

M. Ehteshamul Bari
Uday Shankar *Editors*

Human Rights During the COVID-19 Pandemic

The South Asian Experience

 Springer

Human Rights During the COVID-19 Pandemic

M. Ehteshamul Bari · Uday Shankar
Editors

Human Rights During the COVID-19 Pandemic

The South Asian Experience

 Springer

Editors

M. Ehteshamul Bari
Thomas More Law School
Australian Catholic University
Melbourne, VIC, Australia

Uday Shankar
Rajiv Gandhi School of Intellectual
Property Law
Indian Institute of Technology
Kharagpur, West Bengal, India

ISBN 978-981-97-1479-7

ISBN 978-981-97-1480-3 (eBook)

<https://doi.org/10.1007/978-981-97-1480-3>

© The Editor(s) (if applicable) and The Author(s), under exclusive license to Springer Nature Singapore Pte Ltd. 2024

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Singapore Pte Ltd.

The registered company address is: 152 Beach Road, #21-01/04 Gateway East, Singapore 189721, Singapore

Paper in this product is recyclable.

Preface

The proclamation of an emergency can be a legitimate constitutional method to take effective measures for safeguarding the interests of the society in times of grave crises. However, the extraordinary powers concerning emergency should be exercised in a manner that does not undermine a nation's commitment to democratic values, such as maintaining the rule of law and safeguarding the fundamental human rights. The COVID-19 pandemic posed unprecedented threats to the lives and health of individuals. However, since the constitutions of South Asian nations do not permit the proclamation of an emergency on health grounds, executives of these nations were constrained to rely, among other things, on ordinary legislation to tide over the threats posed by the pandemic. Although these statutes entrust the executive with extensive emergency powers, they do not simultaneously subject the exercise of such powers to a reliable system of checks and balances. Consequently, the exercise of these powers during the pandemic had a profoundly adverse impact on the fundamental human rights of individuals. This was consistent with the general tendency demonstrated by succeeding generations of executives in the South Asian nations to use emergency situations as the convenient means for imposing long-lasting limitations on the rights of individuals. Since no systematic and structured research has so far been carried out evaluating the invocation of emergency measures in the South Asian nations to respond to the threats posed by the COVID-19 pandemic and their adverse impact on the human rights of individuals, this research will enhance knowledge by identifying the flaws, deficiencies and lacunae of the framework relied on to articulate the response to the pandemic. Consequently, based on these findings, recommendations will be put forward to rectify these defects from comparative law and normative perspectives. The outcome of this book will establish the best means for preventing undue intrusion on the fundamental human rights of individuals during grave crises, such as the COVID-19 pandemic.

Melbourne, Australia
Kharagpur, India

M. Ehteshamul Bari
Uday Shankar

Acknowledgements

We, the editors, duly acknowledge the invaluable contributions of the authors of the chapters. Dr. M. Ehteshamul Bari is indebted to his dearest mother, Mrs. Umme Salma Atiya Bari, for her undying love and unconditional support. He also owes a profound debt of gratitude to his beloved father, Prof. M. Ershadul Bari, who was the leading authority on Bangladeshi Constitutional Law.

Dr. Bari is also thankful to his wife, Samia Islam, and daughter, Samaira Bari, for their love and understanding, in particular, of his commitment to carry out the onerous task of editing and preparing this book.

Professor Uday Shankar would like to thank his wife and daughters for their kind understanding of his preoccupation with the task of editing the book.

Finally, we are, indeed, grateful to Springer Nature for extending their kind cooperation towards the publication of this book.

