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# THE EDITORIAL PAGE

WORDLY WISE

ALL POLITICAL PARTIES DIE AT LAST OF SWALLOWING THEIR OWN LIES. — JOHN ARBUTHNOT

## The Indian EXPRESS

FOUNDED BY  
RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

### MEASURING PAIN

GDP figures confirm the sharp contraction of the economy, and the arduous challenge of recovery that lies ahead

THE INDIAN ECONOMY contracted by a staggering 23.9 per cent in the first quarter of the current financial year — a period when economic activities were largely curtailed due to the imposition of a national lockdown to deal with the spread of the COVID-19 pandemic. With the exception of agriculture and allied activities, value added by all other sectors in the economy witnessed a contraction, underlining how grim the scenario is. Excluding the farm sector, the rest of the economy contracted even more severely by almost 27 per cent. This is also the first time the Indian economy has contracted since the government began releasing the quarterly growth estimates in 1996-97. However, as these estimates tend to rely largely on the listed corporate sector data, and don't accurately capture the state of the informal economy, they may well be underestimating the true extent of the shock. Subsequent revisions of the data may well provide a more accurate assessment of the economic pain stemming from the COVID-19 pandemic.

The agriculture and allied activities sector was the only bright spot in the first quarter. The sector, which was excluded from the lockdown restrictions, grew by 3.4 per cent on the back of a healthy rabi harvest. A good monsoon, coupled with healthy sowing of the kharif crop suggests that it may well continue to grow at a relatively healthy pace. But the manufacturing sector collapsed by 39.3 per cent, while construction activities fell by a staggering 50.3 per cent. On the services side, sectors such as aviation and hospitality fared badly, with the trade, hotels, transport and communication sector declining by 47 per cent. Private consumption fell by a little more than a fourth during this period, underlining the collapse in household demand. Going forward, the continuing uncertainty over income and job prospects, coupled with the fear of moving in crowded places is likely to continue to weigh down household spending, especially discretionary spending. Investment activity declined by a staggering 47.1 per cent, while government consumption expenditure, arguably the only driver of growth in the current scenario, grew by a healthy 16.4 per cent.

Leading economic indicators suggest that parts of the economy have continued to improve sequentially. However, hopes and expectations of a quick bounce back to pre-COVID levels in the near term are likely to be dashed, with indications of some economic activities plateauing at below pre-COVID levels. While the pace of contraction may well ease, the near term prospects don't appear to be promising. With the number of COVID-19 cases still rising, and localised lockdowns continuing, self-imposed curbs by individuals, coupled with risk-aversion by both households and businesses, suggest that normalisation of activities to pre-COVID levels is unlikely in the near term.

### MR BHUSHAN'S FINE

He should seek a review so that the Honourable Court may get an option to erase the blot

WITH due respect, the highest court in the land has not shown its customary wisdom and institutional grace in the contempt case against Prashant Bhushan. On Monday, it lost another opportunity to correct course. In a 108-page order on August 14, it had convicted Bhushan for scandalising the court by two tweets. Subsequently, it urged him to reconsider his position. Bhushan stood his ground, and the court now, over 82 pages, argued that it is necessary to preserve the people's trust in the administration of justice. It is also that the punishment seems indefensibly disproportionate. If Bhushan does not pay Rupee 1 by September 15, he would be jailed for three months and debarred for three years — having tried and failed to extract an apology, the court has attached to its token fine an unbecoming or else.

Bhushan has respectfully accepted the punishment while reserving his right to seek a review. The court will have yet another chance to reconsider — it must not miss it again. These are not the best of times for the court. In recent months, it has invited questions about its lack of clarity on cases that involve the liberties of the citizen and encroachment by the state. On matters ranging from habeas corpus to electoral bonds, it has attracted criticism for giving the benefit of doubt, and delay, to a powerful executive. It has also been ill at ease within — Monday's order recalled the unprecedented January press conference of four senior-most judges in 2018.

In such times, it is even more necessary for the court to acknowledge that its prestige as the custodian of constitutional values and individual rights is best protected not by rushing to use its punitive powers against those who would criticise it, but by living up to its most capacious institutional self. And by showing its ability to self-correct. Bhushan has admirably held his ground, he should now seek a review so that the Honourable Court has the option to strike.

### WALKING WITH THE WARRIORS

Chadwick Boseman paved the way for actors of colour in the cinema of comic book blockbusters

LAST YEAR, CELEBRATED film-maker Martin Scorsese stoked controversy when he said that films in the Marvel Cinematic Universe were "not cinema" and more like "theme parks". Given their ubiquity, and dominance of the market, Scorsese's argument had many takers. In their defence, the fans of comic book movies held up *Black Panther* (2018). Chadwick Boseman's role as T'Challa, king of the fictional nation of Wakanda, was a celebration of African culture, imagining a technological superpower that is rooted in a milieu that is not white American. It remains the first superhero movie to be nominated for an Oscar. With his performance, Boseman paved the way for actors of colour in the world of blockbusters.

Boseman died last week after a four-year battle with cancer. He was 43. While T'Challa will undoubtedly be his most popular character, the role was of a piece with the body of work he built up in his all-too-brief career. Before playing a fictional progressive ruler and fighter, he played the lead role in three biopics of African-American icons — Jackie Robinson, the first African-American to play major league baseball (42, 2013); musician and entertainer James Brown (*Get On Up*, 2014); and civil rights lawyer Thurgood Marshall (*Marshall*, 2017). Like Denzel Washington (who, incidentally, helped pay for Boseman to study acting at Oxford), Boseman managed to bring out the humanity and complexity of great historical figures, without diminishing their dignity or legacy.

*Black Panther* came out at a time when racism and police brutality were being backed, at least tacitly, by the highest office in the US. Boseman, the star of the film, was also a generous performer, allowing strong women actors and characters to shine alongside him. After playing great historical black figures, he gave the world a fictional, futuristic one, someone to both look up to and look forward to.



NEERJA CHOWDHURY

HIS NAME CARRIED the correct initials — "PM" — for the top job but the office of Prime Minister eluded Pranab Mukherjee all his life. India's 13th Rashtrapati, a "Bharat Ratna" who stood the political stage for half a century was number two in India Gandhi's Cabinet in the early Eighties. A quarter of a century later, he remained number two in Manmohan Singh's Cabinet.

The first time I went to see him — he would see scribes in that side room at 13 Lalit Road, where he lived for over 15 years — I was struck to see a picture of Kantilal and a copy of the *Arthashastra* in his room. It was his favourite book and he would refer to it often. When you went in to see him, you knew instinctively not to sit down till he had asked you to do so. Several journalists would keep standing, if he was poring over a file. "Were you a bureaucrat in your last birth?" he teased one of them.

But Pranab was a stickler for protocol. He did not like it when an editor remarked that there was a stray ray on his table. He ticked off a leading TV anchor on camera, for asking questions in a raised voice. He was, after all, speaking to the former President of India who deserved courtesy. The diminutive man was conscious of his political stature; India Gandhi had told him that "political standing must never be compromised".

Pranab was a paradox in more ways than one. He supported the Emergency, which abridged fundamental rights, and was indicted by the Shah Commission. Impressed with his talents when he had campaigned for V.K. Krishna Menon in 1969, India Gandhi had given him a Rajya Sabha seat when he was only 33. And yet, in the latter part of his life, he became a convinced believer in the import of democratic rights, possibly because he saw it as the only way to run a country as diverse as India. He said later that the Emergency could have been avoided. He called Parliament, the "Gangotri of our democracy".

He was cast in the mould of a Nehruvian, and his political DNA stayed with him till the end. He sent shock waves through the corporate world when he defended the retrospective amendment in the income tax law that

## Bharat ratna

Pranab Mukherjee was a man of government, who saw consensus as the way to administer India

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would force British telecom operator Vodafone to pay Rs 23,000 crore as tax and penalty. His words — "Indian Parliament is omnipotent" — were meant to demonstrate the authority of the Indian State, with its own message to call him "Sir" and continued to do so, in private, even after he became PM.

As convener of the special UPA-Left committee set up in 2007 to sort out differences on the Indo-US Civil Nuclear Cooperation Agreement, Pranab displayed intellectual rigour. He held nine meetings with the Left leaders, framed the UPA's responses, and would meet Prakash Karat and Jyoti Basu individually to soften them. But before the 10th meeting could take place, the Left withdrew support to the UPA.

While being a convinced secularist, Pranab was also a devout Hindu. For two hours every morning, he recited the "Gandi Path" in his little temple at home. He also carried a copy of the Indian Constitution in his briefcase. He could recite from it chapter and verse, just as he knew from memory the 700 slokas about goddess Durga's destruction of the demons. Once BJP leader Pramod Mahajan recited a sloka in Parliament. Pranab got up and told him that his recitation was flawed. He then recited it the correct way. The then PM, Atal Bihari Vajpayee, counselled Mahajan never to argue with Pranab.

Pranab drew eyeballs when he attended the RSS's annual programme in 2018. He spoke about liberal values and positioned himself as someone acceptable to both the Right and the Left. It was soon thereafter I found to my surprise — while talking to a group of traders in Delhi to ascertain their views on the GST — many making a pitch for Pranab as the Opposition's prime ministerial candidate for 2019: "Yeh sambhal lenge".

India will remember Pranab for his contribution as a minister heading virtually every important ministry. He will also be remembered as a leader who saw consensus as the way to run a country as heterogeneous as India, and believed in holding conversations across the political divide.

The writer is a senior journalist



SWASTI RAO

IMAGES OF A visibly tired Shinzo Abe, the longest-serving Prime Minister of Japan, apologising to the Japanese people with low cast eyes are alive in international media. His surprising resignation due to deteriorating health has come as a masterstroke in the Indo-Pacific and the world at large. Despite his failings, he represented stability both at home and abroad as he took up the reins of a liberal order in Asia that US President Donald Trump had abandoned.

A controversial leader, Abe strove to change Japan's defence strategy and tried to revise its pacifist constitution and revive Japan's economy with Abenomics (the nomenclature inspiration for our Modinomics). He delivered consequential agreements, such as multilateral trade agreements in the Pacific (the CPTPP) and the Atlantic (the Japan-EU Economic Partnership Agreement), as well as the Australia-Japan-US Trilateral Infrastructure Partnership.

India saw great strides in the bilateral relations 2014 onward. Whether it was the Indo-Japanese civil nuclear energy deal or the catchy synergy of Abenomics-Modinomics, India-Japan bilateral relations seemed better than ever. Abe promised a \$3.5 trillion yen in investment and planning and India reciprocated in October 2014 with establishing the "Japan Plus" office in the Ministry of Commerce as a "one-stop" location for resolving problems faced by Japanese companies. Upbeat, the two leaders were to sign a key military logistic pact, Acquisition and Cross-Servicing Agreement (ACSA), and in combining efforts to tackle a hostile enemy in China.

## HIS DEEP BOW

Shinzo Abe's élan, his resolute foreign policy in disturbed international times shall be missed

The blow to his popularity came from Abenomics that delivered little on the ground. Abe was elected eight years ago primarily due to his economic promises. He will now leave the country in the worst economic crisis in decades. The second quarter of 2020 saw growth shrink by almost 8 per cent. The Nikkei Index has dropped 2.1 per cent at the news of his resignation.

discuss the possibility of some Japanese manufacturing shifting to India.

So, what went wrong? Who is likely to succeed Abe? What would be the major implications of this apparent power vacuum in post-political times? And finally, what does this hold for India?

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former defence minister and Abe's arch-rival, has been a leading contender in opinion polls. So, what went wrong? Who is likely to succeed Abe? What would be the major implications of this apparent power vacuum in post-political times? And finally, what does this hold for India?

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## SEPTEMBER 01, 1980, FORTY YEARS AGO



SIXTH PLAN PREP BEGINS The National Development Council asked the Planning Commission to proceed with the preparation of the final draft of the Sixth Five Year Plan. A resolution adopted at the end of the two-day meeting of the council said that the basis of the draft plan will be the objectives, programmes, targets and thrusts for growth and additional resource mobilisation outlined in an earlier draft framework. The Planning Commission and state governments will discuss the suggestions made at the meeting. The draft will also be considered at another meeting of the council in January next year. One decision taken at the meeting was to scrap the 10 per cent provision in Central Assistance to states under the Gadgil formula for on-going power and irrigation projects. Finance Minister N.D. Tiwari said this 10 per cent will be only allocated to states whose income is below the national income.

CONGRESS-I CRISIS THE CRISIS IN the Andhra Pradesh Congress-I is likely to be resolved by the end of this week. Chief Minister M. Chenna Reddy had a meeting with Prime Minister Indira Gandhi. Parliamentary Affairs Minister Bhisman Narain Singh who is also

the Congress-observer for Andhra Pradesh had met Reddy earlier. The high command is keen that the crisis is over soon.

ANOTHER CPI An All India convention to launch another CPI is expected to take place end of September or early October. Roza Deshpande, the organiser of a communist convention at Calcutta, said the party would follow genuine communism. She warned of recommitment if the CPI attacked the new group or SA Dange. She also said that it was uncertain if Moscow had blessed the CPI's line on nationalism.

New Delhi

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# THE IDEAS PAGE

## A different view of the world

In dealing with Chinese power, Delhi needs an internationalism that is rooted in realism and tethered to India's economic and national security priorities



RAJA MANDALA  
BY C RAJA MOHAN

A FORGOTTEN INTERNATIONAL conference, a hundred years ago this week, offers enduring insights into the perennial tension between globalism and localism. Three current developments reveal the inevitable clash between grandiose internationalism and the intractable nationalism.

One is Delhi's decision to pull out of this month's military exercise of the Shanghai Cooperation Organisation, which was to herald a new era of Eurasian unity. But the ambition to unite a large geopolitical space, however, is being trumped by the sharpening contradictions between India and China. Second, is the Turkish President Recep Tayyip Erdogan's claim to leadership of the Muslim world that has run into resistance from a large section of the Arab world that have not forgotten the Ottoman imperial rule. Third, is the tension between the globalism of the US foreign policy establishment and Donald Trump's "America First" nationalism. Democratic presidential nominee Joe Biden's promise to restore America's "global leadership" is struggling to overcome Trump's argument that the US must rather take care of itself.

