

# COVID-19 and the Crisis in Indian Democracy

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In the recent global history of constitutional democracies, it is difficult to name a single crisis that has plagued them simultaneously, until the COVID-19 pandemic. The calamity brought in by the virus was universal. For governments, it presented an opportunity for crisis management without compromising rights guarantees. Some countries have marginally succeeded in this test while in others, concerns of democratic decline were amplified. Three features defined the Indian response to COVID-19: lack of transparency, executive monopoly and suppression of dissent.

## Lack of Transparency

Most of us should agree that transparency and access to information improve public trust and accountability. While the initial [strategy](#) of countries like Brazil under Jair Bolsonaro or the United States under [Donald Trump](#) has been to deny the virus, the Indian response is characterized firstly, by the absence of transparency in governance and crisis management. On the evening of 24 March 2020, Prime Minister Narendra Modi announced a 21-day national lockdown which was set to begin within four hours. The lockdown was extremely harsh leading to a complete ban on transport including international and domestic travel, closure of schools, non-essential shops and prohibition on assembly and events. This abrupt declaration without any prior notice left a country of around 1.366 billion people in utter confusion and disarray. The suspense served no meaningful purpose.

The unpreparedness of the state to meet the demands of such a lockdown was apparent. The shutdown led to a sudden halt in freedom of movement and access to resources. It caused disproportionate impact on vulnerable groups such as students, [women](#), the [disabled](#), the [poor](#) and the homeless. India's social safety net has proven itself to be vastly insufficient. The impact on poor migrant workers is striking. Incomes stopped for most of the inter-state migrant workers constituting around 450 million who had traveled to urban neighborhoods seeking jobs. No arrangement for transport was made by the government, at least not until several months into the lockdown. Left with no other option, they resorted to walking hundreds and thousands of kilometers. For weeks, they [walked](#) to their homes, often carrying children, luggage and surviving on meagre food. Numerous deaths were reported due to starvation and exhaustion.

The governmental response during the pandemic was rife with misinformation and often false data. The number of reported cases were far from actual data, it was [found](#) in surveys. All concerns of community spread were initially [denied](#) by the central government although the number of cases was spiking. This was joined by fake optimism including a plan for a vaccine by August 2020 by the

government [medical research body](#) and [encouraging](#) traditional Ayurvedic medicine for preventing the virus spread. The Prime Minister [told](#) some of the media outlets in a video conference that it was important to ‘tackle the spread of pessimism, negativity and rumour’ implicitly discouraging them from critical reporting. Journalists who made investigative and critical reporting were arrested or [charged](#) under the criminal law. To deal with the crisis, a Prime Minister’s relief fund was set up which received substantial contribution, but the government [refused](#) to divulge the details of donations to the fund or how they are being used. The Prime Minister has also not addressed a press conference in last several years (except the one in 2019 where he [declined](#) to answer questions) and this trend continued even during days of the pandemic and the citizens were addressed through long recorded monologues.

The lockdown was extended with intervals of 21, 19 and 14 days – again without sufficient warning – and finally transitioned to phased easing of restrictions called ‘Unlock’ in June 2020. However, economists [argue](#) that the country entered into the lockdown much earlier than necessary and exited from it, much later. The lockdown therefore not only led to an economic [disaster](#) but failed to effectively control the pandemic. On a balance, therefore, the COVID-19 management was far from satisfactory from the perspective of accountable governance.

## **Executive Monopoly**

The traditional separation of powers consists of the legislature as the primary law maker, the executive that enforces laws and the judiciary that interprets the laws. However, the pandemic saw heavy concentration of powers and decision making on the executive. The second feature of the Indian response can be described as executive monopoly.

The Indian Constitution does not provide for a health emergency. It [permits](#) declaration of emergency on grounds of war, external aggression or armed rebellion.

Therefore, it would have been difficult for the state to resort to this route. However, a deadly pandemic such as COVID-19 requires efficient and sustainable law-making, for a large country like India. The lawmaker must be sensitive that the restrictions imposed on freedoms of movement, work or expression are reasonable, proportionate and necessary. Since the crisis requires comprehensive management, the best modus operandi was to initiate a specific and targeted legislation, similar to the [United Kingdom](#) or [Germany](#).

The benefits of such a law must not be overlooked. A properly enacted law would give sufficient clarity and accessibility to the citizens. It would foreclose, to some extent, possibilities for vague directions and misuse of powers. However, the state chose not to enact a special legislation. Instead, a series of restrictions were [imposed](#) via law making by the executive – through guidelines, ordinances or government orders. The rules to address the challenges of the pandemic were exclusively made by the executive. Moreover, the regulations were broadly phrased, piecemeal and scattered. This vested an undue amount of discretion on the executive, on the nature and extent of the restrictions imposed on rights. For

example, in the early days of the lockdown, the central government [asked](#) the states to mandatorily seal the state borders to prevent movement of people without allowing for necessary exceptions. Private employers [were](#) directed not to reduce wages of or remove employees without considering businesses running on losses.

Existing legislations were also made use of by the state to initiate and impose measures during the pandemic. The existing legislations did not contain sufficient provisions for addressing the challenges posted by the pandemic. The [Disaster Management Act](#) – originally enacted to govern natural disasters – was invoked and the authority under the Act was vested with wide [discretion](#). The [Epidemic Diseases Act](#), a law from 1897 was also used with [powers](#) prescribed as widely as measures the state deems necessary. The criminal law framework was used leading to unprecedented police [violence](#) in the guise of enforcing lockdown regulations and social distancing.

