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After the Emergency: What Pandemic Powers Left Behind in India, South Korea, the United Kingdom and the United States

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Abstract

When COVID-19 arrived, governments took powers that would have been unthinkable a month earlier. Two well-known accounts predict what should happen to such powers afterwards. One says emergency powers never really leave. The other says that a pandemic, unlike a war, keeps the executive on a short leash. Both were built mostly on evidence from 2020 and 2021. This article asks a later question: what was still standing by 2026? It follows nineteen pandemic-era measures across India, South Korea, the United Kingdom and the United States and records whether each lapsed, was cut back, was left untouched or was made permanent. Measures that people could see and feel, such as lockdowns, gathering bans and vaccine mandates, lapsed or were cut back in every country. Measures that worked out of sight, such as access to location data, consent-free processing of health data, new institutions and changes to court procedure, survived, and several were written into ordinary law. The ratchet is real. It just works quietly. The public argument over pandemic powers spent its energy on lockdowns when it should have been watching data, and India, which still relies on an 1897 statute, has the most to lose from that mistake.

Keywords: *: emergency powers; pandemic law; surveillance; public health governance; comparative law; COVID-19*

Introduction

At 8 p.m. on 24 March 2020, India's Prime Minister told the country it would shut down at midnight. Four hours. Within days, migrant workers were walking home along highways, hundreds of kilometres, because their wages had stopped and so had the trains.

The legal basis was not a pandemic law. The government used the Disaster Management Act, 2005, written after the 2004 tsunami with cyclones and earthquakes in mind, and the Epidemic Diseases Act, 1897, a colonial statute drafted to fight bubonic plague in Bombay. Two old tools, pressed into a new job.

Other democracies improvised too. Britain passed an emergency Act in days. American governors used powers built for hurricanes. South Korea was the exception. It already had a detailed infectious disease statute, written after a smaller outbreak five years earlier, and it used that statute to track people with a precision most democracies would not have accepted before 2020.

The emergency is over now. So what did it leave behind?

The question cannot be answered while an emergency is still running, because a power that has not yet expired might still expire. The best comparative studies stopped in 2021. Six years on, we can finally look. What we find is that the state did grow, but not where most critics were looking. Lockdowns ended everywhere. The quieter powers stayed.

Two accounts of emergency power

The first account says that emergencies never really end. Carl Schmitt opened *Political Theology* with the claim that the sovereign is whoever decides on the exception (Schmitt, 1922/1985). Giorgio Agamben (2005) turned this into a warning: modern governments, he argued, had made the emergency an ordinary technique of rule. In February 2020 he applied the argument to Italy's first COVID measures, calling the epidemic an invention used to justify a state of exception (Agamben, 2020). He badly underestimated the virus. The structural worry he raised did not depend on the virus being mild, though.

Robert Higgs (1987) gave the same worry an economic form. Studying American government through wars and depressions, he found that it grew in jumps during each crisis

and fell back only part of the way afterwards. He called this the ratchet effect. A ratchet turns one way.

Michel Foucault (1977) adds the historical point that matters most here. His account of modern surveillance begins not with the prison but with the plague town: sealed, divided into quarters, every house inspected daily, every resident counted. Epidemics sit close to the origin of the watching state. India's history fits. The plague measures in Bombay and Pune in 1896 and 1897 brought forced house searches, segregation camps and the inspection of travellers, and they provoked fierce resistance, including the killing of the Pune plague commissioner, W. C. Rand (Arnold, 1993). The law behind those measures is the same 1897 Act that India used in 2020.

The second account comes from Tom Ginsburg and Mila Versteeg (2021), who surveyed over one hundred countries in the opening months of the pandemic. Courts kept sitting. Legislatures kept voting. Regional governments pushed back against central ones. The executive, they concluded, stayed bound. Their explanation is persuasive. A war is sudden and its information sits with the security services. A pandemic is slow, its information is spread across hospitals and laboratories, and the response needs local governments to carry it out. All of that makes it harder for the centre to act alone. The V-Dem Institute's tracking of 144 governments pointed the same way for most democracies, and it found no link between violating democratic standards and lower COVID death rates (V-Dem Institute, 2020b). Harsh measures did not buy better outcomes.

Both accounts look at the wrong moment. Agamben watched the lockdowns, and lockdowns ended everywhere, even where there was no expiry date. Ginsburg and Versteeg watched the first months, and checks during a crisis are aimed at what is happening in public. The most lasting legal changes from a crisis are often made later, through ordinary bills framed as lessons learned, when the emergency is over and nobody is paying attention.

Our hypothesis is that survival depends on two things: whether ordinary people experience the power directly, and whether the power finds a home in ordinary law or a permanent institution. Visible powers generate their own opposition and tend to lapse. Invisible powers with a legal home tend to stay. There is one other route to survival, which is popularity, and we found one clear case of it.

Method

We compare four democracies that sourced their pandemic powers in four different ways. India relied on a colonial statute and a general disaster law. South Korea had a dedicated statute written after an earlier outbreak. Britain passed a new emergency Act with a two-year expiry date, but did most of its lockdown work under a separate 1984 public health statute. The United States relied on the general emergency powers of state governors in a federal system. All four have independent courts, so regime type cannot explain differences in outcome. A short contrast with China appears in the discussion. It is not a full case, because reliable primary sources are hard to obtain.