Melbourne, Australia
Kharagpur, India

M. Ehteshamul Bari
Uday Shankar

Contents

1	Human Rights in South Asia During the COVID-19 Pandemic: An Overview	1
	M. Ehteshamul Bari and Uday Shankar	
	Part I The COVID-19 Emergency and the Executive Response: Reinforcing the Necessity of Institutional Reforms	
2	The Executive Response to the COVID-19 Emergency and the Issue of Protecting Rights: The Same Old South Asian Story	13
	M. Ehteshamul Bari	
3	Oversight and Monitoring of Executive Actions in India During the Pandemic: A Case of Absentee Parliament	37
	Pritam Dey	
4	Evaluation of the Functioning of the National Human Rights Commissions of India and of Other South Asian Nations During the COVID-19 Pandemic	51
	Manwendra Kumar Tiwari	
5	Looking Beyond Constitutional Institutions During an Emergency: Exploring the Role of the Civil Society in Protecting Rights	73
	Simi Mehta	
	Part II The Adverse Impact of the Pandemic Response on Fundamental Rights	
6	Criminalisation of Media Reporting on the Government Response to the COVID-19 Pandemic in India, Pakistan and Bangladesh: Freedom of Press in Peril	89
	M. Ehteshamul Bari and Safia Naz	

7	Protecting Free Speech and Curbing the Spread of Disinformation in the Age of COVID-19: Did the South Asian Nations Get the Balance Right?	101
	Abhinav K. Shukla and Mayank Shrivastava	
8	Right to Health During the Pandemic: A South Asian Perspective	117
	Rajesh Kumar	
Part III The Adverse Impact of the Pandemic Response on Socio-Economic Rights		
9	COVID-19 and the Indian Migrant Workers—Citizens of States or Citizens of Nation?	135
	Deepak Kumar Srivastava and Balwinder Kaur	
10	The Right to Health: Cinderella Among Fundamental Rights and Lessons from COVID-19	147
	Anurag Deep	
11	Collectivism, Non-justiciability, and the Fragility of Social Rights in Bangladesh: The COVID-19 Pandemic in Context	161
	Lima Aktar	
12	Socio-Economic Rights in Pakistan and Sri Lanka During the Pandemic	179
	Kanij Fatima	

About the Editors

M. Ehteshamul Bari Ph.D. (Macquarie, Sydney), is a Senior Lecturer in Law and the Deputy Head (Research) of the Thomas More Law School at the Australian Catholic University in Melbourne, Australia. He is an internationally recognized scholar in the fields of constitutional law, human rights, Asian legal systems and public international law. Dr Bari's expertise was, for instance, called upon by the Chair-Rapporteur of the UN Working Group on Enforced or Involuntary Disappearances for an Experts Consultation on Elections and Enforced Disappearances at the 131st session of the UN Working Group on Enforced Disappearances. He has so far published five books—four monographs and one edited book—with reputed academic publishers, namely, Routledge and Springer, 25 book chapters and research articles including publications in the *Oxford University Commonwealth Law Journal*, *Wisconsin International Law Journal*, *George Washington International Law Review*, *Emory International Law Review*, *Cardozo International and Comparative Law Review*, *Michigan State International Law Review*, and *Transnational Law and Contemporary Problems*. He has received prestigious awards in recognition of his scholarship, including the Executive Dean's Higher Degree Research Award for Best Publication at Macquarie University, Sydney.

Uday Shankar Ph.D. (Delhi), is an Associate Professor of Law at the Indian Institute of Technology, Kharagpur, India. Previously, he served as the Registrar of Hidayatullah National Law University, Raipur. His main research expertise lies in the areas of Constitutional Law and Human Rights Law. He has published extensively in these areas, including a book and book chapters in 18 edited collections. His expertise has more broadly been recognized through fellowships at prestigious overseas institutions, including the University of Hamburg and the Max Planck Institute for Comparative Public Law and International Law.