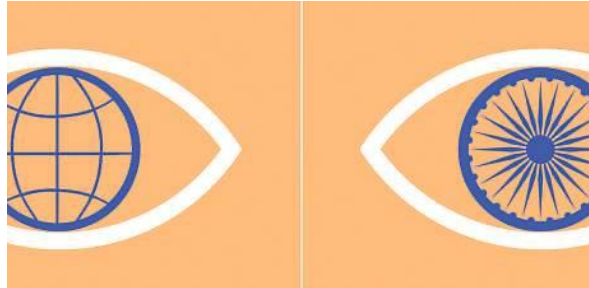
But first to the international conference a century ago. In early September 1920, the newly-minted Revolutionary Russia and the Communist International (Comintern) backed by Moscow convened the "Congress of the Peoples of the East" in Baku (now in Azerbaijan). Its agenda was to spread the revolution to Asia amidst the setbacks to left forces in Europe.

But the promised "new dawn" in Asia was as elusive as the European revolution. Although the framework of the Baku congress was about the East as a whole, the focus was on the Muslim populations on the periphery of Russia. Grigory Zinoviev, the head of the Comintern, which convened the congress called on the 2,000 odd delegates to wage a "holy war" against the imperialist forces, especially the British Raj.

But Communists in Russia ran into a problem that all future revolutionary forces would inevitably confront — the need to balance national interest against declared ideological commitments. As the prospects for trade with Britain opened up, the Soviet Union agreed to scale down its jihad against the British empire in the East. The Comintern also found Muslim nationalism and conservatism as impossible allies in promoting the Asian revolution.

National purpose, in some cases at least, may well be baled into the framing of a universal ideology. Some scholars argue Moscow's internationalism is very much part of Russian religious tradition and its self-perception as a redeemer of both the West and the East. Ideology of liberalism have long pointed to the difficulty of separating the geopolitical interests of the West and its internationalist ideology. China's claim that the Belt and Road Initiative is about "international public goods" is part of a hoary tradition in which great powers present their own interests in universalist terms.

Although the Baku Congress was planned



C R Sasikumar

as the first of a series, it would be the last. Communist internationalism, however, did have some successes. Within a few weeks of the Baku Congress, the Communist Party of India was launched at Tashkent. A separate track saw the establishment of the Chinese Communist Party in 1921.

But the communists in both countries and their supporters in Russia and the Comintern had the unending problem of how to deal with nationalist forces. The CCP's success in winning state power and the CPI's failure have not ended their continuing difficulties with China and Indian nationalism.

The inability of the Baku Congress to set the east ablaze has not stopped the frequent re-emergence over the last century of messianic claims for liberating the world. China's Mao Zedong accused Russia of abandoning the revolutionary spirit and embarked on an adventurism of his own.

The Islamic world has long been vulnerable to sweeping ideas of internationalism. Erdogan's Islamist politics has a long lineage. The Muslim Brotherhood, the Islamic revolution in Iran and Qaeda, and the Islamic State have all sought to liberate the Islamic world. But none of them has been able to transcend the nation-state system of the Middle East.

Marxists and Muslims are not the only ones who are in the thrall of expansive internationalism. Western liberalism has had more power than anyone else to promote internationalism. But the liberal internationalist effort at constructing supra-national institutions that seek to manage the political and economic structures of other societies, after the collapse of the Soviet Union, now faces big setbacks.

The greatest resistance to the liberal internationalist vision has not come from Iran or Afghanistan, but from within the US. It was Trump who channelled the American resentments against the globalist excesses of the Wall Street, Washington and the Silicon Valley.

The Indian elite has not been immune to messianic temptations. As Indian nationalism came of age between the two world wars, it was inevitably influenced by liberal internationalism, socialism, communism, pan-Islamism, pan-Asianism and Third-Worldism to name a few. It has been hard to shake off these impulses despite the repeated knocks from real-life experience.

Pakistan can't discard pan-Islamic ideology despite its growing problems with important sections of the Muslim world. On top of it,

After the Cold War, India re-embraced Asianism in the 1990s when it unveiled the Look East Policy and joined the Asian regional institutions led by the Association of South East Asian Nations. But few could have anticipated that Delhi would eventually walk out of one of the most consequential agreements negotiated by the ASEAN — the Regional Comprehensive Economic Partnership (RCEP) that sought Asia-wide economic integration. Delhi believed that the contradiction between India's domestic commercial interests and a China-led Asian economic regionalism was irreconcilable.

Pakistan has struggled to cope with its relative economic decline vis-à-vis India and the growing economic linkages between India and much of the Islamic world.

Notwithstanding the Indian romanticism, both the Asian Relations Conference (Delhi 1947) and the Afro-Asia Conference (Bandung 1955) showed up the deep differences among the Asian elites. India then turned its back on Asia to claim the leadership of the broader Non-Aligned Movement, that never acquired the needed strategic coherence.

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Even more difficult has been the tension between Eurasian regionalism led by Moscow and Beijing and the deepening conflict between Indian and Chinese interests. India's diplomatic finesse on the SCO has become increasingly unsustainable after Chinese aggression in eastern Ladakh.

Delhi's pursuit of economic regionalism in East Asia and a multi-polar world in partnership with China and Russia had severely underestimated the economic and political consequences of China's rapid rise. As in the 1950s, so in the 1990s, India took a benign view of Chinese power and has been shocked to discover otherwise in 1962 and in 2020.

On both occasions, fanciful tropes of messianic internationalism — pan-Islamism in the 1950s and the quest for a multipolar world since the 1990s — prevented Delhi from recognising the problems with Chinese power.

India today needs more internationalism, than in dealing with the Chinese power. But it must be an internationalism that is rooted in realism and tethered to India's economic and national security priorities.

The writer is Director, Institute of South Asian Studies, National University of Singapore and contributing editor on international affairs for The Indian Express

### WHAT THE OTHERS SAY

"There are lies, there are damned lies — and then there was this week's Republican national convention: a four-day cavalcade of brazen falsehoods from the president (Trump) and his enablers." — THE GUARDIAN

## Year of uncertainty

Government needs to act urgently, and with due process, to conclude National Register of Citizens process in Assam



RAJINI RANJAN LAL

NURJAHAN BEGUM, A 45-year-old home maker from the flood-ravaged Bongaigaon district in northwest Assam, struggles to be optimistic. The devastating combination of the recent floods and COVID-19 lockdown has exacted a significant toll on her family. But that is not her biggest fear: 2020 marks the end of Nurjahan's three-year confinement in one of Assam's six dreaded detention centres, the final destination for those who are deprived of their right to citizenship in the state. While she is silent about the trauma she has experienced, Nurjahan does not hesitate to share her deepest fear — her family could now face the same fate, as they too have been excluded from the National Register of Citizens (NRC).

On August 31, 2019, the final list of the NRC in Assam was released. This was considered to be the culmination of decades of strife and litigation over the rejection of the question of continued presence of "illegal immigrants" and the urgent need to identify and deport them. The NRC was envisaged as a comprehensive record of citizens in Assam identified by the law of the land as persons who had migrated to Assam before March 25, 1971. The legal home for the NRC is found in the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. The update of the NRC was sanctioned by the Supreme Court, which in 2014, began the process of the entire process.

Five years, 5,500 employees, and Rs 1,200 crore were only the visible administrative costs — this does not include the lives of the people, primarily out of fear of exclusion. The loss of citizenship, after all, is the loss of one of the most crucial rights a person can have: in its absence, one's entire body of rights dissolves. Conversations on the NRC revealed that initially, people from across the spectrum agreed on the NRC. People who belong to the ethno-religious category of Bengali-Muslim origin were welcomed by the NRC, as fulfilling the aim of weeding out "immigrants".

The result of the NRC list has been well documented — 19 million people were excluded from its ambit and now face the prospect of filing appeals against this exclusion before the quasi-judicial body known as the Foreigners Tribunal (FT).

Set up in 1964 under the Foreigners (Tribunals) Order, the FT is the main legal body with the power to determine who is a citizen in the context of Assam. As has been extensively documented, this process of citizenship determination is riddled with flaws.

The burden of proving one's status is on the person who faces scrutiny. s/he is expected to provide stringent documentary proof of citizenship, despite there being no clarity from the state on what documents meet this evidentiary standard. (It has been held that Aadhaar cards, PAN cards, land records, birth certificates and passports may not amount to proof.) Oral testimony is frequently disregarded, and the tribunal is quick to dismiss paperwork on flimsy grounds such as minor errors in spelling or dates. The main test of citizenship according to the Tribunal is the ability to trace one's legacy to a person who had been residing in the state before 1971. Applying such a high standard of documentary evidence flies in the face of the ground realities of the country. Moreover, there are serious concerns around the judicial independence of the tribunals. Members are appointed by the home and political departments of the Assam government, and the performance of tribunal members is incentivised based on the number of persons they declare as foreigners. This implies bias entrenched in the system. As a result, around 1.3 lakh people have been declared foreigners since the inception of the FT. Like Nurjahan, many declared foreigners are sent to languish in detention centres.

The potential repercussions from the NRC exclusions could be catastrophic. It does not help that the appeals process is fraught with delays; one year on, there is no sign of when this process will begin and decisions such as deportation or the rejection of the exclusion people only add to the uncertainty.

Vulnerable populations are poised to suffer grave consequences in the absence of legal clarity. For instance, there are multiple instances of children who have been excluded from the NRC. Will they be extended protections as per the law governing juveniles in the country? Will they be separated from their parents and sent to detention if they are unable to prove their citizenship? What guarantees are in place for the protection of the rights of the entire process to which there seems to be no answers.

The state machinery's track record is one of see-sawing. In 2019, the Ministry of External Affairs, which oversees the NRC process as "statutory, transparent, legal," a "fair process based on scientific methods." In almost the same breath, it has called for the NRC to be scrapped. Shifting these goalsposts for political gains reflects an extraordinary lack of regard for the people who have been excluded. Those included in the NRC are also waiting for the final list to be gazetted.

The authorities have not been treating this matter with the gravity that it deserves. Justice delayed, as the adage goes, is justice denied. The state needs to take urgent steps to weeding out the NRC, as fulfilling the aim of weeding out "immigrants".

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REPORTAGE | TALKING POINTS | IDEAS | INSIGHT | THE BOTTOMLINE

# WHY GREEN REFORM IS A GRAVE STEP BACK

India's environmental clearance process is riddled with delays. Will proposed reform make it better or worse?



Policemen try to get people off the road following an explosion at an oil well in Baghjan, Assam. India may be climbing the global rankings on the ease of doing business, but its environmental protection record remains dismal. AFP

Arun Shrivastava  
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The draft Environmental Impact Assessment (EIA) Notification, 2020, released by the Union ministry of environment, forests and climate change (MoEFCC) has been mired in controversy ever since it was placed in the public domain in March. This notification, which aims to replace the existing EIA Notification, 2006, has been in the spotlight even more due to the occurrence of two high-profile industrial accidents recently—the gas leak at the LG Polymers plant in Visakhapatnam and the fire at Oil India Limited's Baghjan oil well in Assam's East Tinsukia district. In retrospect, both projects were found not to have all the required clearances.

Analysis of data on past projects shows that the process of obtaining environmental clearances is plagued by delays and inefficiencies. A 2016 report by the auditor to the government showed delays in each stage as well as poor monitoring of environmental violations. With the new EIA draft notification, the MoEFCC claims the process of granting clearances will be expedited through sweeping relaxations in several spheres.

However, based on what recent data shows, these relaxations appear to tilt the balance in favour of project promoters. For example, project promoters have often glossed over public consultations and now the new law is seeking to dilute the necessity of this step. The most significant change is the legitimization of post-facto clearances, where a project promoter can report a violation retrospectively and pay compensation for the damage done.

Environmentalists argue this can lead to more accidents like LG Polymers, since the plant was not operating with a valid environmental clearance at the time of the accident.

## 4-STEP CLEARANCE PROCESS

An EIA is the most critical step in the obtaining of environmental clearances (EC) since it systematically examines both benefits and adverse consequences of the proposed project. By ensuring that the environmental impacts and the mitigation measures are considered in the project design, the EIA seeks to ensure minimal damage to the environment and the optimal use of resources.

In India, an EIA is mandatory for certain development projects under the Environ-

ment Protection Act, 1986. The complete process for granting an EC has been notified in the 2006 notification. This classifies all projects into two categories, A and B, based on their spatial distribution and the scale of their potential impact on natural and man-made resources. Category A projects are larger in scale and mandatorily require clearances from the MoEFCC. Category B projects are further divided into two sub-categories: B1, which need to seek approval from the respective State Environmental Impact Assessment Authority (SEIAA), and B2, which are exempt from all clearances.

The 2006 notification outlines four sequential stages in the process for granting ECs, along with a recommended timeline. The first stage is screening and involves submitting a pre-feasibility report with the proposed terms of reference (ToR) to the MoEFCC. The screening is to determine whether the project requires an EC or not. Those that require an EC move to the scoping stage where an Expert Appraisal Committee (EAC), appointed by the ministry, either approves or rejects the project and displays the particulars on the MoEFCC website. These two stages are required to be completed within a total of 60 days.

The third stage involves public consultation. Here, the concerns of the local population and others who have a plausible stake in the environmental impacts of the project are heard and sought to be addressed. This consultation is based on the draft EIA, typically prepared by an accredited private consultant agency hired by the project proponent and submitted to the State Pollution Control Board (SPCB). The proceedings of the public consultation are to be displayed on the notice boards of the panchayats concerned and the SPCB website.

The fourth and final stage is where the EAC appraises the project and gives its recommendation to the MoEFCC, which takes the final call. The third and fourth stages are mandated to be completed in 105 days.

There is a further post-EC monitoring mechanism, which entails the submission of half-yearly compliance reports.

## THE SHORTCOMINGS

However, the above process is beset by inefficiencies. A 2016 report by the Comptroller and Auditor General of India (CAG), which is the most recent such exercise, highlights deficiencies in all four stages. The analysis is based on a sample of 216 projects across seven sectors that were granted ECs between 2011 and 2015.

The first lacuna highlighted is delays. In 89% of cases, there was an overall delay in the grant of ECs to applicants. The delays were pervasive at all stages, but especially in the recommendation by the EAC to the competent authorities. In 2014, the projects in the CAG audit faced an average delay of 318 days over the prescribed limit (see Chart 1).

The CAG report also highlights several inconsistencies in the EC process, such as a lack of cumulative impact assessment. Each project's impact was considered independently, without accounting for other existing or planned activities in its proximity. Further, in 2009, the MoEFCC had issued a memorandum that all consultants who conduct the environmental appraisal have to be registered with the Quality Council of India or the National Accreditation Board for Education and Training. However, the CAG audit found that for over a third of the projects analysed, the accreditation certificate was not available for the EIA consultants.

