning will be neither static nor monolithic, neither

wholly positive nor wholly negative. Already, public discourse is showing sites of contestation in meaning making. Uplifting and tempting assertions that we are 'all in this together' are met with reminders that the pandemic cannot impact individuals and communities proportionately when inequality—racial, ethnic, political, economic, social—is baked into our existing social systems (Guarnieri, 2020; Menon & Kucik, 2020). As Roy writes in her recent essay, "The Pandemic is a Portal" (2020), the current crisis is playing out along the same paths of structural inequality and violent xenophobia as were traversed in the pre-pandemic world. To assume that it would suddenly do differently is to ignore the very forces that have allowed the world to have been so willfully unprepared for a disaster of this scale, despite not only the warnings of experts (Henig, 2020) but also the experiences of our own parents, grandparents, and great grandparents in 1918, experiences that are tucked away in archives, their characters waiting in the wings of memories that have been receding for 100 years.

It is too late to prevent the current pandemic. It is here, and it will be the kind of generation-defining moment that will become the stories and memories against which the next century is measured. Can these stories do the work that Roy says we have the opportunity to finally realize—namely, the work of "breaking with the past and imagining the world anew" (2020)? Will the current pandemic be the end of the world (as *The God of Small Things* shows all crises to be, in their own way)? And if so, can it be an ending that brings about the beginning of a more just and peaceful society? The shape of the answers to these questions will depend on the meanings we make around the trials and tragedies of the current moment, and the extent to which we bring those meanings into the historical record.

In this effort, the work of collective meaning makers will be essential. This work is being done in much the same way that it was done during the 1918 pandemic. It is being done in academic journals and in newspaper columns, in political speeches and in interviews. However, there is one site of meaning making available to us in 2020 that was not available to our ancestors a century ago: social media. Whereas, personal meaning making in

1918 was likely to happen in discrete conversations between friends and family or in the pages of diaries and letters, today it happens increasingly in public. Social media's nature as a medium for recording (fairly) immediate thoughts and conversations, paired with the fact that physical distancing measures render online spaces even more critical for social connection, illuminate it as a unique tool for archiving public meaning making in real time. While the literature has already shown that meaning making is a dynamic process, with meanings being made and remade over time, social media—more so than oral histories recorded twenty years down the line—will allow for a larger record of what the pandemic felt like "in the midst" rather than what it will mean "in the aftermath." Chronicling the latter will of course be key to understanding the impact of this period, but it is the former that we must do the work of recording now, before that opportunity fades with the passage of time and in this effort, social media will be key.

Approximately half of the world is using social media to some extent (Cooper, 2020). While the discourse around social media often bemoans the ways in which it seems less meaningful than personal conversation and physical presence, research has in fact shown that online platforms—of which social media networks are one part—are actually likely to make individuals "more social and less isolated" (Tufekci, 2014, p. 13). This type of sociality looks very different than the sociality of our relatives and ancestors in 1918, not just because of the medium through which it occurs but also because it has re-shuffled the networks in which we find ourselves. Social media has shifted us towards "*achieved* social networks," which are affinity-based, and away from "*ascribed*" networks, which are based in the family and neighborhood (Tufekci, 2014, p. 18 [her italics]).

While social media is far from ubiqui to us—half of the world's population is not using it, whether out of personal preference, lack of technological fluency, or lack of access—it has become such a firm feature of 21st-century life that, particularly in internet-saturated societies, "to abandon social media is to isolate oneself outside of vital spaces for contemporary social life" (Tufekci, 2014, p. 18). Social media is democratizing in that it

increases opportunities for both the creation of personal meaning and the consumption of the personal meanings of others, often across multiple platforms (Poulsen & Kvåle, 2018). Individual posts, pictures, and videos become an in-real-time log of the iterative process of personal meaning making—and over time, these millions of posts become the site at which collective meaning is made.

Yet social media also brings its own constraints to personal and collective meaning making. The public nature of social media creates within it elements of performance. Research on social media repertoires have found that social media platforms have been "developed and produced" to carry out specific practices (e.g., Instagram for visual representations of a 'charmed' life, Twitter for insights and jokes delivered with a news-like urgency, Facebook for widespread social networking). Social media users both consciously and subconsciously leverage these platforms to carry out "various social practices in their everyday and professional lives" (Poulsen & Kvåle, 2018, p. 704). The evolution of these practices is itself iterative and dialogical. While social media platforms are usually designed with a specific use in mind, users often innovate beyond their design, leading social media companies to then re-shape the technological capabilities of these platforms to be responsive to ever-evolving user practices (Poulsen & Kvåle, 2018). The introduction of the Twitter thread in 2017 is one such example, allowing users that were already circumventing the platform's character limits to post "tweetstorms" on specific topics to do so in a matter that allowed these conversations to be more easily consumed (Perez, 2017).