Chapter 1

Human Rights in South Asia During the COVID-19 Pandemic: An Overview



M. Ehteshamul Bari and Uday Shankar

1.1 Introduction

Human rights are the ‘inviolable and inalienable’ moral rights which all individuals are entitled to enjoy by virtue of their membership of the human family.¹ In light of the fundamental interests protected by human rights, such as the interests of individuals in enjoying physical and bodily integrity, and their interest in enjoying freedom from discrimination on the basis of certain characteristics, such as race, sex, religion, and ethnicity, it is a common feature of most modern democracies to safeguard their enjoyment by means of constitutionally entrenched bills of rights. The objective underlying the enumeration of human rights in a constitution was eloquently articulated by Justice Hidayatullah of the Indian Supreme Court in *IC Golak Nath and others v the State of the Punjab and another*²: ‘declarations of the Fundamental Rights of the Citizens are the inalienable rights of the people ... [The] constitution enables an individual to oppose successfully the whole community and the state and claim his rights’.³

Notwithstanding the objective underlying the incorporation of a justiciable list of rights in the constitution, extraordinary threats—such as war, external aggression, or deadly pandemics—which pose a grave threat to the life of the nation and its inhabitants may necessitate the imposition of restrictions on such rights. For permitting the unconstrained enjoyment of certain human rights, such as those relating to liberty and

¹ Bari (2017), p. 64.

² [1967] 2 SCR 762.

³ Ibid. [867].

M. E. Bari (✉)

Thomas More Law School, Australian Catholic University, Melbourne, VIC, Australia

e-mail: me.bari@acu.edu.au

U. Shankar

Indian Institute of Technology, Kharagpur, India

movement, may impede a government's efforts to contain the grave threats posed to the life of the nation. However, the restrictions imposed on the liberties of individuals must be proportional to the emergency facing the nation both as a 'matter of degree and duration'.⁴

The World Health Organization declared 'coronavirus disease' (COVID-19) as a pandemic on 12 March 2020. This 'once-in-a-lifetime' pandemic has so far infected more than 775 million people around the world and caused the death of 7 million individuals.⁵ In an effort to contain the threats posed to the lives of individuals during the pandemic, governments around the world resorted to emergency powers to, among other things, order the closure of businesses, impose travel restrictions, mandate the isolation of individuals infected with the virus, and require individuals who had been 'exposed to the virus' to be quarantined.⁶ Thus, the measures taken by governments around the world to deal with the threats posed by COVID-19 had a profoundly adverse impact on the life and livelihood of individuals. However, resort to these measures was justified as being necessary for maintenance of public health and for saving lives. It should be stressed here that in order to alleviate some of the constraints imposed by the measures adopted by governments to tackle COVID-19, governments around the world made available various support packages, including financial and mental support services, to impacted individuals.

Although the constitutions of certain nations authorise the executive to proclaim an emergency to tide over the threats posed by natural catastrophes, such as pandemics, the Constitutions of South Asian nations do not contain any such authorisation. The absence of a power under the constitutional framework of South Asian nations to declare an emergency on health grounds, however, did not prevent the governments of these nations to resort to emergency measures to deal with the COVID-19 pandemic. To this end, the governments relied on ordinances and colonial-era legislation. The emergency measures adversely affected not only the civil and political rights of individuals but also their socio-economic rights. However, this book will shed light on the fact that the South Asian governments did not introduce extensive support packages to alleviate the sufferings of their people. Rather, the failure of governments to adequately deal with the discriminatory impact of the measures taken to deal with the pandemic only reinforced the economic inequality prevalent in these nations. Furthermore, this book will make it manifestly evident that the pandemic was conveniently used by governments of some of the South Asian nations to arbitrarily dispense with the civil and political rights of individuals.

In this chapter, first, the nature of health emergencies and the safeguards that are considered imperative for preventing the use of such emergencies to unduly infringe the fundamental human rights of individuals will be briefly discussed. Second, an attempt will be made to examine the legal framework under which nations around the world articulated their response to the pandemic. The objective of this analysis is to provide an insight into the shortcomings of the approach undertaken by the South

⁴ Bari (2017), p. 69.

⁵ World Health Organisation (2023), <https://covid19.who.int>.

⁶ Pugh (2020), p. 2.