There were also irregularities found in the public consultation process in about 28% of the projects analysed. These included delay in the conduct of public hearing, missing advertisements, advertisement not in vernacular language and not taking views of the public into account. Further, in many cases, there was a shortfall in the commitments made during the public hearing, such as compensatory afforestation, education and employment for the local population, effluent treatment, etc.

CAG also noted that the ministry did not have a database of cases received by it where violations were reported by regional offices. More significantly, zero penalties were imposed by the ministry in 2014 and 2015 for violating EC conditions. As per a 1986 law, the penalty for non-compliance with EC conditions was up to ₹100,000 and/or imprisonment for up to five years. In 2015, an amendment allowed fines up to ₹15-20 crore, and an additional ₹1 crore per day if the damage continues. However, data regarding violations and fines imposed since 2015 is not available in the public domain.

CAG makes several recommendations to improve the EC process, such as adhering to timelines, better screening of projects based on the initial ToR submitted and the establishment of a national regulator to monitor environmental violations.

The CAG recommendations seem to have had some bearing on the MoEFCC. From 2017 onwards, there seems to be better initial screening of the EC applications. According to data from the Parivesh portal of the MoEFCC, in 2017, close to 20% of the EC applications were rejected at the screening stage itself, as opposed to zero projects rejected in 2015.

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SHORT  
STORY

## WHAT

With the new EIA draft notification, the government claims the process of granting environmental clearances will get expedited through sweeping relaxations in several spheres

## BUT

The proposed change in law has been in the spotlight due to the occurrence of two high-profile industrial accidents recently—the gas leak in Visakhapatnam and a fire at Oil India's Baghjan oil well

## MOREOVER

The new relaxations appear to tilt the balance in favour of project promoters. The most significant change is the legitimization of post-facto clearance after ecological damage is done

While the number of rejections decreased in 2018 and 2019, there has been a sharp increase in 2020. Close to 40% of EC applications this year have been rejected at the outset. Some of these projects have been rejected simply because they have applied to the wrong authorities. These include the aforementioned Category B projects, which need to seek approval from the state authorities. However, a majority have been rejected for not meeting the stringent requirements laid down by the 2006 EIA notification. There are projects with missing documents, environmental management plans (EMPs) not fully fleshed out, and inconsistencies in the ToR (see Chart 2). While the increased scrutiny is noteworthy, there are concerns that the 2006 notification is too restrictive. In a recent interview to the *Hindustan Times*, RP Gupta, secretary in the MoEFCC, said India took too long to issue environmental clearances. The new draft EIA notification seeks to relax some of the more stringent regulations of the existing EIA regime—and expedite ECs.

## CHANGES AND CRITIQUE

So what has changed in the new draft notification? For starters, a set of 40 industries will now be classified under Category B2, and therefore be exempt

## PROCESS PUZZLE

Chart 1  
Clearance process is riddled with delays at each stage



Note: Based on a sample of 216 projects between 2011 and 2015 analysed by the Comptroller and Auditor General of India (CAG).

## Chart 2

Since 2017, improved screening has resulted in more rejections



Source: CAG, Ministry of environment, forests and climate change.

LARGEST REJECTION REASONS

from the EIA and public consultation process. This includes projects labelled 'strategic' by the government. No information on 'such projects shall be placed in the public domain'. The projects under this category include oil, gas and shale exploration, hydroelectric projects up to 25 MW, irrigation projects between 2,000 and 10,000 hectares of command area, all inland waterway projects, and the expansion or widening of highways between 25km and 100km with defined parameters.

Further, projects such as roads and pipelines in border areas will not require any public hearing. The 'border area' is defined as 'area falling within 100km aerial distance from the Line of Actual Control'. Activists argue these relaxations will increase the discretionary powers of the MoEFCC in offering concessions to projects that might have severe consequences on the environment and local populations.

The new draft notification has also reduced the mandatory window for public consultation from a minimum of 30 days to a minimum of 20 days. This has caused concerns that there might not be enough

time for the public to be informed and to raise objections, especially in far-flung tribal regions. The issuing of sand-mining licenses in Maharashtra during the lockdown after an online public consultation through Zoom has been criticized by activists as a sham exercise.

However, the most contentious and consequential change is the introduction of post-facto project clearances. This means that projects operating in violation of the Environment Protection Act will now be able to apply for clearance, as long as they have a plan for remediation and resource augmentation equivalent to 1.5-2 times 'the ecological damage assessed and economic benefit derived due to violation'. Further, these violations cannot be reported by the public, but only by the government authorities or the developer-promoter itself.

This goes against two central tenets of environmental protection: The 'precautionary principle' and the 'public trust doctrine'. Once the damage has occurred to the environment, it is often irreparable, especially in sensitive ecosystems, and no amount of post-facto remediation will resolve the problem. By disenfranchising the public who are most likely to suffer the consequences of environmental violations, the new notification favours the interests of promoters over that of the local population.

Activists have cried the changes to the notification as facilitating business interests, rather than the protection of the environment. The government, however, is calling for a more measured view. In the same interview, Gupta says that while the new notification might make issuing clearances faster, there needs to be a stronger monitoring and enforcement mechanism. He adds

this notification is only the first part, and the ministry will release a new monitoring mechanism soon.

India may be climbing the global rankings on the ease of doing business, but its environmental protection record remains dismal.

In 2020, India ranked 168 out of 180 countries, according to Yale University's Environmental Performance Index. The global index comprises 32 indicators of environmental performance and gives a snapshot of 10-year trends. As India strives for further economic growth, it has to ensure this does not come at the cost of its environment, and a robust EIA legislation is critical for a sustainable future.

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## OUR VIEW



## Last quarter's washout must spur policy action

*It's official now. India's economy has contracted for the first time in four decades—by nearly 24% in the last quarter, compared to 2019-20. We can't afford to dither over our policy response*

Data from India's statistics ministry has put a figure on the gloom that has pervaded our economy since the covid pandemic struck. By its estimate, gross domestic product (GDP) in the three months ended 30 June, or the first quarter of 2020-21, shrank 23.9% from the quarterly figure a year earlier. This marks the country's first economic contraction since 1979-80. This is also the first official assessment of the damage inflicted by covid-19. After economic activity was largely brought to a standstill by an all-India lockdown imposed in late March, a drastic fall in our output of goods and services was given. What we did not know was the extent of it. As it turns out, the figure reported is slightly worse than the 20% decline that most economists had predicted. Worryingly, however, this might be an underestimation. Since no direct data on the performance of the informal sector is readily available, our GDP calculations use formal sector numbers as a proxy for the former. Under usual circumstances, that may be fine. But in this instance, informal units were found by some independent surveys to have been hit harder by the crisis. Once better data comes in, the first quarter's GDP may yet need to be revised downwards.

It is clear that the entire economy is in pain. Value addition in manufacturing fell 39%, while construction and trade as well as hotel services lost about half the figure notched up last year. Other sectors also showed significant contraction. The little support the economy got was from farm production, which grew 3.4%. Overall, the picture seems one of deep despair, and it would be foolhardy to bet on a recovery anytime soon. Though our nationwide lockdown has been largely lifted, com-

merce remains constrained. Localized restrictions have prevented supply lines from being fully restored, even as a jumble of curbs in various places made all-India operations hard to run. It is true that factory shutters have been lifted, construction sites no longer look desolate, and offices are reopening. But pre-covid levels of resource availability—both human and material—will take time for businesses to attain. This is obvious on health concerns alone. India's count of coronavirus cases still seems on a relentless upward path, signifying the failure of our flurry of measures to contain the pandemic. The less apparent problem, though, is a second-order impact of the covid crisis. The commercial crunch has translated into job losses, reduced salaries and income anxieties of a kind unfelt in recent times. Demand has slumped, worsening business conditions further, and causing even more uncertainty. Some analysts have even warned of hysteresis setting in as a major risk.

The last quarter's wipeout could be followed by a few more bleak quarters. Indian policymakers must frame their response accordingly. Also bear in mind that India's economy was on a downturn well before the pandemic struck. Investments had dried up and demand had weakened. A recovery plan, therefore, must also aim to fix pre-covid dragons on growth. Incremental change will not do. We need a broad set of structural reforms that address long-term challenges. For an instant uptick, however, the country needs the demand boost of a sizeable fiscal stimulus. Money needs to be pushed around. The Centre could begin by ensuring that people at large have more of it to spend. True, this would be a costly affair. But it has to be weighed against the cost of letting things slide further.

## MY VIEW | THE IMPARTIAL SPECTATOR

## The GST pact must hold for the tax reform to work out

SHRUTI RAJAGOPALAN



is a senior research fellow with the Mercatus Center at George Mason University, US

As India's government reneges on compensating the states for GST shortfalls, there are murmurs of sovereign default, constitutional crisis and breakdown of federalism. Unfortunately, the current situation includes elements of all three. Debt is used by governments to loosen constraints and spend more than they raise in revenue. Borrowing has immediate benefits for political actors, while passing costs to future generations. Lenders find it difficult to enforce contracts with sovereign governments and collect on their debt. But, a host of global rating agencies, financial institutions and markets make it reputationally very costly for a government to default on debt commitments, by making it very difficult to borrow funds in the future.

In the current Indian scenario, defaulting on a constitutional obligation to states is technically not the same as defaulting on sovereign debt borrowed from the market—as many economists have pointed out. It appears the Union government is avoiding a

scenario where it must borrow and struggle in the future if the post-pandemic economic slump continues. Instead, the Centre would rather state had debt on their books, hoping richer states do better, and there are few to no state debt defaults to deal with in the future. This is short-sighted; eventually, the Centre must have to bail states out.

The Centre's latest move should be treated as a sovereign default—as a constitutional default. Just as the Constitution is placed above any ordinary statute, a constitutional contract trumps an ordinary contract. It binds all governments for generations. Defaulting on the GST contract is one step worse. The Narendra Modi government did not inherit a constitutional GST arrangement from its framers. This tax regime, the revenue compensation arrangement between the Union and the states, and the related constitutional contract are entirely its design.

The point of the compensation commitment was to cover states' shortfall even if the economic climate was bad. So, reneging at a time when the economy is doing badly renders it moot. Further, the Centre's distinction of revenue shortfall because of GST implementation versus covid is irrelevant; it was the Centre that looked down all states, preventing them from evaluating their trade-off

between covid containment and revenue-raising economic activity. Even if New Delhi argues that the pandemic is an "Act of God" (it is not), the decision to look down the Union government—not just the present government, but on the accumulated sins of many past governments. So, it is the Centre that must bear the brunt of the latest economic crisis.

Reneging on the deal is worse than having no GST in the first place. It will push India into a new stage of federalism, where states have little reason to cooperate unless the Union is ruled by the same party. Now each state may have an excuse to levy its own additional taxes or break away from GST entirely, becoming protectionist for short-term political gains.

Or, under the rescue plan hatched by the Centre's Reserve Bank of India, states will have to borrow funds at costly rates that they have little hope of paying back. The big reform needed was GST simplification, not more uncertainty by defaulting on states and jeopardizing the federal indirect tax system.

structure means that historically, the Centre has set the economic reforms and growth agenda. If India's economic growth has faltered, it is time to place the blame also on the Union government—not just the present government, but on the accumulated sins of many past governments. So, it is the Centre that must bear the brunt of the latest economic crisis.

**The Centre could create a constitutional crisis and imperil the GST system if it reneges on compensation**

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The Modi government could now face a full-blown constitutional and federal crisis, with states tempted to break their commitments and let GST and non-GST tax rates proliferate. It could mean more border controls and bigger enforcement problems, which could drive India toward economic balkanization and an even worse slump. Or the Centre must tighten its belt, curtail its own spending and borrowing, and keep its commitment to the states.

It could be done by sending a costly signal. The revenue shortfall from GST is about ₹13 trillion. According to the 2020 Budget, expenditure estimates for all centrally-sponsored schemes put together is about ₹13.4 trillion (likely to be revised). The path out of this mess, if we wish to avoid both fiscal profligacy and a constitutional crisis, is for the Centre to cough up the compensation. One way forward is to cut down a bulk of those centrally-sponsored schemes, the Union government to borrow them, and give the money to the states to spend as they see fit. If the states find a socially valuable use, they could choose to spend on it themselves.

Funding the states will keep the Centre's constitutional commitment and also give states more autonomy, which they desperately need to deal with covid.

## There are no bad guys in India's muddle over GST compensation

*The GST shortfall of states can't be blamed on the Centre, whose offer of credit was made in good faith*



V. ANANTHA NAGESWARAN is a member of the Economic Advisory Council to the Prime Minister.

The issue of compensation to be paid to states for shortfalls in the collection of Goods and Services Tax (GST) is great material for discussion in classrooms. One can debate it until the cows come home without reaching any conclusion. Point-scoring is not problem-solving.

The two options presented by the Union government to the states are now in the public domain, and I do not have to restate them. Readers are better off consulting the official version. At the heart of the dispute between some states and the Union government is the extent of the shortfall arising out of GST implementation. The Union government estimates that figure at ₹37,000 crore. States contend that the shortfall is due not just to GST implementation, nor mainly to the pandemic, but due to an economic slowdown for which they hold the Centre responsible. Without such a growth slowdown, there may not have been a shortfall in the GST collections of states—to be met with cess revenue. Economic growth slowed sharply in 2019-20. Nominal gross domestic product (GDP) growth dropped to 7.2% in the year ending 31 March 2020, and real GDP to 4.2% from 11.0% and 6.1% respectively in 2018-19. The problem is one of assigning responsibility for it.

Monetary policy played a role. It is both possible and reasonable to take the view that it was too tight in 2017 and

2019. Indian statistical agencies had a role. The GDP estimation methodology showed higher growth than what actually obtained in 2016-17 and 2017-18. This played a role in dulling responses both from the Centre, in terms of structural reforms, and from the central bank by way of monetary policy.

Global growth also fell, and so did India's export growth. The slowdown was not unique to India. Brazil and Indonesia have suffered far worse export slowdowns than India has in the last few years. Both are large emerging economies. Further, if one went back and looked at growth across nine key emerging economies since the turn of the decade, real GDP growth has slowed sharply in all of them. So, pinning the blame on the Union government for the economic growth slowdown and hence the decline in GST collections is quite as stretch.