Additionally, as social media platforms have matured and their use has become more widespread and integrated into broader collective meaning making processes—from informing traditional media to even influencing policy (Miranda, Young & Yetgin, 2016)—the power dynamics of who gets heard on these platforms have solidified. Firstly, the usage of social media requires internet access and it is also enhanced by both access to and fluency with smartphone technology (Carah, 2014). Lack of access to and fluency with such technologies means that half of the world still is not being heard

in a media space that has come to define interpersonal communication in the 21st century. Once on social media, users must then struggle to be heard within oversaturated conversations. While social media may be "emancipatory" in that it gives individuals more opportunities than ever to create public-facing meaning, it is also "hegemonic" in that social media platforms are structured in such a way that being heard often becomes a function of popularity, which is itself baked into capitalistic structures that privilege sites of traditional legitimacy, namely, the voices of elites that have derived their status and platforms from systems of inequality (Miranda, Young,&Yetgin, 2016). What's more, as social media has gained popularity, so too have social media companies gained influence over the public meaning making space. As Boczkowski, Matassi and Mitchelstein (2018) observe in their study of young adult users of social media, "a user could spend her entire online day messaging on WhatsApp, posting information on Facebook and browsing images on Instagram, without ever leaving the digital environment owned by the Facebook corporation" (p. 256). In much the same way that the collective meaning of the 1918 pandemic relied upon the role that newspapers did or did not play in chronicling its spread and impact, social media companies will play a role in what collective meaning gets made and privileged around the COVID-19 pandemic.

To salvage the meaning of the COVID-19 pandemic will require paying close attention to questions of access and power. Social media will be a tempting site for meaningmaking research, as physical distancing measures have likely pushed much of today's social meaning making processes into the digital sphere. Social media also provides a wealth of information and discourse around the pandemic across a variety of levels—from elite to everyday meaning making—while also allowing for meaning making processes to be tracked over time. Nevertheless, to salvage the meaning of the COVID-19 crisis will also require listening to the silences, both those on and off social media, and then developing strategies to address those silences and ensure that the meanings of the pandemic that get recorded are not only those made by individuals and organizations with the greatest collective public meaning making capital.

In these efforts, the work of academics and researchers will be crucial. Research on meaning making in the aftermath of crisis has found that academic studies of meaning making are themselves meaning making processes, often giving research participants the opportunity, tools, and space to create meanings that did not exist quite the same way before the research effort in question. Qualitative research methods, in particular, can give participants the chance to tell stories that they have never told before (Puvimanasinghe et al., 2015). In so doing, the research initiative itself becomes the site of meaning making—a fact that requires care and reflexive understanding by the researcher of how the methods in question can impact both current and future meaning making processes for their participants.

In such research initiatives, there are multiple levels of meaning to be made. There is the meaning made by the participant, influenced by the methods and approaches of the researcher, which themselves can be constraining (as in the cases of survey research or structured interviews) or elaborating (as in the cases of unstructured life story research or participant observation). Then, there is the meaning being made by the researcher, which happens both within the research study (during the interviews, focus groups, participant observation, etc.) and in the write-up. For example, this present article is itself a meaning making activity—as all writing ultimately is.

Thus, collective meaning makers—considered here to be those individuals (such as academics, journalists, policymakers, community-based practitioners, and public figures) whose work entails the curation of meanings made by others—have a choice to make when salvaging the meaning(s) of the COVID-19 pandemic. They can curate the meanings that are most easily heard—the meanings of elites and the meanings of dominant groups, especially those on social media—and thus give them even more power; or they can also pay attention to the meanings less likely to be heard—the meanings of the everyday individual; the meanings of the marginalized; and the meanings of those disproportionately impacted by the pandemic while under continued assault from longstanding structures of racism, sexism, classism, and xenophobia.

Conclusion

The importance of salvaging the meaning of the COVID-19 pandemic cannot be overstated. The actions we take as individuals and as societies are dependent upon the meanings we make from our past and present experiences. For example, the realization of reparations and justice in the aftermath of violent conflict can depend upon whether the meaning ascribed to marginalized communities positions said communities as 'innocent' versus 'complicit' (Godoy, 2018), even though such binaries can curtail the fuller meanings to be drawn from conflict, thus preventing narrative justice in service of a legal justice tied to the desires of the state.

The actions we take, and the life events we experience, are also dependent upon which meanings are given legitimacy and which are silenced. For example, the meanings that veterans derive from their participation in war can determine whether they maintain their participation in militarism or whether they push for the end of such conflicts (Flores, 2017), actions that themselves can be deciding factors for who dies and who lives, especially among civilians who have little control over the toll that war takes on their lives.