Asian nations to deal with the threats posed by the pandemic. Third, the objectives of this book will be discussed. Finally, an outline of the chapters which will make up this book will be provided.

1.2 Health Emergencies and the Safeguards Necessary to Prevent the Misuse of Such an Emergency to Dispense with the Fundamental Human Rights

While historically the notion of emergency declarations has generally been confined to security-oriented matters, the severity of the threats posed by natural catastrophes, which ‘adversely affect the lives, health, and private property of the inhabitants of a nation or any part thereof and put the public infrastructure at risk’,⁷ in recent times have also necessitated the proclamation of an emergency. Natural catastrophes or disasters warranting a declaration of emergency have been broadly defined to include pandemics, ‘famines, tornadoes, typhoons, cyclones, avalanches, volcanic eruptions, drought and fire’, ‘in which the day-to-day patterns of life are—in many instances—suddenly disrupted and people are plunged into helplessness and suffering and, as a result, need protection, clothing, shelter, medical and social care, and other necessities of life.’⁸ The objective underlying the invocation of such an emergency is to facilitate the expansion of ‘the state’s ability to free up funds and cut through bureaucratic red tape to expedite and dispatch resources and emergency personnel to emergency areas’.⁹

While an emergency declared on health grounds, for instance, may necessitate the imposition of restrictions on the human rights of individuals to enable the government to prevent the spread of an infectious disease, such restrictions must be subjected to the governance of two substantive principles—the principles of non-derogation and proportionality—which are considered the cornerstone of the international human rights norms developed in 1950s and 1960s.¹⁰ The principle of non-derogation stipulates that there are certain rights, such as the right to life¹¹; the right not to be subjected

⁷ Bari (2017), pp. 148–149.

⁸ The League of Red Cross Societies (1976), p. 13.

⁹ Ibid.

¹⁰ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the American Convention on Human Rights (ACHR) 1969.

¹¹ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), opened for signature 4 November 1950, 213 UNTS 222 (entered into force on 3 September 1953), Art 2; International Covenant on Civil and Political Rights (ICCPR), opened for signature on 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976), Art 6; American Convention on Human Rights (ACHR), opened for signature on 22 November 1969, 1144 UNTS 123 (entered into force on 18 July 1978), Art 4.

to torture, cruel, and degrading treatment¹²; the right to freedom from slavery¹³; and the right to protection from retroactive laws,¹⁴ which ‘express fundamental value for human beings’ and as such should not be susceptible to derogation even during a grave emergency. The fact that a right is not incorporated in the list of non-derogable rights does not, however, give the executive the *carte blanche* to dispense with such a right. For any measure derogating from a right must also satisfy the principle of proportionality. The principle of proportionality is premised on the idea that ‘there should be a reasonable relationship or balance between an end and the means used to achieve that end’.¹⁵ Only those rights which are ‘strictly required’ to deal with the exigencies of a public emergency can be suspended.¹⁶ Thus, these principles serve to limit the impact of a declaration of emergency on the fundamental human rights of individuals.

The broad scope of emergency powers, however, often persuades the executive to use or continue to use emergency powers beyond the circumstances which warranted their exercise. Consequently, it becomes necessary to subject the exercise of emergency powers to a reliable system of checks and balances. For instance, the continuation of a proclamation of emergency and the consequent emergency measures, such as the restrictions on rights, should be subjected to periodic review by increasing super-majorities of the Parliament, which is considered a ‘competent, active and informed organ’ of the government.¹⁷ The Parliament’s scrutiny of emergency measures at regular intervals has the merit of ensuring the ‘implementation of the principle of proportionality in practice,’ and consequently facilitates the enjoyment of those rights which do not have any bearing on a state of emergency.¹⁸

The above safeguards also provide the judiciary with the objective criteria for examining the legality and necessity of emergency measures, such as restrictions on the human rights of individuals. In this context, Tom Hickman pertinently notes, a carefully designed derogation model ‘creates a space between fundamental rights and the rule of law. While governments are permitted to step outside the human rights regime their action remains within the law and subject to judicial supervision’.¹⁹

¹² ECHR, *ibid*, Art 3; ICCPR, *ibid*, Art 26; ACHR, *ibid*, Art 5.

