

Moving Beyond COVID-19 Restrictions in South Asia: Pushing Back Against Authoritarian Pandemic Governance

This policy brief reviews the use of emergency decrees, temporary COVID-19 laws and existing health ordinances in South Asia during the COVID-19 pandemic. These laws were deemed necessary to combat the pandemic. Still, they also allowed South Asian governments to limit certain civic freedoms, pointing out the democratic backsliding of the region. After examining the impact of COVID-19 restrictions on freedom of assembly, electoral integrity, freedom of expression and the right to privacy, a set of recommendations for governments, international organisations, and civil society organisations to prevent the abuse of the legislation in future emergency situations is provided. This brief is part of a wider study on the misuse of powers and their impact on civic freedoms and democracy across Southeast Asia, East Asia and South Asia.

The COVID-19 Pandemic in South Asia

South Asia was one of the worst-hit regions in the world by COVID-19. As of December 2022, more than 49 million cases had been reported in the region, of which around 600,000 resulted in casualties. For instance, India had the second-highest number of deaths worldwide inflicted by the virus ([Worldmeter, 2022](#)). In March 2020, when the first cases were reported, South Asian governments introduced strict measures to control the spread of the virus, including lockdowns, quarantine measures, the prohibition of public gatherings, and the closure of non-essential businesses ([Babu et al., 2020](#)). Despite the prompt implementation of such strict measures, the infection rate and the death toll continued to rise. Moreover, the under-equipped healthcare facilities and personnel resulted in delayed hospitalisation and, thus, deaths that could have otherwise been prevented ([Fliegau & Ayres, 2020](#)).

Furthermore, ill-equipped pandemic response systems were a major factor affecting how governments responded to the outbreak of the pandemic since executive powers were prioritised over clear legal guidelines. As this policy brief shows below, even in countries where health ordinances existed, those were only occasionally invoked. Instead, governments created executive-led responses that employed the security sector to manage the crisis and enforce lockdowns. The pandemic also saw central governments delegating their tasks and responsibilities to local administrative bodies, leading to deficient and uncoordinated responses to the pandemic.

Legal Measures

A number of emergency and temporary laws were invoked to address threats arising from the COVID-19 pandemic. These included the formal and informal declarations of states of emergency (SoEs), temporary COVID-19 laws, and provisions under health ordinances providing special powers to address emergencies.

States of Emergency (SoEs)

The **Maldives** declared the SoEs under the Public Health Protection Act (2012). With it, the government banned the use of public spaces in Greater Malé (Notice of the DG of Public Health No. [2020/06](#)). The SoE was revoked in March 2022 after being extended over the course of two years ([Zalif, 2022](#)). In **Sri Lanka**, the President invoked a state of public emergency under the Public Security Act (1947) in August 2021 ([Gazette 2243/1](#)) citing food shortages caused by the pandemic. The SoE was extended from early 2022 to August 2022 ([Karunatilake, 2022](#)). To note, there had already been calls to introduce bills that would have provided for the declaration of a specific ‘public health emergency’; however, they went unheeded.

No SoEs were declared in Bangladesh, Nepal, India or Pakistan. Nevertheless, emergency powers were exercised informally via the executive branches of government. With the enactment of executive decrees, the **Bangladeshi** government shut down courts and mobilised the army to enforce stay-at-home orders ([Hoque, 2020; 2021](#)). In **Pakistan**, the federal government maintained the use of executive ordinances and guidelines, such as the National Action Plan for COVID-19, throughout the pandemic ([Haris, 2021](#)) to keep the virus at bay. The Pakistani government also mobilised the joint civilian-military body, the ‘National Command and Operation Centre (NCOC)’, to enforce lockdown measures ([Syed & Tariq-Ali, 2021](#)). **India** the government *prioritised* using executive ordinances over employing public health-specific legislation. It also relied on state governments to take a proactive role in mitigating risks ([Shunmugasundaram, 2020](#)). These decrees allowed the government to bypass legislative scrutiny.