The second question is whether the Centre had an moral obligation to compensate states from the Consolidated Fund of India. GST adoption has been a national effort for at least 15 years before it became a reality. India's two major political formations, along with their coalition partners, had tried to advance the cause of GST when they were in office. All states eventually signed on because they believed that higher GST revenue would compensate for loss of revenue autonomy. It did work for several states, including for Tamil Nadu, which had opposed the idea of its GST collections rising faster than its pre-GST sales tax revenues did. Therefore, it is not correct that states acquiesced in the introduction of GST as an act of benevolence towards the Union government. A few facts would help take the partisan edge off the debate.

The total shortfall in GST due to states (protected revenue at 4% compounded annual growth minus estimated actual revenue) is ₹13 trillion. Net of compensation through cess, the amount drops to ₹2.35 trillion. If states opted for their first option given by the

Centre, they would get ₹2.62 trillion, including the compensation cess. That is 87% of the shortfall. This option will enable borrowing of approximately ₹11 trillion. That is because states will be able to borrow the final instalment of 0.5% (originally intended as a bonus for completing at least three of the four specified reforms set out in May) even without meeting the pre-conditions. Through option 2, they can cover the entire shortfall, but the terms are not great. Importantly, under both the options, whatever is not borrowed by states will still be paid to them even after 2022, through an extension of the cess. The delayed payment may be abetting in disguise for states to manage the transition to a post-compensation GST era. Finally, GST has actually delivered 44% revenue growth to all states for the period till the end of last financial year. So all dues have been settled for a total of 2 years and 9 months out of 5 years.

The growth malaise is global and the pandemic has been an unfortunate and involuntary impact. Facilitating borrowing by the states without affecting their debt ratios and arranging to clear any arrears of compensation through future compensation cess collections are "good faith" efforts on the Union government's part. The reliance on future compensation means that taxpayers will have to bear the cost. This is inevitable and is happening in other countries too. Singapore, for example, is contemplating revenue measures to rebuild its depleted fiscal reserves.

One point that the GST Council should discuss but hasn't, is this: both the Union government and States sacrifice fiscal revenues and incur expenditure for many considerations other than national interest alone. The GST compensation crisis is an opportunity to reassess the country's long-term fiscal health from political arbitrage.

Incidentally, whether the pandemic is an act of God or a laboratory is yet to be established. These are the author's personal views.

## 10 YEARS AGO



## JUST A THOUGHT

Trickle-down theories do not address the legitimate aspirations of the poor. We must lift those at the bottom so that poverty is erased from the dictionary of modern India.

PRANAB MUKHERJEE (1935-2020)



| MY VIEW | A VISIBLE HAND

# Do not blame globalization for every economic ailment in sight

An erroneous attribution of problems like inequality to the phenomenon can distract us from the policies needed to solve them



**NARAYAN RAMACHANDRAN**  
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columns at [www.livemint.com/avisiblehand](http://www.livemint.com/avisiblehand)

The fallout from the Global Financial Crisis (GFC) of 2008 triggered a wave of economic research on measurement of inequality. The most noteworthy early discussion on the topic, which turned into a treatise, was Thomas Piketty's *Capital in the Twenty-First Century*. Piketty's study focused on the evolution of incomes of the top 10%, 1% and 0.1%, using tax data. Piketty concluded that the top 1% benefited enormously relative to the rest. The "Occupy Wall Street" movement that gathered momentum after the GFC adopted that slogan as its own.

There has been a wave of scholarly re-examination of academic work on inequality to better understand what has happened and whether the progress of the first three decades after World War II has indeed been eroded. At the economy-wide level, and parallel to the discussion on inequality, is a debate about the long-run decline in the national income share of labour relative to capital. Prima facie, labour's share (income that accrues to workers rather than investors) has been falling in all major economies for the last 40 years or so, while it had remained constant prior to that.

To properly estimate changes in living standards, newer studies on inequality adjust Piketty's income data for taxes and transfers for the top income decile and benefits for the other deciles. Those studies have come up with the noteworthy conclusion that the incomes of the top 1% have not changed materially for the last six decades, even in the US. In other countries like the UK, the difference between the top 1% and the rest was smaller even in Piketty's study. The decline in labour's share has been explained by several factors. In a comprehensive literature survey and study by McKinsey in 2019, the global consultancy attributes the decline to five factors: 1) Boom-bust cycles; 2) Rising and faster depreciation; 3) Superstar effects related to market dominance; 4) Capital substitution/deepening and automation; and 5) Globalization and labour bargaining power. Contrary to widespread perception, they find that the most important cause of the decline in labour's share, particularly in extractive industries and the real-estate sector, are boom-and-bust cycles.

After the initial decades of positive trends, after World War II, much has gone wrong with the practice of market capitalism. In recent years, social mobility has been falling, equality of opportunity has remained elusive, superpower companies (in developed countries) and superpower entrepreneurs (in the developing world) have accumulated market power that distorts competition, and housing, health care and some lifestyle aspects like live entertainment have become increasingly expensive. Despite these failings, the new studies suggest that attributing the declining labour share



of national income to globalization and automation would be hasty and possibly erroneous.

Populists around the world have risen to power by using economic inequality as a political plank. Over time, as populist leaders become the establishment, it seems likely that the economic basis of that plank will be questioned. Received wisdom that inequality in society is due to globalization and automation will continue to be re-examined. While de-globalization, or some form of "slowbalization", will probably remain with us for many years, globalization's "villains" will be better understood in the context of other factors. For developed economies, this would imply a need to turn away from knee-jerk "nationalism" and focus instead on reducing the disruption caused by a range of factors responsible for middle-income stagnation.

For India, in particular, the lessons are manifold. The first is that we should start tracking whole-economy statistics in a much more transparent, objective and rigorous way than we have been doing so far. Our labour market data, for example, is simply too poor for any useful data analysis. Only with consistent and unbiased data can we draw appropriate conclusions for policy action. A second lesson is that we should continue to enable economy-wide growth. This is the most effective way of lifting the entire population rather than

attempting to focus on one group or another, which dissipates energy and lacks effectiveness. A third implication is that we should widen the tax base beyond our tiny group of income-tax payers. This should be the focus, rather than inventing new forms of taxation or increasing direct (cess) or indirect taxes (the goods and services tax already has extraordinary high rates) to make up for the shortfall. An important takeaway for India is that it stands to benefit greatly from globalization. Global capital and technology and international talent (both our diaspora and foreign citizens) have a role to play in India's future prosperity. India should focus on fighting a resurgence of crony capitalism and keeping powerful businesses from distorting competition in any sector (this is a more significant contributor than globalization to inequality). Domestic policy in India should try to reallocate the fruits of a fair-play economy and globalization more inclusively, particularly to marginalized groups, through the use of innovative, modern and time-defined welfare programmes.

P.S.: Things are not always what they seem, the first appearance deceives many," said Plato in *Phaedrus*.

*This is the concluding part of a two-part series on rethinking received economic wisdom in the aftermath of the covid pandemic.*

## MINT CURATOR



The find is Britain's earliest example of Christian graffiti on an object

### Ancient graffiti found on 5th-century chalice

Archaeologists have unearthed a unique fifth-century chalice near Hadrian's Wall covered in Britain's earliest example of Christian graffiti on an object. The lead vessel, the only known example of its kind from the period, was found in 14 fragments buried beneath the remains of a 5th or 6th century church during an archaeological dig at Vindolanda Roman fort in Northumberland. Although in poor condition the pieces were found to be covered in well-known symbols from the early Christian church including ships, crosses and chi-rhos, fish, a whale, a happy bishop, angels, members of a congregation and letters in Latin, Greek and potentially Ogam. This combination of etchings and the context of the discovery makes the artefact "one of a kind from this period of British, and indeed European..."

*The Independent*

### Fake Rembrandt traced to an artist's workshop

A tiny painting of a weary, melancholic old man long rejected as a fake and consigned to a museum basement has been revealed to be one from Rembrandt's workshop, and possibly by the man himself. The Ashmolean museum in Oxford will this week put on display *Head of a Bearded Man* (c.1630) which was bequeathed to it in 1951 as a Rembrandt panel. In 1981, it was rejected by the Rembrandt Research Project, the world's leading authority on the artist, that effectively has a final say on attributions. "They saw it in the flesh and decided it wasn't a Rembrandt painting," said the Ashmolean's curator of northern European art, An Van Camp. "They said it might be an imitator painting in the style of Rembrandt and is possibly made before the end of the 17th century, so not even in Rembrandt's lifetime..."

*The Guardian*

### The idea of immunity passports refuses to die

In recent months, the idea of introducing digital immunity passports has begun to circulate as a potential lifeline to jumpstart international leisure travel. "An immunity passport is a presentable proof of immunity to Covid-19," said Husayn Faisal, co-founder and CEO of Onfido, a London-based technology company specialising in facial biometric certification. "It is designed to help an individual prove that they have been tested and that their test result belongs to them, but without having to share any personal information." Immunity passports are currently being examined primarily for the benefit of frontline medical workers, allowing them to continue working safely with reduced risk of outbreak in hospitals. The jury is still out on whether the UK will formally adopt immunity passports...

*BBC*

### Spot where your hometown was millennia ago

A California paleontologist has created an interactive map that allows people to see how far their hometowns have moved over 750 million years of continental drift. The online map, designed by Ian Webster, features a range of tools that also make it easy to discover more about the Earth, such as where the first reptiles lived or when the first flower bloomed. "It shows that our environment is dynamic and can change," Webster, 30, told CNN. "The history of Earth is longer than we can conceive, and the current arrangement of plate tectonics and continents is an accident of time." Webster built the map as a web application that sits on top of another map which visualizes geological models created by geologist and paleogeographer Christopher Scotese.

*CNN*

### America set to revive its abandoned virus hunt

A worldwide virus-hunting program allowed to expire last year by the Trump administration, just before the coronavirus pandemic broke out, will have a second life—whatever the outcome of the presidential election. Joseph R. Biden Jr. has promised that, if elected, he will restore the program, called Predict, which searched for dangerous new animal viruses in bat caves, camel pens, wet markets and wildlife-smuggling routes around the globe. The expiration of Predict just weeks before the advent of the pandemic prompted wide criticism among scientists, who noted that the coronavirus is exactly the sort of catastrophic animal virus the program was designed to head off. The new program, set to begin in October, will be called Stop Spillover.

*The New York Times*

## GUEST VIEW

# The headache of IBC resolution plans wrecked by covid

PRITHU GARG & SHAILENDRA SINGH



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An intriguing dilemma awaits the Insolvency and Bankruptcy Code (IBC) when it returns to full force in September after a six-month coronavirus-induced suspension.

The pandemic has wreaked havoc on the Indian economy and businesses are stumbling towards insolvency and over-burdened bankruptcy courts. Companies have seen their grey-market valuations sink along with the collapse of the commercial premise that attracted offers from resolution applicants in the first place. Should the courts, then, allow resolution applicants to withdraw their plans? The stage is set for precedent-setting legal skirmishes, with significant new investments and jobs at stake. On one hand, bankers, already accepting haircuts on non-performing loans, are under pressure to close deals and collect what they can. On the other hand, a queue of investors is eager to pick up assets at a discount and access India's large market.

Should risk-taking applicants who, in agreement with creditors, have built in their plan robust contractual protections, including for pandemics, be allowed to trigger these clauses—known as "force majeure"? This question assumes significance as both foreign and domestic investors view security and sanctity of contracts as their top task of the company to achieve an "ease of doing business" status that can be verified. Under the IBC process, an applicant for a distressed firm submits a resolution plan—a schedule of debt repayments and a revival strategy. The Committee of Creditors places the best plan before the National Company Law Tribunal (NCLT) for approval. The tribunal's primary task is to ensure that the plan survives and meets its promise.

But what happens if, after approval but before effective implementation, the plan turns unviable, or the basis of the company's valuation gets eroded? Should the applicant be permitted to exercise exit clauses because market conditions for a viable implementation of the plan have vanished?

Recent decisions illustrate the pulls and tugs on IBC provisions in this context. The Mumbai NCLT allowed Deccan Value Investors, a US-based fund, to withdraw its plan for Metalsa Forgings after approval by

creditors on account of unviability. This decision was confirmed by the National Company Law Appellate Tribunal (NCLAT) and holds good under the law for now. Similarly, the NCLAT in Tarini Steel's case permitted the withdrawal of a plan after NCLT approval. More recently, the Ahmedabad NCLT in Digjam's case allowed modifications on grounds of changed circumstances, post-covid.

In contrast, decisions involving Educomp Solutions and Astonfield Solar (Delhi NCLT) have set a precarious precedent by refusing a withdrawal or modification, on the basis of "lack of jurisdiction" to grant such permission. These decisions overlooked specific IBC provisions that grant the tribunal "jurisdiction to entertain... any question of law or fact, arising out of or in relation to the insolvency resolution..." and further endow it with "inherent powers".

If, for example, a company's valuation after the plan's approval is found to be incorrect, or a "mistake of fact" is revealed about

the existence of a major asset, then should the applicant be compelled to pay up?

Take the instance of Jet Airways. What if, after the plan's approval by creditors but before Jet is effectively placed in the hands of the applicant, the civil aviation regulator revokes Jet's licence on grounds other than non-payment of dues?

Should the applicant be forced to go to insolvency courts again?

If the starting assumption is the premise of free negotiation between creditors and an applicant, it follows that a company is allowed to re-enter a negotiation if conditions change sufficiently to threaten the viability of the plan.

We recall an applicant for a power generation company rushing to the tribunal because an agreement for sale of power no longer existed, throwing into disarray its valuation of it. Similarly, an applicant in Antek Auto's case has so far been unsuccessful in convincing the NCLT that the contractual provisions of its bid should be upheld. This is a fundamental aspect of

the rule of law that investors rightly demand—will contracts be enforced?

There are myriad scenarios with a single clear effect of compelling an applicant to execute an unviable plan. Such an applicant would be left with no option but to declare itself insolvent and force all stakeholders to re-start the process. The IBC, after all, threatens penal consequences for contravention of an approved plan.

The tribunal is endowed with the responsibility of balancing two seemingly conflicting interests: that of creditors in gaining more value than if the company were to be liquidated, and that of an applicant in acquiring the company. The expiration of Predict just weeks before the advent of the pandemic prompted wide criticism among scientists, who noted that the coronavirus is exactly the sort of catastrophic animal virus the program was designed to head off. The new program, set to begin in October, will be called Stop Spillover.