¹³ ECHR, *ibid*, Art 4; ICCPR, *ibid*, Art 26; ACHR, *ibid*, Art 6.

¹⁴ ECHR, *ibid*, Art 7; ICCPR, *ibid*, Art 26; ACHR, *ibid*, Art 9.

¹⁵ Kirk (1997), p. 2.

¹⁶ Bari (2017), p. 70.

¹⁷ *Ibid*. p. 156.

¹⁸ *Ibid*.

¹⁹ Hickman (2005), p. 659.

1.3 Emergency Governance During the COVID-19 Pandemic Around the World, Including South Asia

Only very few constitutions, e.g. the Constitution of the Independent State of Papua New Guinea, 1975²⁰; the Political Constitution of Peru, 1993²¹; the Constitution of Azerbaijan, 1995²²; and the Constitution of the Republic of South Africa, 1996,²³ permit the proclamation of an emergency on account of natural disasters, including the outbreak of infectious disease. Some of these Constitutions also stipulate certain safeguards for examining the constitutionality of a proclamation of emergency and its impact on fundamental rights. For instance, the Constitution of South Africa not only makes a number of rights non-derogable during the continuation of a state of emergency but also subjects the continuation of emergency measures, such as the limitations imposed on rights, to the scrutiny of the increasing supermajorities of the Parliament. The South African Constitution in the first instance requires a proclamation of emergency and the consequent measures to be approved by a simple majority of the Parliament.²⁴ However, any further extension of the emergency measures warrants ‘a supporting vote of at least 60 per cent of the members of the Parliament’.²⁵

While the executives in these nations could rely on their constitutional emergency framework to articulate their responses to the threats posed by the pandemic, the absence of an express constitutional authorisation to proclaim a health emergency coupled with the enormity of the threats posed by the pandemic persuaded a number of nations to adopt comprehensive pandemic laws to curb the spread of coronavirus. In this context, reference can be made to the Coronavirus Act (CA), which was enacted by the British Parliament in March 2020 to invest the executive with emergency powers to combat the threats posed by the pandemic. The powers granted to the executive included, among other things, limiting or suspending public assemblies and detaining individuals infected or contaminated with the virus. Thus, it is evident that the executive was empowered to impose restrictions on civil and political rights of individuals to curb the spread of the virus. However, in order to prevent the abuse of emergency powers to impose unwarranted restrictions on the

²⁰ Constitution of the Independent State of Papua New Guinea 1975 in Sec 226(b) permits the declaration of a state of emergency in the event of ‘an earthquake, volcanic eruption, storm, tempest, flood, fire or outbreak of pestilence or infectious disease, or any other natural calamity’.

²¹ Political Constitution of Peru 1993 in Art 137(1) empowers the President of the Republic of Peru, with the written advice and consent of the cabinet, to declare a state of emergency ‘in case of disturbances of the peace or the domestic order, disasters, or serious circumstances affecting the life of the Nation’.

²² Constitution of Azerbaijan 1995 in Art 112 authorises the President of Azerbaijan Republic to proclaim an emergency ‘whenever natural calamities take place’.

²³ Constitution of the Republic of South Africa 1996 in Art 37(1)(a) empowers the declaration of a state of emergency in terms of an Act of Parliament ‘when the life of the nation is threatened by ... natural disaster’.

²⁴ *Ibid.* Art 37(2)(b).