Temporary COVID-19 Laws

Special powers were also informally granted via temporary COVID-19 laws. **Nepal** hastily enacted the COVID-19 Crisis Management Ordinance ([2021](#)), which, among other provisions, established the COVID-19 Crisis Management Centre composed of the political-security-bureaucratic arms of the government. However, these government-led efforts were ruled by the Supreme Court as insufficient to protect human rights during the pandemic ([myRepublica, 2020; Shrestha, 2021](#)). **Pakistan** promulgated the National Emergency Measures for COVID-19 Quarantine Act ([2020](#)) that conferred the government the power to order quarantine zones and control interprovincial movement. The Act also granted the powers to provincial governments to issue COVID-19 regulations.

The rest of the COVID-19-related emergency and temporary legal measures in South Asia was provided via existing health and infectious disease laws. The **Bangladeshi** government used the Communicable Diseases Act ([2018](#)) to define COVID-19 as a transmissible disease and declared the whole country to be exposed to COVID-19 risks. **Nepal** started imposing a lockdown early into the pandemic in March 2020. The government then granted chief district officers discretionary powers to impose prohibitory orders ([The Kathmandu Post, 2020](#)). These measures were declared under the Infectious Disease Act ([1964](#)), which broadly provides the government with the “necessary powers” to prevent any infectious disease. In **India**, many states invoked Art. 2 of the Epidemic Diseases Act ([1897](#)), which granted them “power to take special measures and prescribe regulations as to dangerous epidemic disease”. Its Ministry of Home Affairs, in May 2020, issued Order No. 40-3/2020-DM-I(A) ([2020](#)) under the Disaster Management Act ([2005](#)). The Order contained a list of guidelines to be taken up by various government authorities and provided them with the

power to unilaterally impose local restrictions as well as to conduct intensive contact tracing and house-to-house surveillance in COVID-19 containment zones.

Restrictions of Civic Freedoms and Impact on Democracy

Only two countries in South Asia – Maldives and Sri Lanka – officially declared SoEs and emergency laws. Unlike them, India, Nepal and Pakistan, enacted temporary laws and existing health laws to tackle the pandemic. Regardless of the differences between these two approaches, all these measures restricted civic freedoms to a certain extent on at least four fronts: freedom of assembly and movement, right to take part in elections, freedom of expression and right to privacy. As a result of these liberties being curtailed, democracy regressed across the region.

Regarding freedom of assembly, protests in the **Maldives** by Bangladeshi migrant workers, whose already-bad living condition was exacerbated by lockdowns, resulted in police crackdowns ([Malsa, 2020](#); [Mohamed, 2020](#)) that limited their options to gather and fight for their rights. In another incident, the police arrested 41 individuals involved in an opposition-led protest, accusing them of violating COVID-19 guidelines ([Aiham, 2020](#)). Students in **Pakistan** were charged after organising a rally during the lockdown ([Zafar, 2020](#)). The demonstration was against the government's decision to instate mandatory online classes without proper access to infrastructure (internet access, device, etc.). **India** suspending parliamentary sessions must also be noted. The government cut short the first (mainly budget-related) and second sessions and suspended the third session of 2020 ([Bhatnagar, 2020](#)) using the rising cases of COVID-19 infections as its justification.

Postponements of elections over COVID-19-related reasons were reported in **Bangladesh, India** and **Pakistan**, affecting the natural course of electoral cycles. The **Bangladeshi** election commission deferred the Parliamentary by-elections of constituencies in Bogura and Jashore from 29 March 2020 to 14 July 2020 ([Daily Star, 2020](#)). The Election Commission of **India** (ECI), citing the lockdown, pushed the Upper House of Parliament (*Rajya Sabha*) elections, which were set to fill in 18 seats, from 26 March 2020 to 19 June 2020 ([Onmanorama, 2020](#)). The Election Commission of **Pakistan** also postponed the by-elections of the national and provincial assemblies, previously set to take place on 31 December 2020, to February 2021 ([Geo News, 2020](#)). Amid political turmoil, the Election Commission in **Sri Lanka** delayed the parliamentary elections twice over the outbreak. The election, which was supposed to happen on 25 April 2020, eventually took place on 5 August 2020, making the Rajapaksa government run the country without a sitting parliament past the 3 month **Pakistan** was repurposed from a terrorist activity tracking system. Through the process of assessing the risk of those in close contact with COVID-19 patients, the application allowed the government to eavesdrop on them ([Mohammad, 2020](#)). **India** saw a significant step up in surveillance facilities, with the prime example being the deployment of AI-based facial recognition and over 600,000 CCTVs in Hyderabad ([Raghunath, 2022](#)). This raised concerns about the right to privacy.