The exercise is also not easy given the limited time frame to complete the process and the legal issues that abound. But the tribunal must still open itself to examining each case on its specific facts and circumstances and according to the terms of each offer. If not, it is unlikely that better candidates or applicants will be willing to step forth without scepticism, defeating the purpose of the IBC.



# Opinion

TUESDAY, SEPTEMBER 1, 2020

## If govt doesn't spend a lot more, expect a big collapse

At a time when govt needs to be spending ₹10-12 lakh-cr more, its spending is slowing; and public capex is falling

**GIVEN HOW THE** near-24% contraction in GDP in the June quarter was much worse than we believe it is. These numbers have been crunched in the absence of adequate data, and the revised data could be even more disappointing. In fact, given the performance of the informal sector is extrapolated from the formal sector data—and that the pandemic would certainly have hurt the informal sector more badly than it has the organised sector—there is a fairly good chance the growth numbers would turn out to be weaker. Indeed, one area where economists seem to have been a little too optimistic is agriculture, which clocked in a growth of only 3.4% y-o-y, nearly 150 basis points below consensus estimates. For all the talk of the rural sector supporting the economy, that does not seem to have materialised at all; economists have pointed out that rural India depends heavily on the construction and real estate sectors doing well to create jobs, but both are in dire straits.

Expectedly, private consumption collapsed in Q1, contracting nearly 27%; but we knew consumers were being cautious because PFCE grew at an anemic 2.7% y-o-y in Q4FY20, the slowest in 21 quarters, even though business was shut for just 15 days.

Investment has been sluggish for several years now, and GFCF had contracted in the last three quarters of FY20; so, the negative 47% y-o-y in Q1FY21 does not come as a shock. In fact, unless the government now spends serious amounts on capex, the GFCF could trend below 2.3% of GDP seen in Q1, which is the lowest level reported in at least eight years. As of now, there are few signs the government is stepping up. The Centre's Budget spending in April-July was up just 11.3% on the year, compared with the targeted rate of 13.2%. For July, the increase in spending was a mere 6% y-o-y, against 46% achieved in June; also, the budget capex in July actually fell sharp 47% y-o-y. Since the private sector would be very hesitant to risk more capital, the government must be bold and spend significantly. It could easily tap household savings—at reasonable interest rates, especially since banks are not putting deposits to work.

We need to appreciate that India is strapped for cash; profits for a sample of about 1,400 companies crashed 35% y-o-y in Q1FY21. The government also needs to support MSMEs, which have been debilitated by disruption, beyond the guaranteed credit lines, otherwise many may yet succumb. Support for the Covid-hit sectors—hospitality, aviation, tourism—either with credit lines or other means are greatly needed; indeed, much more support for the industry is called for because there is a high chance of many businesses going belly up.

Once the government spends meaningful amounts—in capex—it would boost demand, giving the private sector the confidence to invest. There is also an immediate need for some kind of a consumption stimulus, even if for a limited period during the festive season. A cut in personal income taxes—at the lower-income levels—would help as would cuts in GST on items such as two-wheelers. Without this, consumption would stay sluggish, leaving India to report a double-digit contraction in GDP in FY21.

## Reaching cyber-defence

Need a more pro-active regulator to keep citizens informed

**WHILE PAYTM HALL** has denied a report—by cybersecurity firm Cyble—that its data had been hacked, the reports should be a wake-up call for India's cybersecurity agency CERT-IN. Defending its database is each company's responsibility, but it is CERT-IN's job to keep the public informed of the actual picture when there are reports/threats, and it is its job to conduct audits, even surprise checks, of a company's security. In this context, however, several high-profile misses blur the record. Last year, CERT-IN only alerted WhatsApp users of their accounts being hacked, after media organisations had published reports of Israeli software Pegasus affecting phones across the world. The Kudankulam nuclear power plant attack also escaped its radar, and in 2017, CERT-IN was late in responding to Petya and Wannacry attacks.

Given how security threats are only going to increase, India needs more proactive regulation. More important, India also needs new regulation. While India was one of the first countries to enact a cybersecurity policy in 2013, it is yet to come out with new rules that mandate stricter data protection rules and regular security audits. An array of organisations has further complicated India's cyber response. Unlike the US, Singapore, and the UK, which have a single umbrella organisation dealing in cybersecurity, India instead has 36 different central bodies, one for every ministry, to deal with cyber issues, and each has a different reporting structure. Moreover, every state has a CERT body of its own. India, thus, needs to create an umbrella organisation for better co-ordination. It also needs to start looking at cybersecurity as a necessity. First, the government will have to upgrade its systems. One reason for a high number of attacks on government bodies is the use of legacy systems and software. In 2018, a Telegram report had found that hackers were able to bring down the national health service (NHS) network in the UK because some hospitals were still using legacy Windows XP systems.

The government also needs to foster a partnership between academia and industry to promote cyber-hygiene. Although it has plans to create a certification for cybersecurity professionals, it also needs to enrol the help of universities so that they can check apps for cybersecurity issues. The new national health database policy envisages regular audits for data operators; this has to be extended to other areas as well.

## JailJAM

Overcrowding in jails is growing, need to tackle the issue of jailed under-trials through bail reform

**A RECENT REPORT** from the National Crime Records Bureau (NCRB) shows overcrowding in jails increased from 115% in 2015 to 119% in 2019. While the increase doesn't surprise last year, an SC-appointed committee had indicated this, as had the NALSA report in 2017—the length of time over which overcrowding in jails has been allowed to fester is shocking. While 57% of those lodged in jails comprised of under-trials in 1975, NCRB data shows this increased to 67% in 2019.

More important, none of the reforms suggested in the law commission reports or by committees seem to have been acted upon. In 2017, the 268th Law Commission report, for instance, had highlighted that bail reforms need to be instituted immediately, and the government needs to expand the scope of Section 436A of the Code of Criminal Procedure. The Section directs that an under-trial having spent half the maximum period of the sentence be released; the commission had recommended this to be brought down to one-third for offences where the maximum period is up to seven years. Last year, the court had asked under-trial review committees to meet every month for the first six months to review under-trial cases. Earlier this year, taking cognizance of the matter, the CJ had remarked the issue was connected to the performance of courts. The NCRB report highlights that there was also the problem of understaffing in prisons. As against a requirement of nearly 1 lakh people, only 66,000 posts had been filled. Although bail reforms need to be brought in immediately, the court needs to complement them with prison reforms and fast-tracking of criminal cases.

## ● GST COMPENSATION

THERE WAS NO REFERENCE TO "ACT OF GOD" IN THE GST AGREEMENT, NOR WAS IT PROVIDED THAT THE STATES WILL HAVE TO BORROW & PAY INTEREST ON THE COMPENSATION LOANS

# The compensation conundrum

**THE GST COMPENSATION** Act requires compensating the states for a shortfall in their revenue collection because of GST implementation over two months. The states have joined the GST regime in 2017 on the agreement that they will receive compensation equivalent to the difference between the revenue from the taxes collected in GST in 2015-16, increased 14% every year, and the actual revenue collection from the tax. Of course, it was optimistic to take a high growth rate, but that was a part of the "grand bargain" lure for the states to join the reform. With a sharp decline in revenue collection due to the pandemic, the Union finance ministry has put forward two alternative proposals in the meeting of the GST Council, held specifically to discuss the issue. The states have been asked to decide on the proposals within seven working days.

Even as the fine print of the two proposals is unfolding, there is considerable consternation among states on the recommendations. They are vexed with the solutions offered as an abrogation of the agreement. The entire episode brings out the fact that despite enjoining "cooperative federalism", ultimately, it is the revenue bargaining power and not the spirit of the agreement that decides the solution. Even if the states feel that they have been given the short-shift, there is very little they can do. They cannot go back to the pre-GST regime, nor is there a dispute resolution mechanism. Although Clause 11 of Article 279A of the Constitution provides for the creation of an adjudication mechanism by the GST Council, it has not been done so far.

The states were persuaded to forgo their fiscal autonomy in favour of tax harmonisation only after assuring that their revenue interests will be safeguarded for five years. The compensation amount was to be estimated as discussed above, and to finance this, provision was made to let the Centre to levy compensation as cess on

**M GOVINDA RAO**  
Chief Economic Adviser, Brickwork Ratings, and former member, 14th Finance Commission  
Views are personal

Some 'luxury' items and 'demerit' goods were to be deposited in the compensation fund to be kept in the Consolidated Fund of India and the excess will be transferred to the Consolidated Fund of India and the remaining to the states.

However, there is no mention in the Act about what would be done when there is a shortfall. However, according to the minutes of the 7th and 8th GST Council meetings, the FM had assured that compensation to the states shall be paid in full over the five years within the stipulated period.

And, in case of a shortfall, the GST Council shall decide the mode of raising additional resources including borrowing from the market, which could be repaid by collecting the cess in subsequent years. In the prevailing situation, the states are hoping that the Union government would borrow the required funds, which could be repaid from the collections from the cess in future.

The GST Reform was hailed as a great experiment in "cooperative federalism" with all the states and UTs with legislative powers joining the Centre in the reform to harmonise domestic trade taxes. But the real test of cooperative federalism lies in a crunch situation. Faced with significant erosion of their own revenues and substantial decline in the tax revenue from the Centre and facing

With sharp increases in their liabilities in account of fighting the pandemic and providing livelihoods to the people and saving the economy, they were hoping that the Centre, armed with greater strength and borrowing powers, would help them tide over the difficulties.

The two proposals put forward is to choose between two options: a 'hard place'.

According to the available reports, the total revenue to the states is estimated at ₹10.65 trillion. After adjusting for the estimated revenue collection from the cess at ₹0.65 trillion, the loss to the states works out to ₹10 trillion. After adjusting for the loss on account of Covid-19, which is termed as an "Act of God", the loss is estimated at ₹9.35 trillion.

In the first proposal, the states can borrow ₹9.35 trillion, and the Centre would arrange with RBI to open a special window at a lower interest rate for servicing and repayment of this loan. But the future cess collections, and this will not be counted in the abilities. In the second, the states can borrow the entire shortfall of ₹2.35 trillion from the market and pay the interest, though the repayment will be made from future cess collections as states liability to the Centre is not expected. There was no reference to the "Act of God" in the agreement, nor was there a provision that the states will have to borrow and pay interest on the compensation loans.

The proposals raise a number of

The projections and adjustments made to account for the "Act of God" are contestable. It would be better if the Centre borrows

## China calls Trump's bluff on TikTok

With the US-China trade talks inching slowly forward, Beijing has found itself a bargaining chip. Whether or not Trump is found to be bluffing, both sides now think they have the stronger hand

**IMAGINE A BIDDER** wanting to buy KFC, but being told the deal might not include the Colonel's 11 secret herbs and spices. That is effectively what Beijing has told the list of US companies keen to purchase short-video app TikTok. The key ingredients may be out of reach.

At first it looked like the Trump administration had it all figured out.

ByteDance Inc, it decided, was a risk to national security and the Chinese company's main product for international markets had to be sold. For reasons that remain confounding, Satya Nadella entered the fray and Microsoft Corp put in a bid. Soon, suitors were apparently lining up to buy the hip new product that claims 100 million US downloads. A short deadline—September 15—helped build a sense of urgency. TikTok is essentially going through a forced sale.

Then Beijing stepped in. China's commerce ministry added new items to its list of export controls late Friday. Now, artificial intelligence technologies such as speech and text recognition, as well as methods to analyse data and make personalised content recommendations, are matters of national security.

That means ByteDance will need Chinese government approval to sell TikTok's US operations. Bloomberg News reported Sunday, a person familiar with the matter said the new rule is aimed at delaying the sale, not an outright ban. But with AI and its content recommendation engine among the key ingredients of the company's success, Beijing becomes the arbiter of TikTok's fate. Not the US administration.

As much as critics—including the US senators and the secretary of state—express concern about the data

TikTok collects, it is really the algorithms that matter most to the company, and anyone who buys it. These are the magic formulae that tell the app what data points will predict future behaviour, and keep you staring at the phone longer. If you linger on hip-hop videos and swipe past cooking tips, then chances are you will be seeing more lip-synched DJ Khalid and fewer turkey-stuffing recipes. Speech and text recognition allow TikTok to peer deeper into content to extract a better sense of what is being said and written.

Facebook Inc, Snap Inc and Alphabet Inc are among those pouring billions of dollars into better predicting user behaviour. This is the bread and butter of search-engine results and timeline feeds, helping them sell more targeted ads at higher prices. Notice that Google tends to return better results than Bing, despite having access to the same pool of data (the entire internet), and you get a sense of why algorithms matter.

This development will surely send Microsoft, Oracle Corp and everyone else back to their bankers, and lawyers, trying to figure out what TikTok would be worth without those algorithms. ByteDance, for its part, will need to work out what it can and cannot throw into the package it is

As much as critics express concern about the data TikTok collects, it is really the algorithms that matter most to the company, and anyone who buys it

being forced to sell. That is not easy. At worst, this may require trawling through millions of lines of code to sort out whether content is allowable or forbidden. It is not black and white. What one person considers AI may be viewed by another as mundane software technology.

As bidders rush to guess what Beijing may allow them to buy, and reassess whether they want to make an offer, some may simply conclude that it is too fraught with uncertainty. Any final transaction will surely be couched with provisions about what they will be able to obtain—management's fiduciary duty to shareholders requires no less.

This move puts the ball back in Donald Trump's court. The US president may need to contend with the real possibility that TikTok doesn't find a buyer, and he will have to decide whether one of the nation's most popular products should be removed from the app store of its most valuable company.

Trump may think that strong-arming China will boost his re-election chances, but being outplayed could backfire. It is also possible that if TikTok ends up being bought and sold together, there will be a backlash by the app's fans.

With the US-China trade talks inching slowly forward, Beijing has found itself a bargaining chip. Whether or not Trump is found to be bluffing, both sides now think they have the stronger hand.