²⁵ *Ibid.*

rights, the CA incorporated a number of safeguards. First the CA incorporated a principle of proportionality. For it stipulated that any measures taken to shut down the circulation of the virus had to be both necessary and proportionate for: a) safeguarding the best interests of the detained individuals, or b) protecting other people, or c) maintaining public health.²⁶ Second, the detention of an infected individual beyond 14 days had to be reviewed at last once daily by a public health officer. If the officer determined that the individual was no longer infectious, then s/he could revoke the order of detention.²⁷ Third, the CA stipulated that its provisions would be subject to parliamentary scrutiny at 6-month intervals.²⁸ Finally, the CA contained a sunset clause under which most of the provisions expired on 25 March 2022—2 years after the enactment of the Act.²⁹ Thus, the British Parliament incorporated a mechanism in the CA to ensure that the Act did not remain on the books beyond the health risks posed by the COVID-19 emergency.

Although the Constitutions of South Asian nations do not permit the proclamation of a health emergency, the executives of these nations nevertheless resorted to emergency powers to deal with emergency situations posed by the pandemic. To this end, they relied on decrees and colonial-era statutes notwithstanding the call for the enactment of comprehensive national legislation dealing with all aspects of the pandemic. The enactment of such a statute, as is evident from the discussion on the CA, provides legal certainty which is ‘paramount in cases of deprivations’³⁰ of the fundamental human rights individuals. This book will make it manifestly evident that the absence of any reliable checks and balances governing the exercise of emergency powers in South Asia during the pandemic in turn had an adverse impact on the fundamental human rights of individuals.

It is also pertinent to note here that the decision to impose hard lockdowns around the world during the pandemic raised significant constitutional and human rights concerns around the issues of equality and non-discrimination. However, while liberal democracies around the world introduced extensive economic stimulus packages for individuals and businesses, no such packages were introduced in the South Asian nations. This in turn profoundly impacted the socio-economic rights of individuals.

1.4 Objectives of the Book

Since no systematic and structured research has so far been carried out evaluating the invocation of emergency measures in the South Asian nations to respond to the threats posed by the COVID-19 pandemic and their adverse impact on the human

²⁶ Coronavirus Act, 2020 (UK) Sch 21, Secs 6(3), 7(3), 8(2), 13(6), 14(2), 15(2b).

²⁷ Ibid. Sec 15(7–8).

²⁸ Ibid. Sch 23, Sec. 98.

²⁹ Dyer, C. (2022), *COVID-19: Parliament was Denied Power to Scrutinise Pandemic Laws, Say MPs*. Available at <https://www.bmj.com/content/376/bmj.o730>.

³⁰ Pugh (2020), p. 9.

rights of individuals, this research will enhance knowledge by identifying the flaws, deficiencies and lacunae of the framework relied on to articulate the response to the pandemic. Consequently, based on these findings, recommendations will be put forward to rectify these defects from comparative law and normative perspectives. The outcome of this proposed book will establish the best means for preventing undue intrusion on the fundamental human rights of individuals during grave crises, such as the COVID-19 pandemic.

1.5 Structure of the Book

Following this introductory chapter, this book will be divided into three parts. Part I examines the executive response to the COVID-19 Emergency in South Asia, and, consequently, advocates the necessity of institutional reforms. The COVID-19 pandemic constituted a threat to the organised life of the community. The Constitutions of the South Asian nations, as pointed out above in Sect. 1.3, do not empower the executive to proclaim public health emergencies. Furthermore, owing to the past distressing experiences of these nations with politically motivated states of emergencies, the governments were reluctant to formally invoke emergency powers to deal with the threats posed by the pandemic. Instead, they relied on health and police powers under disaster management laws and colonial-era epidemic prevention laws. Paradoxically, these laws do not contain any realistic checks on the exercise of emergency powers. Furthermore, the police powers were supplemented by the liberal use of criminal codes to restrict movement in specific areas.