In the current moment, the meanings we draw from our experiences of COVID-19 will determine the shape that our post-pandemic world takes, not just in terms of public health, but also in terms of whether we will use this moment to dismantle what 'normalcy' has meant up until this point—e.g. inequality, racism, sexism, classism, and xenophobia—or whether we will return to unjust systems that dictate who gets to be saved in a crisis and who doesn't (Roy, 2020).

What's more, the act of cultivating the meaning of this moment and the moments to come—the act of gathering as much meaning as we possibly can from as many people as we can, across social media feeds and traditional media, in dialogues and in interviews, both now and in the years and decades to come—could itself become a meaning making endeavor, one that is

adaptive rather than maladaptive. Making meaning, especially through the telling of our stories to even one careful listener, can allow us to assert an element of control over our lives and generate coherence from what might otherwise defy logic (Puvimanasinghe et al., 2015). Such stories do not need to be smooth and neat to be compelling or healing. In fact, it is their complexity that can be the most transformative, for both ourselves (Nelson, 2001) and for our societies (Cobb, 2013).

Like Rahel and Estha, we are all of us living in a Great Story and like with all stories, there will be an end. A unique and terrifying quality of collective calamity is that it brings the end into sharper focus. Often like characters in a novel, each day we are turning the pages of our lives, confronted by not just our own ends but also the ends of those we love and hold dear. *When the book of this pandemic ends*, we wonder, *will we come away alive?*

And for those of us who do, what then? Are we meant to commit ourselves to the process of forgetting—to siphoning away all but the most palatable details of our stories so that a century down the line, they are little more than a few words on a rarely read page? Are we meant to return to a sense of normalcy that for a few of us will mean long, prosperous lives but for too many will mean the ever-present threat of a story cut short, a legacy forgotten or secreted away?

Perhaps the start of the answer lies in Roy's *The God of Small Things*, which circumvents the usual order of a story. It begins with death and tragedy. It ends with love—with Ammu and Velutha in an embrace, simultaneously hanging on to the promise of tomorrow and knowing it is never guaranteed to come. It teaches us that to salvage the meaning of a crisis—whether it is a personal tragedy or a collective one (or both); whether it is a war, or a system of oppression, or a sudden and yet predictable pandemic—means entering it wherever we can. It means providing ourselves with the tools, the space and the permission to enter and exit our stories where they hurt the least and to make those points their center.

To salvage the meaning of the COVID-19 pandemic means to assume all stories are Great Stories. Stories worth remembering, even and especially when 'business-as-usual' calls upon us to forget (Bierman & Stokols, 2020).It means carrying out acts as small as being the keeper of the memory of a brother you never knew, and as big as saying the names of those lost over and over and over again so that they can never be unheard (Hayes, 2020).Ultimately, it means recognizing that the stories of COVID-19 are stories worth telling, and it means making sure they get told.

Endnotes:

[1]Based on the accounts kept as part of the Corona virus Resource Center maintained by Johns Hopkins University (https://coronavirus.jhu.edu/map.html), accessed on June 28, 2020, at 23:37 (GMT).

[2] I borrow this framing of "in the midst" and "in the aftermath" from Lederach and Lederach (2010), who make the case that conflicts and crises must be understood and addressed as constantly cycling between *before*, *during*, and *after.*

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Give us today our daily bread

Reflections on the pandemic

Mary Therese Kurkalang

Growing up in a rainy hill station at a time when temperatures barely went over 25°C, ice cream was a rare treat; you could only buy it in a few shops in the city. As kids, we saved our paisas and had to forego other lesser treats, to finally have enough rupees to buy a scoop of ice cream and if we had a little extra, in a wafer cone, a treat made all the more delicious for all the anticipation. I remember a rare occasion when I was invited to lunch at a friend's house, this was in the early 90s, her house seemed so big and grand, and her parents so kind, but what stood out for me was the tub of ice-cream brought out post lunch, for us to eat as much as we wanted! I understood in that moment, the difference between her table and mine.

This distinction keeps coming back to my mind often, in many ways, under different circumstances.