Executive decision making was aided by lack of legislative scrutiny. The number of sitting days of the parliament saw a general decline over the years. It is [reported](#) that the number has gone down to 70 days a year in the last decade for the upper house while it sat for more than 120 days a year during the 1950s. But the pandemic made it convenient for the executive to suspend or shorten parliament sessions altogether. Usually, parliament sits thrice a year. In March 2020, the session was cut short. The second session in September was prematurely interrupted. The last session of the year was altogether suspended citing the pandemic, in spite of [demands](#) from members from the opposition. No possibilities for virtual, reduced capacity, or short-term sessions were explored, setting a dangerous precedent to suspend parliamentary sessions at the whim of the executive.

Even for the small duration in which the parliament assembled, laws were passed practically without deliberation. The demands of the opposition to send the Bills to committees and individual voting were denied. In September, two important laws – the farm laws and the labour codes – were [passed](#) without discussion. In fact, the labour codes were passed in the absence of opposition members of the parliament, who had [boycotted](#) the session. The farm laws were passed despite protests by the opposition that the required voting [procedure](#), as specified by the parliament's own rules, had not been followed in the upper chamber.

The pandemic also saw concentration of powers at the central level, even when states were capable and equipped to deal with the pandemic. For example, the powers exercised under the Disaster Management Act were made uniformly applicable and binding on all states. The States, with localized administration and better competence were not permitted sufficient autonomy in decision making.

This led to conflict between the policies of the Central and state governments. For example, since the national lockdown in March, all flights into and from the country were banned. This meant that even citizens who were abroad for medical, employment or tourist purposes could not return home. The ban was made on the ground that the risk of the virus spread is too high to allow persons to return and that 'domestic medical needs' are given priority. However, states like Kerala, with better public infrastructure and able control measures were open to allow residents

into the state. Until May, however, the national government rigorously enforced this [indiscriminate](#) travel ban, without being sensitive to the states which were capable of accommodating the return.

The judicial response to executive action is notable. I have [written](#) elsewhere on the evasive approach of the Indian Supreme Court of legal adjudication which has emerged in recent years:

“Three distinct and recurrent tactics of evasion can be identified. First, when the court is called upon to decide on a matter, it refuses to give orders either way and chooses an indefinite adjournment. Second, the court defers to the executive when asked to answer legal questions, leaving it to decide on the validity of its own actions. Third, the court accepts the executive’s version of events unquestioningly and closes cases without assigning substantial reasons.”

During the pandemic, this trend became visible like no other times. This made the situation of the citizens especially precarious when judicial review is a major outlet to challenge executive action.

Prominent cases reached the court concerning personal liberty, free speech and political assembly. But the court stayed aloof from rights adjudication in most cases. 4G Internet remains suspended in parts of Jammu and Kashmir since August 2019, and in spite of the demands of the pandemic to restore it, the court [refused](#). The backlash of the government took the form of a series of political arrests. Activists, authors, student leaders and politicians were charged under anti-terrorism laws. But the court took a hands-off approach from [interfering](#) or [granting bail](#). Challenge against labour law changes passed to overcome market crisis was dismissed at the outset. The public [trust](#) in the court came to an all-time [low](#), arguably second only to its attitude during the national emergency in the 1970s.

## Suppression of Dissent

In late 2019, the Indian Parliament passed the Citizenship Amendment Act granting citizenship to ‘illegal migrants’ from certain neighboring countries based on their religion. The law enumerated specific religious communities and excluded Muslims. Muslims were thus not [eligible](#) for citizenship, although there is no express singling out in the law. It was criticized as a measure to implement the Hindu nationalist ideology of the current government against the constitutional guarantee of secularism and non-discrimination.

In February 2020, Delhi, the national capital [witnessed](#) horrific riots targeting protestors of the law by Hindu nationalist forces, sometimes aided by the police. Widespread protests broke out in various parts of the country against this law. The outbreak of the COVID-19 pandemic, however, put an abrupt end to the protests. It presented a convenient opportunity for the government to distract the public from these concerns and focus on the pandemic. This was one of the most dangerous

political consequences of the epidemic – it put dissent to rest and neutralized political movements.

This suppression aided the executive to also arrest [journalists](#), [politicians](#), [students](#) - mostly Muslims (and in a latest incident, even a stand-up [comedian](#) for jokes he did not make). Many of those who criticize the Hindutva ideology or the government's pandemic management are met by unduly invoking existing criminal provisions. Those who participated in the protests against the citizenship law are targeted as well. The restrictions on assembly and movement have made political mobilization against the government repression almost impossible.

## Conclusion

A major lesson of the COVID-19 crisis for India is to take deliberation and accountability seriously. India continues to pay a heavy price for absence of a comprehensive legislation and effective enforcement mechanism. The separation of powers has tremendously suffered, with legislative and judicial accountability under threat. It is imperative to ensure that the rollback on regulatory systems such as parliamentary deliberation, judicial check on the executive, lack of consultations in law making process is discouraged. The government must recognise the significance of transparency in governance and initiate measures to restore the trust of the public. Informal norms are equally significant, such as public consultation and dialogue, respect for opposition and tolerance for dissent. The judiciary will need to do substantial work in hearing and effectively disposing cases where personal liberty is at stake. India is already sliding away from its democratic set up, and the need to reclaim it, is vital.