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners

## LETTERS TO THE EDITOR

### India will miss Abe

It is geography and geopolitics that make India and Japan natural allies. But, it would be unfair not to credit Japanese PM Shinzo Abe for the way the relationship has flourished. PM Modi, who like his predecessor Manmohan Singh enjoyed a good rapport with Abe, tweeted praise for his counterpart's "personal commitment" to the Japan-India partnership. It was another Japanese premier who kicked off the annual Japan-India summit in 2005, but it was under Abe their significance mounted. It was also under Abe's watch the 2014 Indo-Japan nuclear deal went through, despite stiff anti-nuclear opposition in Tokyo. It was Abe, too, who persuaded the US and other Western countries to recognise India's geopolitical and economic importance. He also helped build up the Quad (the loose alliance of India, Japan, the US and Australia) and got India to participate more in the Malabar naval exercises. The two nations will likely sign a reciprocal naval facilities pact soon, allowing India to utilise Japan's Djibouti base to counter China in the Indian Ocean, and give the Japanese access to the Andaman & Nicobar Islands—both with good reasons: needing alliances to contain Beijing's ambitions. On the economic front, too, Abe played a big role in backing the nation's nuclear power and Modi's pet Bullet Train project. Officially, Abe's sudden resignation is due to a relapse of the ulcerative colitis that has long troubled him. But another theory is that he has become more unpopular domestically amid criticism of his handling of Covid-19. Still, he is such a shrewd player that analysts don't rule out his returning as PM in more favourable political times. The India-Japan relationship wins no doubt, three no matter who's the leader. But, it may lack that extra savvy energy Abe brought to the table and which helped push through many deals.

—Sanjay Chopra, Mohali

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## ● RoFR RIGHTS &amp; WRONGS

## Getting RoFR right

Even if the Kerala government was required to participate in the auction, the stipulation that the state's bid had to be 'within 10% below the range of highest bid' was against the spirit of RoFR. There should have been a right-to-match, as there is in the IPL

**I**F ONLY THE Government of Kerala (GoK) or Kerala State Industrial Development Corporation (KSIDC) had paid attention to the auction process in Indian Premier League (IPL), the controversy over the state government not winning the contract for managing Thiruvananthapuram International Airport could have been avoided. The GoK could have agreed to participate in an auction, but should not have agreed to the proviso that it will be eligible for the right of first refusal (RoFR) only if its bid is within 10% of the winning bid.

Civil aviation minister Hardeep Puri tweeted, "If Kerala Govt is against privatisation, then why did it participate in the bidding process? State Govt was given a fair chance & Right of First Refusal (RoFR) if their bid was within 10% below the range of highest bid. However, they bid 19.64% below." The point is not whether the Kerala government is pro- or anti-privatisation. The point is that Kerala should have bargained to have the option of matching the winning bid. The price of a commodity is discovered via the bids submitted by other participants, and the entity with RoFR can essentially sit out of the bidding process. What Kerala agreed to was not a standard RoFR since it not only had to participate but also had to be within 10% of the winning bid to be eligible for matching the winning bid.

A good example of RoFR is the Right-to-Match (RTM) card which was introduced in the Indian Premier League (IPL) 2018 auction. The RTM was introduced to help a team reacquire a player who had played for the said team in the last season. Consider the case of Shikhar Dhawan. He had played for Hyderabad Sunrisers the earlier year. Kings XI Punjab placed the winning bid of

5.2 crore for Dhawan. At that point, Hyderabad Sunrisers used their RTM and ensured that Dhawan continued to play for them. In the 2018 IPL auction, Mumbai Indians, Chennai Super Kings, Rajasthan Royals all used RTM to retain Kieron Pollard, Farid Khan and Ajinkya Rahane, respectively. A total of 19 players were bought by different franchises using RTM. One of them had to bid for these players in order to be eligible to use their RTM card. But then, the Supreme Court of India ruled participation in the tender as a necessary condition for exercising RoFR. The case was in the context of an unfinished road project unlike the contract for airport in Kerala. Even if the state government is required to participate in the auction, the stipulation that the state's bid had to be 'within 10% below the range of highest bid' is against the spirit of RoFR. The objective of the auction is to facilitate price discovery. Adani Enterprises offered per passenger fee of ₹1.68 while KSIDC and GMR Airport offered 137 and ₹5.3 per passenger, respectively. At this point, the logic behind IPL auction process should take over: KSIDC will have the RTM if the offer made by Adani Enterprises. If the state government believes that the winning bid of 1.68 is a viable one, then it should match the offer rather than litigate. Otherwise, it should simply walk away.

Courtesy the IPL, cricket aficionados play are conversant with intricacies of an auction process. Ironically Kerala had understood certain aspects of IPL auction, they might have had a better chance of being elected as the concessionaire for operations, management and development of Thiruvananthapuram airport.

Another lesson from IPL is that teams fight tooth and nail to retain the players they see value and have invested in. Since the Kerala government has given land for the airport, it should have gone to the court to ensure that its interests are not compromised. One might argue that the compensation for this is separate from that of the passenger fee, and the two issues should not be mixed up. But then, the fact that the winning bid is higher by early 20% attributable to the land provided by the state government?

Recent developments suggest that the issue of RoFR has not been thought through despite instances of it being used as a policy to promote Make-in-India. Case in point is the 2019 guidelines of the shipping ministry that gave priority chartering to Made-in-India ships. But, the guidelines were contested and later withdrawn. Readers might recall another case from recent times that hogged the headlines, *Indian Hotels Company Ltd vs New Delhi Municipal Council*. The case pertained to the renewal of the lease for a hotel located in south Delhi.

There appears to be a temptation to tinker with RoFR depending on the specifics of the case. We need to allow auction theory to provide us guidance rather than go by intuition or gut instinct. First, economic theory would allow bidders to bid, with an RoFR, other parties might not bid. This is why we gave the example of RTM card used in IPL auction. Second, if a tender stipulates requiring a minimum number of bidders, the entity with RoFR should ideally not be considered as a part of the process of price discovery. Third, RoFR is not a negotiated settlement as the auction process helps set the price. But there are still some questions where there are no clear-cut answers. In the auction, Adani Enterprises or any other entity only had to outbid KSIDC by 10%, the pre-specified bid-difference clause. Would entities bid differently depending on whether there is a bid-difference clause or not? Does the size of the bid-difference clause matter? In instances like the *Indian Hotels* case where the incumbent has a perceived advantage over any entrant, how should RoFR be structured? If the government is planning to use RoFR as a policy instrument, we need a better and informed discussion on the issue.

## ● LAND ACQUISITION

## Refine process to unlog courts

LEAH VERGHESE

Executive discretion and inadequate compensation have led to litigation clogging the courts

**T**HE DEBATE OVER the recent Karnataka Land Reforms (Amendment) Ordinance has brought into focus the contestations over land in rural India. Conflicts over land form a large proportion of civil litigation in India. DAKSH's *Access to Justice* 2017 survey showed 29.3% of civil disputes concerned land and property. Apart from disputes between private parties over inheritance, encroachment and eviction, there is widespread litigation over the compulsory acquisition of land by the state.

DAKSH conducted a study of land acquisition litigation in six districts and the High Courts of two states, Maharashtra and Karnataka between 2008 and 2018 to understand the nature and causes of such litigation. These cases relate both to the Land Acquisition Act, 1894 (1894 Act) before 2013, and the new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act).

In Maharashtra's Amravati, Beed and Raigad districts, land acquisition cases on average remained pending between 1,516 days and 2,462 days. In Amravati and Beed, execution cases in land acquisition took inordinately long to get disposed. Execution cases here usually are for payment of the compensation amount. These delays in execution indicate serious flaws in the administration of the process, especially the payment of compensation by the state. If the state takes 1,424 days to merely pay money to a person whose land has been acquired, it points to a severe lack of planning in the executive processes.

In Bengaluru Rural, Mysuru and Kalaburagi in Karnataka, land acquisition cases remained pending between 729 days and 4,038 days. In Mysuru and Kalaburagi, the large number of appeal cases before the district courts indicates a general propensity to appeal in the expectation of higher compensation or perception of not having been treated fairly. This tendency to appeal persists despite the prospect of the tax on compensation pending for years, indicating that the perceived benefits of a favourable order from the appellate court far outweigh the litigants' transaction costs in terms of time, effort and money.

Cases involving a challenge to compensation constituted 52.9% and 51% of the land acquisition litigation before the Bombay and Karnataka High Courts, respectively. Among such cases, reference courts/district courts hearing appeals from the decision of the land acquisition officer have almost always enhanced compensation owed to landowners. Despite the increase in compensation by the reference courts, people still approached High Courts, seeking a further increase in compensation. The Bombay High Court enhanced compensation in 46.8% of the cases and the Karnataka High Court did so in 41%. It would be fair to conclude that inadequate compensation, coupled with a trend of courts increasing compensation, incentivised landowners to litigate.

The other major reason for litigation at the high court level is procedural irregularities. The most common procedural irregularities alleged were related to the preliminary notification of acquisition, declaration of public purpose and invocation of the urgency provision. These echo one of the major criticisms of the Land Acquisition Act 1894, of unbridled executive discretion. This kind of discretion led to a lot of room for arbitrary actions, various interpretations of statutory provisions and hence created fertile ground for litigation.

The 2013 Land Acquisition Act has reduced executive discretion to determine compensation and has delineated the ambit of 'urgency' and 'public purpose'. However, the new provisions relating to compensation, social impact assessment, rehabilitation and resettlement still leave scope for executive discretion and hence the possibility of protracted litigation.

State governments need to create guidelines and set up protocols that narrow the scope of executive discretion and hence create more equitable outcomes for all parties concerned. It would be useful to have nodal officers at the department-level to avoid and contain litigation.

The 2013 Act has also ousted the jurisdiction of district courts over land acquisition, and references from Collectors' awards now lie with an authority to be created under the Act. However, several states are yet to establish these authorities seven years after they were mandated. It is imperative that state governments issue guidelines on implementation and establish these authorities. Any changes in land laws will fall short on expectations unless the basic infrastructure for dispute prevention and resolution is in place.

## GST IMBROGLIO

**T**HE RECENTLY-CONCLUDED 41st GST Council meeting was keenly followed by all stakeholders in the Indian economy.

The biggest takeaway for Trade and Industry was that there was no discussion, and hence no decision on either increasing the existing GST rates or enhancing the ambit of the levy of GST Compensation Cess in view of the huge shortfall in the GST revenues expected in FY21.

The Centre cleared its position on the liability to pay compensation to the state governments. With the two options given to the states to choose from, it sent a strong signal to the states that the Centre is unwilling to foot the bill, though willing to facilitate borrowing by the states. So much for co-operative federalism!

After three years of implementation, in hindsight, it now appears that agreeing to compensate the states for any GST revenue shortfall, that too at a 14% compounded growth rate for five years, was a tall order.

With no linkage to GDP growth rate during the same period, and with petroleum products, electricity, alcohol (fully) and real estate (partially) kept out of GST, it was a recipe for disaster. The economy was doing good in 2015 and 2016, and hence,

## It takes two to tango!

The Centre and the states need to sort out the compensation issue amicably

RAHUL RENAVIKAR

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there was a tinge of optimism in the blanket 14% annual increase in revenue for computation of compensation to all states. At the time, there were many states whose revenues from those taxes subsumed under the GST were hardly growing in single-digits. A 14% guaranteed increase in revenues, that too at a compounded rate for five years, was like a windfall for these states, which never objected then. Why would they?

In fact, it would have made these states very complacent in all matters relating to GST, including its implementation, once they got this assurance from the Centre. The Centre perhaps should

have adopted a differential approach, depending on pre-GST tax revenues of the states, and devised a band of compensation slabs. It is now simply clear that the Indian economy started to face headwinds in FY17 (the year in which DeMo happened). FY16 was used as the base year for calculation of GST shortfall, not FY17, the year immediately preceding the GST implementation year.

The GDP growth rate was around 8.2% in FY16, by far the highest in the last five years or so. It slid to 7.1% in 2017. By FY19, it was 6.1%, and it is estimated that the growth rate will be

around 4.2% in FY20. Taking FY16 as the base year for calculating the compensation for GST losses has proven to be an additional burden.

As it was not enough, Covid-19 hit the economy hard, starting mid-March 2020. The pandemic necessitated lockdowns globally. But, India went into a complete lockdown that was announced without giving any time to Trade and Industry to plan activities that could have facilitated smooth operations.

In India, the consumption of those goods and services that were either exempted from GST (essentials) or were outside the GST ambit was at a peak during

the lockdown period. No doubt, the Centre and the states got their respective share in revenues either in the form of excise duty or state VAT or state electricity duty from consumption of these products/services.

However, had these been included in the GST ambit, the compensation amount may have been far less. For this purpose alone, these ought to have been included in the GST ambit, *ab initio*.

The Centre has estimated that the share of states in the shortfall in GST collections for FY 21 would be in the range of ₹3 lakh crore, of which around ₹65,000 crore would be funded through

the GST compensation cess that will be collected during FY21.

This leaves a shortfall of ₹2,35,000 crore, of which the Centre has attributed ₹97,000 crore on account of GST rollout and the balance of ₹1,38,000 crore to the Covid-19 pandemic.

Without going into number crunching, the discussions/reactions from the states on the two options proposed by the Centre are being played out in full public glare.

We already have a few states that have voiced their rejection of the two options, and the list is increasing. Surprisingly, the chief minister of a large state has gone on record to suggest that a review of the GST implemented be undertaken and be compared with the erstwhile indirect tax regime!

All in all, it seems that the argument between the Centre and the states is going to spill over from the aegis of the GST Council; it is headed for a long battle where the judiciary may also get involved at some point in time unless the Centre and the states patiently thresh out the problem at hand and arrive at an amicable solution.

The last thing that Trade and Industry wants in these testing times is discord between the Centre and states on fiscal matters. After all, it takes two to tango!

## SPOTLIGHT PRANAB MUKHERJEE

## A towering figure of Indian politics leaves behind an unmatched legacy

A consummate politician and statesman, Pranab Mukherjee had multifaceted contributions to his credit through the course of a five-decade-long public life

Saubhadra Chatterji  
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**NEW DELHI:** For 50 years, till a few days before he was detected with a brain haemorrhage on August 10, Pranab Mukherjee kept a diary. It must make for compelling reading. For much of this period, Mukherjee was active in public life. He positioned himself as a reliable support system, a trusted vice-captain to at least three Prime Ministers. Then, as the country's first citizen, he had a vantage view of politics at the highest level from Rashtrapati Bhavan. Mukherjee, 84, died 21 days after the surgery at the Army Research and Referral Hospital on August 10, leaving behind a rich legacy of old-school politics, three children, countless friends across parties—and the diary.

His death elicited an outpouring of grief across the political spectrum, a reminder of his brand of politics that placed a premium on personal equations—the reason why everyone called him Pranabā and not the distant Pranab babu. Prime Minister Narendra Modi, whose government awarded Mukherjee India's highest civilian award, the Bharat Ratna last year, said: "He has left an indelible mark on the development trajectory of our nation, a scholar par excellence, a towering statesman, he was admired across the political spectrum."