Just behind the gated colony I currently live in, in south Delhi, a weekly market takes place every Thursday. These *Haats* have always been special for me, they remind me of *Ïewduh* (the main local market) in Shillong where I was born. I was introduced to the concept of the weekly market in Delhi rather dramatically. Soon after I arrived in the capital in 1997, I got a job at

a local NGO in Hauz Khas and found accommodation at a working women's hostel in RK Puram. I anxiously navigated my way around the wide roads and heavy traffic, noting down bus numbers and landmarks so I would not lose my way back and forth from work. I lost my way on a Friday of the first week; my street seemed to have disappeared somehow. I was at my wit's end as it was getting dark and close to hostel curfew time, when I bumped into a woman I recognized as a resident at the same hostel. She laughed as we walked along together and told me about the *Haat* that came up on our street every Friday. It made the street unrecognisable. She also told me it was the best place to buy my weekly supply of vegetables and that if I went later at night, just before the traders packed up, the prices go down. For five years, I was a regular customer and did most of my shopping at Meera didi's stall. She was a friendly and feisty elderly woman, who reminded me of my mother. On some days she would set aside her best and freshest greens for me.

On 19 March 2020 when the Prime Minister addressed the nation at 8 p.m. - his first speech addressing the pandemic. It happened to have been a Thursday and I was at the weekly market to shop for vegetables as usual. The traders were present at their usual spot, but their goods had not been unpacked. There was a sense of confusion and desolation as I walked along the street. There were a couple of policemen who had come to inform them that the market was not being allowed and that they needed to leave. The effects of the impending lockdown had begun. Almost four months since, I wonder what happened to the heaps of fresh fruits and vegetables that day, how much might have rotted and wasted during the lockdown, and how and if the traders survived and what had become of Meera *Didi*.

I live in a gated colony, a small walled complex with individual houses built with spaces in between. Here, you rarely see the neighbours and there's an unspoken code to not look each other in the eye, if you happen to pass each other. In this colony, on that first day of lockdown, people came out of their houses, onto their balconies and gated gardens - women, men and children. They all came out with empty metal utensils and plates in their hands, beating on them with spoons and spatulas; it was cacophonous. As I

lay in bed that night, nursing a migraine, I wondered if empty stomachs could articulate as vociferously.

On 24th March 2020 at 8 p.m. we tuned in to listen to the Prime Minister's second address with a sense of trepidation, at least some of us did. Ten minutes or so into the speech as the three-week lockdown that was to begin in four hours was announced, I looked at my friend with whom I share home, and said 'come its time to stock up'. Wordlessly we picked up our wallets and shopping bags and ran to the nearest grocery store. We bought the last carton of milk on the shelves, five kg packs of wheat and rice, pulses and potatoes, all the while impossibly trying not to touch or be touched, as people started rushing into the store, palpable panic in the air. It was past 9 p.m. by the time we walked back, getting caught in a sudden downpour. Later that night, I went to sleep thinking about the city I grew up in: like Shillong, in most towns and smaller cities, all shops would be shut by 8 p.m. How would they manage? Did everyone have enough food stocks?

In the months before the lockdown, I had spent most of my time in the midst of masses of people at different anti-CAA protest sites that had sprung up in different parts of Delhi. In the weeks and months, through days and nights of sitting in at protests, sometimes marching among strangers who had become friends and comrades had become a new way of life. Among the many memories of that time which stands out for me was as incident when I was leaving a protest site one late afternoon along with a few other people I had just met. A group of middle-aged women in the locality stopped us and asked where we had come from, if were students and if we had eaten lunch yet? When we told them we had not eaten yet, they insisted we come in and eat with them. This incident, in a city where strangers don't acknowledge each other let alone converse and then invite you home for a meal, left me with hope and a fullness that went beyond the stomach.

With the pandemic and resultant lockdown, overnight our worlds had shrunk. I feel that for those of us who belong to overpopulated countries and regions, it has been traumatic in a different way. Suddenly we've had to

live with ourselves in a way that we've never had to before. It's like suddenly finding yourself in a large stadium with no performers, no audience, and the spotlight shifts directly to you, you are both performer and audience, something in you shifts as you see yourself in the piercing light that does not at any point shift focus to another.

I belong to the class of people privileged enough to live a double life - offline and online. On a regular day, I spend at least ten hours on a digital device. Some of that time is spent working, the rest of the time is spent consuming copious amounts of information, and then there's time spent on social media. My social media network includes a vast and motley list of contacts I have acquired over the years working in a sector that requires networking that stretch geographies, philosophies and practices. For the first time, in these last years, I began to cull out these friend-lists on one criterion only – hate politics. It was thankfully not a large percentage. The pandemic brought on new filters.

Like many, in our household too, we spring cleaned, watched movies, cooked and ate, and exercised, while simultaneously updating our statuses and timelines on our 'new' ways of living. In the first week of the lockdown, I was invited to a Facebook group called 'Simple Recipes for Complicated Times'. The title appealed to me, and I joined in. I am not a gourmet cook, the ways in which I learnt to cook in my childhood were simple and straightforward: the taste dictated by the freshness of the ingredients and the tools and cooking medium, relationship of food with wood, with clay, with charcoal, and stone and iron, were things I understood inherently; I believe it is my mother's legacy to me. The connection of food with ritual, community and earth are things I have come to understand. I felt perhaps there were a few things I could share here and also learn.