Criticism of policy mismanagement was also challenged since governments were reported to intimidate dissenting voices, threatening to press legal charges that could result in punishments as per emergency laws and measures. The acting Police Inspector General of **Sri Lanka**, for example, issued a warning against those publishing on social media criticising the government and threatened that it could amount to the obstruction of official duty ([Daily Mirror Online, 2020](#)). While no laws were cited, Sec. 17(2)(b)(i) of the Public Security Act (1947) used to invoke the SoE indicated such powers. **Pakistan's** joint civil-military command NCOC formed a committee to prepare a legal framework to take action against disinformation and "fake news" ([Press Information Department, 2020](#)). This ultimately resulted in self-censorship.

The pandemic also saw an increase in state surveillance through the deployment of 'COVID-19 applications' and other physical infrastructures. For example, the COVID-19 track and trace system of

Pakistan was repurposed from a terrorist activity tracking system. Through the process of assessing the risk of those in close contact with COVID-19 patients, the application allowed the government to eavesdrop on them ([Mohammad, 2020](#)). **India** saw a significant step up in surveillance facilities, with the prime example being the deployment of AI-based facial recognition and over 600,000 CCTVs in Hyderabad ([Raghunath, 2022](#)). This raised concerns about the right to privacy.

This analysis points out the impoverished state of civic freedoms, in which the use of existing laws and executive powers without clear provisions regarding their scope and criteria was remarkable, revealing a generalised democratic contraction in the region. The special powers exercised by the executive branch of government cut short parliamentary scrutiny, challenging the principles of separation of powers. This analysis concurs with several measurements of democracy that also stress the decline of the quality of democracy when comparing pre (2019) and post-pandemic (2022) indexes in South Asia, especially in India and Nepal ([EIU 2019; 2021](#), [Freedom House, 2019, 2022](#)).

Recommendations and Conclusion

The restriction of civic freedoms in South Asia shown above exceeded the scopes and criteria set out in international standards, particularly in Article 4 of ICCPR (1966) on the derogation of rights in emergency situations. The ICCPR lays out the obligations states must comply with to protect individuals' civic and political rights. States may derogate from this obligation on the strict conditions that such emergencies constitute a monumental threat, that SoEs must be officially proclaimed and that powers must be narrowed in geographical and material scope. Such measures should not be inconsistent with other international law obligations and not discriminate solely based on race, colour, sex, language, religion or social origin. In this regard, there is a need for government officials, international organisations and civil society organisations to monitor whether emergency measures in South Asia follow international standards.

Governments must increase transparency and accountability in implementing emergency measures and cooperate with civil society organisations in creating a space where voices of those affected by emergency measures can be channelled. South Asian governments should also design a comprehensive set of laws which is specific to health emergencies and include human rights elements. This will help navigate both federal and state governments in managing crises while limiting the consequences thereof on civic freedom and amalgamating human rights-sensitive management at both the national and state levels.

International organisations are to assist South Asian countries to fulfil their human rights obligations. They must provide South Asian CSOs with a platform to raise concerns about the human rights situation during emergencies in their home countries. South Asian CSOs, for their part, should strive to prevent their government from enjoying impunity over mala fide use of emergency measures and raise awareness of international human rights obligations in times of crisis among the public.

This policy brief has shown the ways in which emergency and temporary measures invoked or enacted during the pandemic allowed South Asian governments to amass powers and skirt scrutiny. Informal and executive powers were favoured over formal legal measures that could have refrained the abuse of power. As a result, the derogation of rights during the pandemic – to assemble, for a free and fair election, to express and to privacy – accelerated the democratic backsliding in the region.

Asia Centre is a civil society research institute in Special Consultative Status with the United Nations Economic and Social Council. It was founded in Bangkok, Thailand, in 2015 and a second office was established in Johor Bahru, Malaysia, in 2018. Asia Centre serves as a knowledge partner and undertakes evidence-based research to publish baseline studies and policy toolkits. It also provides training and capacity-building programmes for end beneficiaries such as government officials and universities.

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