Congress President Sonia Gandhi, to whom his loyalty was never in question, said: "He brought distinction to every post he held, he established genuine rapport with colleagues across the political spectrum and he served our country with utmost dedication."

And former PM Manmohan Singh, a junior of Mukherjee who became his senior and boss, said: "He and I worked very closely in the Government of India, and I depended on him a great deal for his wisdom, vast knowledge and experience of public affairs."

Mukherjee was born in Mirati, a non-descript village in undivided Bengal on December 11, 1935. His father Kamada Kinkar Mukherjee, was involved in India's struggle for independence and would go on to serve in the West Bengal Legislative Council between 1952 and 1964 from Congress.

Pranabā has spoken of how, as a young boy, he had to walk for miles, and during the monsoon rain across an overflowing river, to reach school. But he doggedly pursued education. For him, India's Independence in 1947

meant simple dreams, better food and a footbridge across the river.

By 1963, with degrees in political science and history (a Masters) and law, Mukherjee was teaching political science at Vidyasagar College and Howrah Chaitanya College in West Bengal. The young boy from Mirati might have thought he had arrived—but in truth, he was just getting started.

In 1969, he was involved in VK Krishna Menon's successful run in the Midnapore Lok Sabha constituency (Menon was contesting as an independent). The same year, Bangla Congress, a regional offshoot of the India Gandhi-led Congress, sent him to the Rajya Sabha (Two years later, it merged with the main party). He had four more terms in the Rajya Sabha (1975, 1981, 1983, and 1989) before he won 2004 Lok Sabha election in Jangipur. He retained his seat in 2009 and three years later, became President of India.

Through these four decades, he was a key player in the political mainstream, except for the period between 1984 and 1989, when he was sidelined by the late Rajiv Gandhi, who considered Mukherjee a rival for the PM's post after Indira Gandhi's assassination. In 1986, he even formed his own party, the Rashtriya Samajwadi Congress in West Bengal, but merged it with the Congress, after making up with Rajiv Gandhi. In 1989,

While Mukherjee himself has said the Prime Minister's office was not for him, it was widely believed that his biggest ambition was the country's top elected office in the leafy corner of the South Block. It remained a distant dream, but he did ascend Raisina Hill, occupied by various offices of North and South Block, and finally settled for a tenure at Rashtrapati Bhavan.

His first PM, of course, was Indira Gandhi. He was a junior minister of industry in her 1973 cabinet. In 1982, he rose to finance minister in her government. Then came his brief stint in the wilderness. But he was soon back.

Jairam Ramesh's semi-autobiographical book "To Be a Minister and Back" narrates how Mukherjee prepared a draft roadmap of the new government and its economic priorities in 1991 before P V Narasimha Rao became the PM. Mukherjee was the chief architect behind India's accession to the WTO in January 1995. While the prospects of India acceding to an all-encompassing multilateral trade regime met with strong domestic opposition, Mukherjee convinced Rao and later signed the WTO Trade Agreement. And a year later, when Rao—sidelined into oblivion—needed a Delhi resident to support his bail application, Mukherjee's wife (she owned a house in GK 2) signed the documents in the police station.

Mukherjee's relationship with Manmohan Singh was perhaps the most complex and, at the same time, most rewarding. Having served under Mukherjee in various capacities, Singh initially continued to call his former boss "sir", much to the latter's discomfort. Finally, when Mukherjee announced it was untenable to be addressed as sir by his boss, Singh resorted to Pranab ji.

He worked hard under Singh, but like most members of the UPA cabinet, his loyalty was tilted towards Sonia Gandhi. Mukherjee enjoyed unbridled power, led the defence, finance and foreign affairs ministries, headed more than 100 groups of ministers (GoMs). The UPA's preferred tool for policy-making and trouble shooting) and had a say in every policy, right from the creation of an anti corruption ombudsman to the stimulus package of 2008 which saved India from economic ruin.

To be sure, Singh and Mukherjee differed on quite a few issues. There was exasperation in the PMO at the way some Mukherjee aides tried to run the show in the ministry. But Singh never missed seeking out Mukherjee's counsel on key issues of economy and foreign policy. When the Pakistan PM said he would come to Mohali to watch the world cup match between the two countries in 2011 with Singh, the latter asked Mukherjee what he should discuss. Mukherjee retorted, "anything under the sun except serious bilateral issues". (The finance minister had little idea about one-day cricket and would praise Singh's patience for spending a whole day in a stadium.)

Days after Singh's retirement in 2014, this writer asked his principal secretary TKA Nair, why the PM, a progressive economic thinker allowed the controversial proposal on retrospective tax in the 2012 budget and Nair replied that the PM perhaps couldn't tell Mukherjee anything considering the latter's stature and experience.

There was an effort to make him the President in 2007. The Congress proposed the names of Mukherjee, Shivraj Patil and Sushil Kumar Shinde to all as possible presidential candidate. But there was no replacement for Mukherjee in the government in the early years of the UPA, and the party decided it couldn't afford to lose him.

Finally, in 2012, the chance came again. The party still wanted him, but eventually Sonia Gandhi, the party president had little option but to back Mukherjee; any other candidate would have meant a contest. In a farewell function for him, Gandhi quipped that she would miss Mukherjee's tantrums.

Pranab Mukherjee went to Rashtrapati Bhavan, a graceful exit from active politics. But soon, the customary equation between the President and the PM in the republic's inner circle took a new turn when Narendra Modi, a man straight from state politics, met Mukherjee, a perpetual national player. Their bond grew quickly. The President often advised the PM on foreign affairs and other issues. Modi has publicly acknowledged Mukherjee's contributions saying, "He held my hand in my initial days in Delhi."

The equation didn't suffer in Mukherjee's post-retirement life. Senior NDA ministers regularly queued up at Rajaji Marg for his counsel.

A party colleague once described Mukherjee as the Shashi Kapoor of politics—always under the shadow of the bigger stars (PMs). But Mukherjee didn't breathe his last yet. He-He didn't lose a godfather, yet he made it to the very top. From an ordinary background, he became a towering figure of contemporary politics. He wanted to be a teacher but life brought him to politics. He walked the long walk from Mirati village to corridors of power in Delhi, or from his first certificate of victory in Rajya Sabha in 1969 to the Bharat Ratna.

Till days before his hospitalisation, he diligently maintained his diary, as he did for the last 50 years. What tales it can tell.

At the GoM meeting, one minister maintained that the Indian government should not intervene in matters of private business. Mukherjee finally intervened and declared that the government has to take a "political decision" and not an "economic one".

A few days later, India announced its first stimulus package to tackle the global slowdown triggered by the collapse of Lehman Brothers in the US.

In 2004, when the UPA came to power, Mukherjee had initially hoped for the home ministry portfolio. He even started brushing up the standing committee reports on home, the panel which he headed for a long time. But less than an hour before the swearing-in ceremony, he was asked to take over the defence portfolio. The home portfolio went to Shivraj Patil.

Mukherjee initially felt some what sidelined in the stiff hierarchy of power but soon he would assume immense power—only next to the Prime



Then President Pranab Mukherjee at the Rashtrapati Bhavan in 2012.

AJAY AGGARWAL/ARTIST

## Cong's troubleshooter whose mark was on every UPA policy

Saubhadra Chatterji  
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**NEW DELHI:** Two senior ministers had taken exactly opposite stands amid a looming economic crisis. It was 2008 and the then Prime Minister Manmohan Singh quickly formed a group of ministers—the UPA era's favourite tool of settling policy troubles—to suggest a solution.

At the GoM meeting, one minister maintained that the Indian government should not intervene in matters of private business. Mukherjee finally intervened and declared that the government has to take a "political decision" and not an "economic one".

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Pranab Mukherjee in a discussion with former prime minister Indira Gandhi in 1983.

KH CHAWLA/HT ARCHIVE

Minister in the government—thanks to his towering presence in nearly all groups of ministers. Between 2004 and 2012, every major policy of the UPA government had the imprint of Pranab Mukherjee as he headed dozens of GoMs or Manmohan Singh's kitchen cabinets.

"Between 2004-2012, Shri Mukherjee was instrumental in spearheading critical decisions of the Government on a range of issues such as Administrative reforms, Right to Information, Right to Employment, Food Security, Energy Security, Information Technology and telecommunication, setting up of UIDAI, Metro Rail, etc through Chairmanship of over 95 Groups of Ministers constituted for the purpose," reads his official profile in the Rashtrapati Bhavan archive.

He got so engrossed in shaping India's policies and the GoMs that he would get bored in the highest office.

people started lovingly calling Pradeep Gupta, a fine, upright officer entrusted with his GoM files, as "GoM Gupta".

And it was these GoMs that highlighted his prowess to solve intricate problems and structural issues and help him consolidate his brand as an ace troubleshooter for the UPA. He was entrusted with delicate political situations—the demand for Telangana in the early UPA years, the threat of a DMK withdrawal, Anna Hazare's movement for a Lokpal—and critical policy issues such as financing Air India, setting up a Direct Benefit Transfer mechanism framework and many pieces of rights-based legislation, which would ultimately become the hallmark of the UPA's success story.

It was not an easy task. He handled conflicting views, diverse interests and major ego trips before a GoM or an empowered group of ministers

would arrive at a decision. Things would often get out of hand. During a GoM meeting on Air India, a furious minister stood up and announced his resignation, leaving everyone in the room speechless. Mukherjee held the minister's hand and announced a break for 15 minutes. After the meeting resumed, the proceedings went on smoothly.

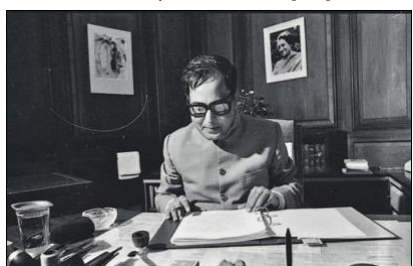
To be sure, there is an indelible imprint of Pranab Mukherjee in the world's largest unique identity programme, the Aadhaar framework. Even as UIDAI chief Nandan Nilekani enjoyed excellent rapport with both Rahul and Sonia Gandhi, it was Mukherjee who gave him the crucial administrative and policy backing in the UIDAI versus NPR tussle. Mukherjee never learnt how to use a computer but he had the vision of a technology-driven unique identity network that would one day change the landscape of India's targeted welfare programmes and a large part of income tax to do with the financial structures.

Manmohan Singh's success as the Finance minister had much to do with the financial structures.

P V Narasimha Rao. As Prime Minister, many of his flagship programmes and policies found administrative and political backing of Pranab Mukherjee. Mukherjee got so used to spending hours browsing files that after he was nominated as President, P Chidambaram rightly predicted that he would get bored in the highest office.



READ: Scan the QR code for Pranab's memoirs



Pranab Mukherjee during his tenure as the finance minister in 1984.

AJAY AGGARWAL/ARTIST

## Tributes pour in from across political spectrum for a colossus of public life

HT Correspondent  
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**NEW DELHI:** Political leaders cutting across party lines paid tributes to former President Pranab Mukherjee, who died at the age of 84 on Monday.

Prime Minister Narendra Modi described him as a scholar par excellence and a towering statesman who was admired across the political spectrum. Modi said Pranab has left an indelible mark on the nation's development trajectory.

"As India's President, Shri Pranab Mukherjee made Rashtrapati Bhavan even more accessible to common citizens. He made the President's house a centre of learning, innovation, culture, science and literature. His wise counsel on key policy matters will never be forgotten by me," the

PM tweeted.

Congress president Sonia Gandhi recalled Pranab's long association with her party and said that Pranab was a politician who would be difficult to fill. "He brought distinction to every post he held, he established a genuine rapport with colleagues across the political spectrum, and he served our country with utmost dedication."

West Bengal chief minister and Trinamool Congress president Mamata Banerjee expressed deep sorrow over the 84-year-old's death and said with his whose loss cannot be compensated.

"So many memories. A visit to Dakhinesh without Pranabā is unimaginable. He is a legend in all subjects from politics to economics. Will be forever grateful. Shall miss him immensely,"

Banerjee tweeted.

Kerala chief minister and Communist Party of India (Marxist) leader Pinarayi Vijayan said that Pranab was a politician who played a significant role in upholding India's prestige at the international level. "He stood for the protection and empowerment of constitutional values and constantly strived to inculcate values in the society, including secularism," he said.

Rashtriya Swayamsevak Sangh (RSS) chief Mohan Bhagwat hailed the former president as "a great scholar and a patriot" whose loss cannot be compensated.

"India's former President Dr Pranab Mukherjee's passing away is a huge loss for all swamis who had come in contact with him. I had met him twice when he was President and

three to four times afterwards," Bhagwat said in a video message in Hindi.

Bangladesh President Abdul Hamid and Prime Minister Sheikh Hasina also expressed sorrow over the demise of Mukherjee.

"His demise has caused an irreparable loss to the political arena of the sub-continent," Hamid said, describing Mukherjee as a "real and sincere friend" of Bangladesh. Hasina too, called Mukherjee a "true friend" of Bangladesh and a guardian-like figure for her country. She said Pranab Mukherjee's demise deeply saddened her... she became emotional and nostalgic as she reminisced her many memories with him, state-run RSS reported, quoting the premier's press secretary Ihsanul Karim.



The  
**Hindustan Times**  
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{ OUR TAKE }

## Farewell, Pranab da

As the elder statesman of Indian politics departs, it will be a void hard to fill

**P**ranab Mukherjee — who served as India's *Rashtrapati*; as finance, external affairs, defence, industry and commerce minister; leader of the House in both the Lok Sabha and Rajya Sabha; deputy chairperson of the Planning Commission — passed away on Monday. In his political life spanning over five decades, Pranab da, as he was fondly called, saw a meteoric rise from a lecturer of political science in a college in West Bengal to the apex of the Indian State. Through this journey, he emerged as among the most important leaders of the Congress, working with a range of leaders from Indira to Sonia Gandhi; the key trouble shooter for his party and all Congress-led governments; and a figure who was central in political decision-making in the country.