Meanwhile, story after story was emerging of migrants dying on their journeys on foot, by cycle, carting children and the elderly on shoulders and makeshift transport; dying of exhaustion or being run over on a railway track by a train that everyone had been assured were not allowed to run;

dying of thirst and of hunger. Almost two months into the lockdown, the image of a child trying to wake up his dead mother on the platform is now etched in our consciousness. Meanwhile, the Facebook group which had somehow turned into a celebration of food and feasting continued to grow and the recipes involved more and more ingredients from the gourmet stores which were home delivered.

Living alone since my teens, I have always cooked for myself, mostly every morning. Cooking perhaps is the only consistent activity I have stuck with all these years. As my circumstances and lifestyle changed, the cooking remained. Working in the arts, I have witnessed close up, the holy connection that the artist has with their art. I connected to that, and have always had an enduring envy of it. I tried too - with music, with writing. It occurred to me much later, that my meditation lies in cooking. My journey as a cook started with having to cook for my ailing mother on her deathbed. She had mouth cancer, there was very little that she could eat. I mostly cooked porridges and soups and mastered the art of cooking nourishing mash. This early practice stayed with me, and the learning - that foods' primary function was to nurture.

Growing up Catholic and attending mass daily for close to two decades, the ritual became for me, a metaphor for life. The Eucharist, a ritual at the heart of the mass service, is a commemoration of Jesus' Last Supper with his disciples in which he gave them bread and wine with the words 'This is my body' and 'This is my blood'. This was for me a very special part of the service, each morning I broke fast with God inside me, I felt. A thin wafer and a sip of wine.

Easter was just around the corner when the lockdown started in India. Leading to it is the Lenten season. Starting on Ash Wednesday for forty days, Christians practice fasting, abstinence and reflection during this period. I did not have a happy childhood, so this dark time leading to Jesus's death on a cross and his resurrection, appealed to me deeply and gave meaning to my negative circumstances as well as hope for a better future. Beginning the

lockdown during Lent felt appropriate, offering solace as news poured in of the suffering of millions of migrant workers making their way home. And my personal circumstances as the possibility of a new job I was about to start, slipped away.

In my home state in Meghalaya where Christians constitute almost three fourths of the population, the chief minister was organising 'Meghalaya Prays' with musicians across the state coming together to sing a hymn in prayer. It was widely publicised and was broadcasted live on television and social media channels on Easter Sunday. A part of me questioned the principle of state sponsored religion in a secular country; another part of me justified this act as that of a minority community in India, offering hope.

On the Thursday before Easter, Maundy Thursday or Holy Thursday is commemorated as the day Jesus had the 'Last Supper' with his disciples and commanded them to 'love one another as I have loved you'. As part of the ritual practiced on this day, there is an enactment of the last supper - the establishment of 'The Eucharist' or 'Holy Communion' as well as an enactment of Jesus washing his disciples feet, symbols of his love, sacrifice and humility. I was always quite fascinated by this ritual; I found the symbolism of Jesus washing his disciples' feet very beautiful. My *Mei* (mother) walked barefoot most of her life. It was something I was ashamed of as a child, and so proud of as an adult.

The day after Easter, news and panic spread like wildfire in Meghalaya of the first COVID-positive case in the state. The victim was a senior doctor, a founder of hospitals in the state, renowned and respected in the city. He died forty-eight hours after. What unfolded in the city was widespread panic, abuse of the family on social media, and protests at the crematorium when word got out that his body was being taken there. For 36 hours no place could be found to lay his body to rest. His son-in-law published an open letter, "My father-in-law literally spent his life in the treatment of his patients. This is not an acceptable way to honour his memory."

Earlier, on Easter Sunday, millions had tuned in and many sung along with the 'Meghalaya Prays' singers, the hymn that was sung was 'Amazing Grace'. The Chief Minister ended with this message "May the words of this song resonate in our hearts and fill us with the strength and hope to face the days ahead, let us rise and rebuild a world where safety prevails…".

What do Migrant Workers think?

Sadan Jha

There is a kind of myth making going on in the media that migrant workers are leaving cities for their love of home. For example, listening to the 'echo of migrant footfalls', Sanjoy Hazarika writes: "...But the love of home was greater than both. Ultimately this desperate longing for home killed a number of them, one group of 14 most violently and tragically on a railway track" (The Hindu, 28 May 2020). Although the essay by Hazarika is primarily concerned about policy, it may be pertinent to ponder a little about migrant worker's 'desperate longing for home'.