At all levels, therefore, the pandemic was managed by an interlocking set of executive decrees passed under broadly worded laws, which do not require the representative bodies to debate or question these moves. The exclusion of deliberative representative bodies from the management of a grave crisis represents a matter of grave concern. Consequently, the COVID-19 pandemic turned into a cover for executive aggrandisement in South Asia. The four chapters contained in this Part critically examines these issues. Chapter 2, titled ‘The Executive Response to the COVID-19 Emergency and the Issue of Protecting Rights: The Same Old South Asian Story’, identifies the weaknesses of the legal framework in India, Pakistan and Bangladesh, which permitted the executive to assume unfettered power during the COVID-19 emergency at the expense of the fundamental human rights of individuals. The manner in which emergency measures were misused during the pandemic had obvious parallels with previous instances of the exercise of emergency powers in these nations. Consequently, this chapter puts forward some law reform proposals for ensuring the maintenance of a delicate balance in these nations between the necessity to respond to grave threats, such as the pandemic, and to prevent undue intrusion on the fundamental human rights of individuals.

Chapter 3, titled ‘Oversight and Monitoring of the Executive Actions in India during the Pandemic: A case of Absentee Parliament’, uses the example of India to shed light on the manner in which the COVID-19 pandemic tested national readiness

in a federal system to contain the spread of the disease effectively and required very quick action by governments. At the same time, those responses involved significant limitations on people's rights and freedoms, especially freedom of movement. They were also implemented through executive power with limited parliamentary involvement and imposed through decision-making processes that involve significant delegations of power. A foundational principle of India's democratic structure is the sovereignty of Parliament—but different layers of scrutiny have applied to the emergency measures, often without parliamentary oversight. This is not just of concern in relation to COVID measures but, more generally, posing serious challenges to Parliament's constitutionally recognised law-making role. This chapter considers the Indian Parliament's accountability framework for responding to the pandemic. It sheds light on how rights scrutiny principles and strengthened oversight framework can inform decision-making, especially in times of crisis.

Chapter 4, titled 'Evaluation of the Functioning of the National Human Rights Commissions of India and of Other South Asian Nations during the COVID-19 Pandemic', examines whether the human rights commissions of the South Asian nations went beyond mere advocacy during the pandemic to take effective measures for safeguarding the enjoyment of the fundamental human rights of individuals.

Chapter 5, titled 'Looking beyond Constitutional Institutions during an Emergency: Exploring the Role of the Civil Society in Protecting Rights', critically examines the role played by the civil society organisations in South Asia during the health emergency posed by the pandemic.

Part II of this book sheds light on the adverse impact of the pandemic response on the fundamental rights of individuals. COVID-19 was a public health crisis that required governments to take far-reaching measures—many of which had a severe impact on the civil and political rights of individuals. However, this did not mean that the governments could assume *carte blanche* power to dispense with all or any of fundamental rights. Rather any state action taken in contravention of the rights of the individuals had to conform to the principle of proportionality, i.e. such action must be strictly required by the exigencies of the pandemic. However, notwithstanding this, throughout the pandemic—and especially in its early stages—a range of measures were taken in violation of the principle of proportionality. These include curfews, public disclosure of the private details of quarantined individuals, restrictions on individual movement, and so on. Furthermore, the ban on media houses reporting COVID-19-related data, and the use of cyberlaws to institute criminal charges against journalists reporting on the inadequacy of the measures taken by governments to contain the spread of the virus and against those who questioned the response to the pandemic, reflected the contemptuous attitude of the governments towards the rights of individuals. Accordingly, the three chapters in this part shed light on these pertinent issues. Chapter 6, titled 'Criminalisation of Media Reporting on the Government Response to the COVID-19 Pandemic in India, Pakistan and Bangladesh: Freedom of Press in Peril', sheds light on the manner in which the governments in India, Pakistan and Bangladesh unduly imperilled press freedom in an effort to shield from scrutiny the inadequacy of the measures that they had taken to combat the challenges posed by the pandemic.

Chapter 7, titled ‘Protecting Free Speech and Curbing the Spread of Disinformation in the Age of COVID-19: Did the South Asian Nations Get the Balance Right?’, critically examines whether the measures taken by the South Asian nations during the pandemic upset the delicate balance required to be maintained between combatting the proliferation of disinformation and simultaneously safeguarding free speech.