What made Pranab da special? It was not mass base, for he won his first Lok Sabha election only in 2004. But what he may have lacked in grassroots electoral support, Pranab da more than made up with his formidable intellectual capital. His exceptional skills of drafting party resolutions and policy statements, managing intra-party dynamics and inter-party relations, providing sound political advice to his leader of the day, and managing multiple constituencies — from business lobbies to social activists, from party leaders and cadres to the bureaucracy — were an asset to the Congress. But if there was one institution that was truly home for Pranab da, it was Parliament. Since the time he first entered the Rajya Sabha in 1968 to his exit from Lok Sabha after becoming President in 2012, Pranab da mastered parliamentary procedure, participated in the cut and thrust of debates, and played a huge, often invisible, role in shaping laws and policies.

A true reflection of his political survival skills was the fact that he was Indira Gandhi's senior-most minister in 1984 when she died, and he was the core of the governance paradigm under Manmohan Singh from 2004 to 2012, even though his record as finance minister drew criticism. Pranab da could not fulfil his ambition of becoming prime minister (PM), but he went further up the Raisina Hill. When he became president, he rose above party politics, building an excellent working relationship with PM Narendra Modi. After leaving office, he also visited the Rashtriya Swayamsevak Sangh headquarters — while this drew flak from his former colleagues, it was a sign of his conviction that democracy meant dialogue with all forces. As the elder statesman of Indian politics departs, it will be a void hard to fill.

## The SC sets a wrong precedent

**A**fter holding advocate-activist Prashant Bhushan in contempt, the Supreme Court (SC), on Monday, imposed a ₹1 fine on him as punishment — the failure to deposit the token fine would have resulted in Mr Bhushan being imprisoned for three months, and being debarred from practising law in the SC for three years. Mr Bhushan has accepted the verdict and will pay the fine. To many who believed that the SC made a mistake in interpreting criticism as contempt, the mild nature of the sentence is an acknowledgement by the court that what it saw as an offence did not merit strict punishment.

But the text of the order sentencing Mr Bhushan presents a more disturbing picture. The SC bench, led by Justice Arun Mishra, has unequivocally said that Mr Bhushan made "reckless allegations", capable of "shaking the very edifice of the judicial administration". It has limited the boundaries of free speech, saying that criticism of the judiciary must be "measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude". These are all subjective terms which can be interpreted in ways to quell criticism.

The sentence does not, in any way, mitigate the original order, through which the court has restricted the space for criticism. A victory for those who believe in free speech would have been a review of the order itself. The judiciary must be open to feedback from citizens, even as citizens accept its supremacy. The case represented an opportunity to set right the contempt jurisdiction. Unfortunately, the court had ended up setting a wrong precedent.

## Securing India against Covid-19

A national mission, with public and private sector participation, focused on vaccinating all Indians can set a global benchmark

**I**ow can India vaccinate a billion-plus people? How would the system work?

First, the government will maintain a list of approved vaccines. This list will change, as some get dropped, and others get approved.

Second, the government will set a rate per vaccination for each vaccine. Finally, after due diligence, it will create a list of Authorised Vaccinators. These could be government hospitals, reputed private hospitals, diagnostic chains, even pharmacies.

Another ecosystem will have to be nurtured to train and certify a few hundred thousand people on how to administer vaccines. Specifications and templates will be distributed for vaccination stations which can be permanent, pop-up, or mobile for making it available anywhere.

The government will distribute a standard vaccination software on smartphones and laptops. For the data of every vaccination to be captured in real-time and sent to a central database with proper security, privacy and encryption.

With this approach, at least 100,000 vaccination stations can be set up across the country over a year, while vaccine production is simultaneously scaled up.

A critical requirement will be the supply chain, including cold chain infrastructure. Vaccine sales will be between approved vaccine vendors and the Authorised Vaccinators; they will have to figure out the cold chain. An entire one could spring up — new mobile cold chains with refrigerated trucks, or repurposed existing cold chains.

People should be able to go to any vaccination station in the country anytime to get a shot. They can also book a slot online. People entering a station and then first authenticating themselves using Aadhaar, phone number, any other digitally authenticable ID. A certified vaccinator will vaccinate them. The data from the vaccination will be uploaded. This data will include the name and ID of the vaccinator and the recipient, details of the vaccine, and the pre-paid voucher (more on this shortly). The money (for adminis-

tering the shot) will be credited immediately to the Authorised Vaccinator, and the central database will issue an instant digital certificate. The certificate can be downloaded to the person's smartphone, printed or stored in a digital locker. The whole process should take about 10 minutes. At 50 vaccinations per day per station, India could do five million vaccinations per day.

The digital certificate will be globally portable and verifiable. While the idea of an immunity passport has been questioned, a certificate of immunisation is part of the International Health Regulations for diseases such as yellow fever, there is a precedent for such documentation. With this, the vaccinated person would be able to travel anywhere. If we find that vaccines induce immunity, then there will be an expiry date on the certificate, and the person will have to get re-vaccinated. If it is a dual dose vaccine, then only a provisional certificate will be issued, with the date for the second dose mentioned.

The system can enable people to get vaccinated at a date, time, and location of their choice. All payments by the people getting vaccinated will be through pre-paid vouchers, and rates could drop over time with volumes. People who can afford it should and will pay for their vaccines. The government will pay to vaccinate all health workers, its employees and their families, and the poor and vulnerable. Payments can be enabled by giving a DBT voucher, which is only accepted for vaccination.

Companies could provide vouchers for their employees and their families. Philanthropies and corporate foundations could also distribute these vaccination vouchers. The vouchers could be digital or printed for those without phones. The government can issue guidelines to streamline procurement of the vaccine manufacturers by Authorised Vaccinators.

Since monitoring is part of the life cycle of any vaccine, a digital record of vaccination and a link to self-reported side effects could strengthen India's vaccine safety surveillance. A sophisticated system could be built on top of this vaccine infrastructure using anonymised aggregate data. For example, if there is a rise in cases of Covid-19 in spite of vaccination in some areas, it would indicate that the efficacy of one of the vaccines used is lower than anticipated. A rise in some symptoms would mean there are unexpected side-effects. Artificial Intelligence could be used for predictive analysis.

Initially, when vaccines are scarce, this system will be used to inform those who should get vaccinated through Authorised Vaccinators from the gov-



The government will pay to vaccinate all health workers, its employees and their families, and the poor and vulnerable. Payments can be enabled by giving a DBT voucher, which is only accepted for vaccination

ernment. The initial vaccines will be directed strategically at health care and other essential workers, and the vulnerable.

The task ahead is fraught with risks from new vaccines, privacy issues, and objections from those reluctant to get vaccinated. There will be important decisions on equity, inclusion, priority, privacy, and choice. Yet, we have no choice but to go ahead.

This system may look daunting, but we are fortunate that India has many digital building blocks which can be used. Apart from the IAM triad, the payment system UPI can be used to create the infrastructure for pre-paid vouchers. This vaccination system is fully aligned with and will accelerate, the National Digital Health Mission announced by Prime Minister Narendra Modi on August 15. Everyone can choose to opt for health ID and an Electronic Health Record. The digital vaccination certificate, as well as the electronic health record, can be stored in the MHTY's Digital Locker. The training modules for vaccinators can be set up on IGOT, the online learning portal, launched by the department of personnel and training and hosted on the ministry of education's Diksha platform.

If advanced training is required, the ECHO platform being used by the ministry of health can be leveraged. Best practices can be learnt from the way in which the Election Commission conducts general elections. Call centres and other digital infrastructure created by the National Health Authority can be used to identify and inform those who should get government-funded vaccination based on Ayushman

Bharat. The Government e-Marketplace (GEM), set up by the ministry of commerce and industry, can list approved vaccines and prices for Authorised Vaccinators to order their supplies. The ministry of finance has experience in large scale DBT. Importantly, building a new delivery system for public health strengthens the ability of the ministry of health and other ministries such as women and child development to deliver other interventions at scale.

Many fine bureaucrats who worked on the Aadhaar project are at senior levels in the government or have just retired and will be happy to come forward to contribute their expertise. And any number of core technologists will volunteer to make this happen as it is truly an emergency.

Vaccinating the whole country as soon and as safely as possible to get things back to some normalcy post-pandemic is the need of the hour. This needs to be accomplished by a national mission there will be departmental or ministry project. All arms of the government and public sector, private sector and civil society need to participate as partners. If we can take this approach, we will set a global benchmark on how to get past the pandemic. A combined response, leveraging each other's strengths, is self-reliance (amanatibharat) at its best.

(This is the final part of a two-part opinion piece on a possible framework for vaccine delivery in India) Nandan Nilekani, chairman and co-founder of Infosys, was the first chairman of the Unique Identification Authority of India, which set up Aadhaar. The views expressed are personal

{ PLAIN SPEAKING }

Baijayant 'Jay' Panda

## Social media: The new theatre of India's culture wars

**T**he phenomenal rise of social media (SM) platforms such as Facebook, Twitter and others is proving to be a double-edged sword in the functioning of democracies. On the one hand, it has democratised access to information. On the other hand, it has concentrated power over that information with a handful of private companies, their billionaire owners, and certain ideologically committed activist groups.

Billions of netizens around the world now feel empowered to bypass traditional curators of information, such as journalists and editors, in searching for their choice of content. They have also become creators and disseminators of content, not just consumers of it. This is further accentuated by such platforms directing more content at people similar to what they have already seen, thus creating echo chambers of like-minded groups.

This is already known. What is happening now, however, is the next stage of that transformation in how information is generated, disseminated, and consumed, and it is directly impacting how democracies function. There is a global war underway, involving the role of SM and the freedom of expression, as an extension of the culture wars between the Left and Right.

India is seeing the early stages of the online version of this war, which has already progressed to a much higher intensity elsewhere, most notably the United States (US). In America's bitterly polarised polity, the frontline of this war is a battle between Twitter and President Donald Trump. The former's flagging of a presidential tweet as a fake news, and the latter's executive order altering the liability of SM platforms who edit content, is most understanding better.

One of the most stark aspects of the West's culture wars has been its erosion of the right to freedom of expression, which had been a hall-

mark of its modern democracies. Especially since the early 20th century, US Supreme Court rulings by the legendary Justices Oliver Wendell Holmes, interpreting its Constitution's first amendment, had established what many considered a gold standard of free speech.

While those struggles for free speech had pushed for more freedom, even to say and write very unpleasant things, the intensification of the West's culture wars in the 21st century has seen a reversal of that trend. Censorship on speech became widely accepted and implemented. But, thereafter, there has been a relentless push by so-called woke activists for ever more curbs on speech, often implemented forcefully and without consensus, based solely on political correctness.

A key aspect of this has been the shift from earlier activism against governments clamping down on speech to a focus instead on pushing media, and especially SM, to impose curbs on politically incorrect speech. The irony in this new activism for speech curbs is that it is being championed by those who call themselves liberals. Of course, this does not represent classical liberal philosophy, and is instead a reflection of the far-Left takeover of post-modern liberalism. This is visible around the world, whether in the forced withdrawal of US academics, papers contradicting the zeitgeist about race relations, or in the unsavoury denunciations of senior staff at the once venerable New York Times, after they had dared to publish op-eds reflecting Centre-Right views. In India, this bullying has manifested itself in the growing up by self-avowed "liberal" authors to stop the publication of a book contradicting their narrative on this year's Delhi riots.

Such far-Left canons have now replaced the reality of free speech. That should hardly be a surprise, considering Silicon Valley's preference for the woke narrative of "canceling" employees. Books and arti-

cles by conservative authors such as Douglas Murray and business journalists such as George Anders have documented explicit hiring policies and statistics to confirm Left-wing dominance among SM employees. It was, therefore, inevitable that employee activism would push these platforms into adopting leftist, illiberal policies.

The inconsistencies in those policies show up when SM platforms selectively select standards, such as when Twitter was accused of hypocrisy for not flagging or proscribing the aggressive, warlike tweet of a West Asian leader.

President Trump's executive order directly impacts this. In US law, SM had been protected against the kind of liabilities — such as defamation — that traditional news media are subject to, on the grounds that SM are simply platforms for others' opinions and did not edit or otherwise shape that information. But now that they are, by flagging, shadow banning, or deleting posts and accounts, the Trump order echoes many voices that had been asking for SM to be treated on par with media outlets.

A similar battle is raging about SM giants' abuse of their massive power by sourcing news from media companies without paying for it, and then disseminating and profiting from it. Despite a bitter legal struggle, Australia is likely to become the first nation to require Google to pay for such content. These battles are relevant to India, which is both the largest user of SM as well as one of the largest user bases for SM platforms. Some of these battles have already begun here, such as the recent Indian version of the West's leftist pressure on Facebook to put curbs on right-wing posts. It is time to broaden the dialogue here about how India ought to respond.

Baijayant 'Jay' Panda is vice-president of the Bharatiya Janata Party, and a former business and tech entrepreneur.

The views expressed are personal

{ PC CHIDAMBARAM } CONGRESS LEADER

It will take many months before the [Indian] economy ... registers positive growth



{ BLOOMBERG }

## Evaluating Shinzo Abe's record in office

**W**hen Japanese Prime Minister Shinzo Abe announced his pending resignation last week for health reasons, he had been in office for nearly eight years. But even that wasn't long enough to fulfill the potential of his premiership.

Abe will rightfully be remembered for the many changes he did manage to push through. His three-pronged "Abenomics" program of loose monetary policy, fiscal stimulus and structural reforms scored some initial successes — boosting growth, stocks and employment. His government brought an unprecedented number of women into the workplace and immigrants into the country. Corporate governance reforms have begun to change the complexion of boards and behavior in Japan Inc. And he bolstered Japan's geopolitical standing.

Yet whoever follows Abe will confront challenges almost as great as he did. The fact is, growth, wages and inflation never really picked up sustainably now, after the pandemic-related lockdowns, the economy has shrunk to the size it was before Abe took charge. Even in areas where Abe made a good start, much work remains. The precariousness of most workers' jobs has been revealed by the pan-

demic. Many of the business reforms promoted by Abe's government ended up being more limited than originally envisioned. Broader changes will be required if Japan is to attract the number and quality of immigrants the country really needs.

Abe can claim perhaps his greatest achievements in the international arena, where he has built Japan into a forceful advocate for the liberal, rules-based global order, both in partnership with the US and, when it comes to free trade, on its own. He has also been instrumental in developing a regional response to China, as well as providing a much-needed counterweight to the US-China trade war. Such efforts may help explain why Abe backed off from pushing more drastic economic reforms. If Japan is to meet its challenges, his successors cannot afford to make the same mistakes.

(This is a condensed version of Bloomberg editorial board's commentary on Abe's premiership)