The question is what choice these migrant workers had. They did not leave their homes out of love for their homelands/natives. They had to leave their homes in the cities. We conveniently/unconsciously switch this compulsion to leave cities for a phrase 'love for the home'. Those who had some means to stay deferred their journey.

To say that migrant workers are leaving cities for their love of home/natives is to absolve ourselves from looking at the harsh conditions which forced them out of city boundaries and left them walking in extreme conditions or undertaking arduous train journeys.

This is not the first case when migrant workers are leaving cities. In late 1896, Mumbai came into the grip of a plague and by February 1897 around four lakh migrants, constituting half of Mumbai's population, fled the city. During 1897-1899, around four million people were medically examined before they were allowed to enter into Bengal. Approximately 72,000 people were detained for plague related and other reasons. This gives us a broad contour to imagine the scale of migration due to the spread of the dreadful plague which was killing nearly 1900 people every week in Mumbai. There was a panic in the city. The government had already brought in one of the most draconian regulations of colonial periods, the Indian Epidemic Act of 1897. Thousands of homes were declared unfit for living and were destroyed. There were rumours circulating and fuelling insecurities. For example, the rumour that Indians were captured and hospitalised so that the oil (*momiai*) from their bodies can be extracted. We come across the fear of this body oil *momiai* getting circulated in a very wide geography and across the seas (among indenture labourers in the Caribbean to East Africa to Bombay). Should we not factor the widespread fear, the panic behind workers' migration? Historians like David Arnold and Prashant Kidambi have written that from the outset lower class neighbourhoods and poor were targeted by the colonial government's plague policies during the 1896 outbreak.

Yet, we do not know whether there was a shortage of food and work back then in 1896-1899. The scenario was slightly different in the case of the Spanish influenza of 1918-1999 which killed around 50 million people worldwide. Around 15 million people were killed in India alone. In 1918, the South-West monsoon failed, leading to crop failure in various parts of the country like Gujarat, Bombay, Deccan, Berar, Rajputana, southern Central Provinces (Marathi speaking areas) and United Provinces. People from these famine-stricken regions moved to Bombay city and official reports note 'a large influx, especially of poorer people into the city' in 'weakened and destitute condition'. These malnourished bodies were easy prey for the deadly flu catapulting the mortality figures manifold.

Historians largely agree that each epidemics are unique. Yet, in each episode (at least in the case of India), epidemics, food insecurity and migration are intertwined with each other. In most cases, though nature's vagaries do their roles, scarcities are man-made.

In the case of Covid-19, ground reports have increasingly made it clear that non-payment of wages and salary at all levels in the informal sector for a better part of extended lockdown period was a major reason behind migrant exodus from cities. In addition to the paucity of liquid cash in their pockets, the food provided to them (both in cooked form as well as raw ration) remain highly insufficient. When sharply asked when you had the food last time; with embarrassed eyes, many of them reported, it was a day ago or even two to three days back that they had something like a meal.

Coupled with the indignity of standing in the food queue just for a meal, the perpetual extension of lockdown tenures accentuated insecurities for these socially alienated migrant workers. The responses to food or salary crisis differed according to internal hierarchies among these migrant workers. This is why, while the first batch of migrant walkers came from the bottom of the informal sector (daily wage earners and itinerant construction labourers abandoned by *thekedars* and sub-contractors), those at relatively intermediary levels of occupational hierarchy (i.e. mason, fitters, carpenters and auto-rickshaw drivers) braced food and cash crisis in initial phases of the lockdown. They waited for the trains to resume.They pulled money to hire goods containers, tempos and small trucks. Many of them had to request their near and distant relatives living in villages to transfer money to sustain themselves and to undertake the journey. For the first time, in the history of migration, we have witnessed reverse remittances. Yet, we do not know at what point and which specific elements convinced them to move out of their cities.

This is also because neither social scientists nor policy makers care to ask: what do migrant workers think and how do they make decisions? Except psephologists, politicians during election campaigns and some of the ground reporters, these two questions bother none of us.

There is a deeper design when we succumb to this myth making. The discourse on migrant workers has denied agency to the migrants. We have never considered them beyond statistical numbers. We have never engaged with their subjectivities. This myopia is a characteristic feature of the scholarship on internal labour migration in India. Except a couple of scholars like Dipesh Chakrabarty (in his work on Jute mill workers of Bengal) and Raj Chandavarkar (on migrants from Ratnagiri districts and rural western Maharashtra working in textile mills of Mumbai), migration scholars have not paid any attention even to cultural ties or linkages which workers carry along with them when they move to cities. Only recently, scholars have started spending some amount of analytical energy to aspects like ideas of home circulating in the folk memory. However, these forays are yet to acquire substantive visibility in the discourse on migration.This lack of attention to migrant subjectivities and scholarly apathy towards meaningfully engaging with migrants' belonging is ironical as we have a very sophisticated and robust discourse on subjectivity, belonging/attachment and longing in the context of the scholarship on diaspora or even cinematic representations of diasporic communities.