Chapter 8, titled ‘Right to Health during the Pandemic: A South Asian Perspective’, conducts an analysis of the legal framework of the South Asian nations to explore the extent to which they safeguard the right to health and, subsequently, sheds light on the impact of the pandemic on this right.

Part III of this book examines the adverse impact of the pandemic response on the socio-economic rights of individuals. Pandemics do not discriminate between the rich and the poor, but the State certainly does. A lockdown, for example, has a severely disproportionate impact, depending on the socio-economic status of a person. ‘Work from home’ jobs statistically track along socio-economic lines (the higher paying jobs are generally the ones that can be done from home), and the forced closure of all establishments had a direct impact on the lives and livelihood of migrant workers, who live on daily wages. Therefore, the decision to impose a hard national lockdown during the pandemic raised significant constitutional and human rights concerns around the issues of equality and non-discrimination. This is not to suggest that the lockdowns were not necessary to break the chain of COVID-19 transmission. Rather once the lockdowns were imposed, governments had an affirmative obligation to deal with their discriminatory impact. The four chapters in this Part shed light on these issues. Chapter 9, titled ‘COVID-19 and the Indian Migrant Workers: Citizens of States or Citizens of Nation?’, seeks to highlight, in the first instance, the plight of the India migrant workers during the COVID-19 pandemic. It argues that the rights of migrant workers were flagrantly breached during the lockdown. The chapter concludes that there needed to be more cooperation and coordination between the federal and state governments to mitigate the adverse effects of the lockdown on migrant workers.

Chapter 10, titled ‘The Right to Health: Cinderella among Fundamental Rights and Lessons from COVID-19’, examines some of the important decisions of the Supreme Court of India on health issues during the pandemic. It makes it evident that contrary to popular belief, citizens do not have an enforceable right to health under Article 21 of the Constitution of India. The chapter advocates for a conclusive judicial pronouncement on the content of the right to health in India.

Chapter 11, ‘Collectivism, Non-Justiciability, and the Fragility of Social Rights in Bangladesh: The COVID-19 Pandemic in Context’, explores how over the years social rights, especially the individual’s right to health, has been critically jeopardised in Bangladesh. This phenomenon resurfaced during the COVID-19 pandemic as well when the government prioritised collective health rights—from pure economic development concern—downplaying the individualistic account of health right.

Chapter 12, titled ‘Socio-Economic Rights in Pakistan and Sri Lanka during the Pandemic’, examines the manner in which Pakistan and Sri Lanka dealt with COVID-19 and its consequences, in light of pre-existing issues and failures to protect socio-economic rights according to international law. It finds that both countries require an integrated recovery plan to respond appropriately to post-COVID-19 conditions.

References

- Bari, M. E. (2017). *States of Emergency and the Law: The Experience of Bangladesh* (pp. 64, 69–70, 148–149). Routledge.
- Dyer, C. (2022). *COVID-19: Parliament was Denied Power to Scrutinise Pandemic Laws, Say MPs*. Available at <https://www.bmj.com/content/376/bmj.o730>.
- Hickman, T. R. (2005). Between Human Rights and the Rule of Law: Indefinite Detention and Derogation Model of Constitutionalism. *Modern Law Review*, 68, 659.
- Kirk, J. (1997). Constitutional Guarantees, Characterisation, and the Concept of Proportionality. *Melbourne University Law Review*, 21, 2.
- Pugh, J. (2020). The United Kingdom’s Coronavirus Act, Deprivations of Liberty, and the Right to Liberty and Security of the Person. *Journal of Law and the Biosciences*, 7(1), pp. 2, 9.
- The League of Red Cross Societies. (1976). *A Handbook of Red Cross Disaster Relief* (p. 13).
- World Health Organisation (2023). *WHO Coronavirus (COVID-19) Dashboard*. Available at <https://covid19.who.int>