In the case of internal migration of migrant labourers, first, we are told that migrants were forced out of villages. They had to move to cities and/or to other states. Now, suddenly we have switched our positions to declare that these migrants can actually exercise their agencies and translate their love for their homes into concrete actions by taking this arduous journey. What this switching subtly does is make migrant workers responsible for all the troubles they face in the course of the journey. It is like saying 'Hey! I told you not to go out and yet you did that. Now, face the consequences'.

First, we never bothered whether these migrant workers were capable of loving (their homes) and now suddenly, we forget that it is not their love but an imposed condition... and their sheer zeal to survive.

COVID-19 Across Continents: A Reflection

Natha Wahlang

The last three months have been steered by COVID 19 and our reactions to it. It feels as if all the conversations we had before COVID 19 have to be temporarily shelved and one does not quite know how the world will look when this is over. In truth, what COVID has done is to lay bare many of the issues that we were talking about before it came and changed our world. Groups that are already in precarious situations in one way or another stand out as being the most affected by the virus and different State responses towards their populations is one of those. In the US, Black Americans are disproportionately hard hit by the virus, in Europe the old constitute more than half of the population dying from the virus. In India, migrant labourers are dying from hunger. This pandemic is - for our experts and political leaders - the trolley problem of utilitarianism.

My own experience of this virus has been rather interesting and I would like to share them and my thoughts with the readers. None of these thoughts are complete, I find it hard to wrap my head around this virus, because it has become a flashlight, you just have to turn it on to light up all the issues we have been talking about. Of course, none of us know which strategy is the right one and which one is not. Maybe in a few decades we will start to

understand the deaths that resulted from different governments responses. In the meantime, it feels like our structural issues have come under the microscope and we now see how precarious life is for the many who keep our societies running.

I have been given an extraordinary chance to experience this pandemic in two exceptional countries – Taiwan and Sweden. Taiwan for its swift and immediate response, Sweden for its hotly debated unrestrictive approach. Back home, my family is split in two cities in India – Shillong and Bangalore.

When we landed in Taiwan in mid-December 2019, our bags were checked for meat and food. We later learned from our friends there that China sends adulterated food into Taiwan. From the get-go, we felt that we had landed into an alert country, constantly being hounded by its giant neighbour. In January, the Democratic Progressive Party (DPP) won the Taiwanese elections. We attended the DPP's rally that had around 510, 000 people in attendance. We met people who flew in from Hong Kong, Singapore and expats who made a short trip back from all over the world, to vote in the elections. The feeling was exhilarating. The commitment stark. When COVID hit the news soon after, Taiwan reacted both from the bottom and the top. There was a sense of trust in the government but also a responsibility that citizens took upon themselves. As early as 1st January, different governmental institutions were working together to stop the spread of the disease.[1]

In public, everyone wore masks. Every café and restaurant had a hand sanitizer. Every government building - from museums, art galleries and government-run stores - took your temperature and sprayed a hand sanitizer. Despite having had around 2000 people from Wuhan in January and thousands flying in from China during the Chinese New Year, the Taiwanese government succeeded in containing the outbreak. The result was that life went on, close to normal. We worried at times, but we met friends, travelled to busy tourist spots, went to restaurants and bars, hung out with friends in their cramped living rooms, ate at busy night markets and used public

transport every day. Apart from the news and the announcements on public transport telling people to wear a mask if they have a cold, you couldn't tell there was a viral infection that would soon be called a pandemic. In all this, a critical factor of course, is that Taiwan has one of the best health care systems in the world. No doubt its relationship to China, its experience of SARS, its recent shift from an authoritarian state and its exclusion from the WHO have played a role in its extraordinary swift and efficient containment of the virus. The rest of the world has not been as well prepared. Neither was Sweden, where I currently reside along with my husband.

While leaving Taiwan to come back to our jobs in Sweden, we felt nervous about contracting COVID 19 for the first time since it hit the news. A week before our departure, my husband called the Swedish consulate, asking if we should quarantine ourselves. He was asked to follow the guidelines given by the Folkhälsomyndighet (FHM) i.e. the Institute of Public Health in Sweden. There was nothing about self-quarantine in the website. That got us worried. We were aware of the problems that the Swedish health care was undergoing for a few years. Nurses had gone on strike in the past two summers because of the working conditions. The paradise of social welfare is undergoing major cracks, with lowered taxes for the rich and rising class inequality. Before the coronavirus, much of the news was focused on the failing social welfare state and the role of immigrants in its undoing. The Swedish Democrats, a rising right wing party was taking over much of the news with its anti-immigrant rhetoric. How was this virus going to unfold in Sweden? Our journey from 'very alert and prepared' to 'definitely not ready' started with our journey itself.

At the International airport in Taipei, our palms were sprayed with hand sanitisers at every corner. Everyone had a mask. Our neighbours donated masks to us for the journey (Taiwan was rationing surgical masks only to its residents). As soon as we arrived at Dubai and later at Arlanda, we realized how unprepared the rest of the world seemed. There were no hand sanitisers anywhere, no one was checking travelers' temperatures. People coughed into their hands or without covering their mouths at all.

When we landed, I self-quarantined and worked from home for a week against the advice of the FHM. In the early stages of COVID, the representatives of FHM publicly said that they did not think the disease would be a problem in Sweden. Since then views have altered. By 23 May, over 3900 people died in Sweden, there are at least 33,000 confirmed cases in the country.[2] Like many countries, Sweden only tests people who are sick enough, though they are now talking of mass testing. Sweden's hardest hit are eldercare facilities and immigrant suburbs.[3] Elderly care-homes divided into apartments for the elderly and nursing homes for the elderly do not always have the same people working in them. Substitutes work when necessary and an elderly person can have 10 different people assisting and caring for them in a week. In addition, not much was done in terms of testing people working in this sector, neither were they given PPEs in the early stages. Even now, my contacts working in the elderly care sector tell me that not every care-home uses masks while caring for the old. With regards to immigrants, they live in intergenerational houses and work in exposed sectors – bus drivers, elderly care, small restaurants, preschools – sectors where you cannot work from home.

Preschools and schools are open, so are restaurants and bars and they are full of people, especially now when winter and the darkness have gone. People belonging to risk groups working in the essential sectors are expected to keep working unless they fall sick. So far it looks like Sweden is trying to build herd immunity by letting its citizens and residents get infected without the health care system crumbling. Then again, how are people in risk groups working in essential sectors supposed to keep safe? If they fall sick, will there be enough medical support and care? While intensive care beds have been increased, Sweden's healthcare was already in a crisis, with nurses going on strike since last year, asking for better work conditions and better pay. Right now, the health care has incorporated people laid off from the Swedish Airlines, SAS, and even put an ad asking McDonald's staff to help fight COVID.[4] Doctors are reporting that they are being forced to turn away patients from the intensive care unit, who would have otherwise been admitted and survived the disease. New regulations have come into force making it harder than usual for people to qualify for intensive care.[5]

In Taiwan and Sweden, the similarities, for very different reasons is that life seems to go on as usual, the battlefield seemingly far away from daily life, only to intrude through the morning news and press conferences held by public officials. Meanwhile, in India, daily life is on hold. Paused. For many it's been sheer murder. For those who can afford life to be on pause or where governments have showed a potential for state building, pausing can hold out for a while longer. For most people in India, the fight is about starvation and being stranded. Perhaps the lockdown saved hundreds of thousands from dying of COVID 19, but many have already died and are dying because of sheer neglect and because the population worst affected by the lockdown is not deemed important enough to be provided with essential support.

In the HBO show, *Watchmen,* based on a comic series by Alan Moore, Adrian Veidt launches a giant squid in New York, killing millions but saving the world from nuclear warfare. He eventually gets arrested despite saving the world twice (the second time, he launches frozen baby squids in Tulsa to save the world from a narcissist who was about to absorb Dr. Manhattan's powers). In our world, the Adrian Veidts that make decisions to let some die will not likely face many repercussions, and more worrying, we will probably find ways to justify the sacrifices we are making.

Endnotes:

[1]https://www.democracynow.org/2020/4/3/taiwan_coronavirus_response

[2]https://www.folkhalsomyndigheten.se/smittskydd-beredskap/utbrott/aktuella-utbrott/covid-19/bekraftade-fall-i-sverige/

[3]https://www.svt.se/nyheter/inrikes/en-tredjedel-av-alla-dodsfall-fran-aldreboenden-i-sverige, https://www.thelocal.se/20200409/why-are-there-so-many-coronavirus-cases-in-stockholms-northern-suburbs

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Studio Nilima is a not for profit research collective based in Guwahati. It seeks to be at the forefront of engaging and initiating dialogues on the contemporary public policy concerns of the northeast of India. It brings together lawmakers, thinkers, learners, policy makers, academicians and practitioners from across the arts to unfold new ways of learning, thinking, research and practice.

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