We recorded a measure if it restricted movement, assembly, work or choices about one's own body, or authorised the state to collect or use personal data; if it had a formal legal basis; and if it was significant enough to have been litigated, debated in a legislature or officially reviewed. This gives a sample of high-profile measures, not a census. A census of every pandemic order in four countries would run to thousands of items, most of them local and short-lived.

For each measure, we asked where it stood on 30 September 2026. A measure *lapsed* if it expired or was withdrawn. It was *cut back* if a court or legislature struck it down or narrowed it. It was *still standing* if the legal power behind it was never changed. It was *made permanent* if it, or an institution created to use it, was written into ordinary law.

One person coded the measures, and no second coder checked them, so borderline classifications should be read with that in mind. Korean material was used in translation or through secondary accounts. Four countries cannot prove a general law. They can support a hypothesis or damage it.

India: the law that was never repaired

The Epidemic Diseases Act, 1897 is four sections long. It lets a state government take "special measures" and make regulations when it thinks ordinary law is not enough to stop a "dangerous epidemic disease." It makes disobedience an offence. It protects officials from being sued for anything done in good faith. It does not define "dangerous epidemic disease"

or "epidemic." It sets no time limit on regulations. It requires no report to the legislature. A law with these gaps does not limit power. It hands power over and walks away.

The Act was amended once during the pandemic. The Epidemic Diseases (Amendment) Act, 2020 made violence against health workers a serious offence and gave the central government added powers over ports and transport. Doctors and nurses were being attacked, so the amendment answered a real problem. But it left the Act's central weakness, the blank sheet it gives the executive, exactly as it was.

Most of the national response ran through the Disaster Management Act. The National Disaster Management Authority directed a lockdown on 24 March 2020, and the Home Ministry issued orders that were renewed and modified for two years. District magistrates banned gatherings under section 144 of the Code of Criminal Procedure, now section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

The courts were slow. In the first week of the lockdown, the Supreme Court accepted the government's statement that no migrant workers were on the roads, while photographs of those workers filled the newspapers. Two months later it took up their situation on its own motion, and during the 2021 second wave it intervened on the allocation of medical oxygen. Late, but real. V-Dem's 2020 assessment placed India among the countries at high risk of democratic erosion because of its pandemic response (V-Dem Institute, 2020a).

The contact-tracing app Aarogya Setu was launched on 2 April 2020 and described as voluntary. In practice, employers, transport operators and some state governments made it a condition of access. No statute governed it. Its data-sharing rules came from an executive protocol that could be extended every six months and had no fixed end date. In October 2020, the Karnataka High Court ordered that, in the absence of a law, no authority could deny a citizen any benefit or service for not installing the app. In January 2021 it restricted the sharing of users' data without informed consent (*Anivar A. Aravind v. Ministry of Home Affairs*, 2020–2021). Notice what the Court did not say. It did not say the state could never compel such an app. It said the state could not do so without a law.

Several states made vaccination a condition of entering public places or keeping certain jobs. In *Jacob Puliyel v. Union of India* (2022), the Supreme Court held that bodily integrity is

protected by Article 21 and that no one can be forced to be vaccinated. Applying the proportionality test from *Puttaswamy* (2017), it found the restrictions on unvaccinated people disproportionate, because the governments had produced no evidence that unvaccinated people spread the virus more. The judgment cut back the mandates. It did not change the law that produced them.

On 22 March 2022, the Union Home Secretary told the states that no further COVID orders would be issued under the Disaster Management Act after 31 March. The lockdown machinery was switched off. It was not dismantled. The Act still allows the same orders to be issued again, with no time limit and no need for Parliament's approval. When Parliament amended the Act in 2025, it gave statutory status to the National Crisis Management Committee, created urban disaster authorities and disaster databases, and clarified that law-and-order situations are not "man-made disasters." We found nothing in the amendment on how long a national lockdown can run, whether Parliament must approve its renewal, or what rules govern health data collected in a disaster. A national public health law has been in draft since 2017. As of September 2026 it has not been enacted, and the 1897 Act remains in force.

Then there is data. The Digital Personal Data Protection Act, 2023, whose rules were notified in November 2025, allows personal data to be processed without consent "for taking measures to provide medical treatment or health services to any individual during an epidemic, outbreak of disease, or any other threat to public health" (section 7(g)). The general duty to erase data once its purpose is served applies, but the Act also lets the government exempt its own agencies on grounds that include public order (section 17(2)(a)). We do not claim section 7(g) was written because of Aarogya Setu. We have no evidence of that. The point is simpler. A High Court said health data collection needed a law. India then passed a law permitting consent-free processing in an epidemic, with no epidemic-specific deletion date, no expiry and no duty to report. The gap was filled, in the state's favour.

India's main pandemic legacy is not a new power. It is an old power left as it was, plus a quiet new rule for data.

South Korea: the ratchet that came first

Korea's pandemic law was written for MERS, not COVID. In 2015 Korea had the largest outbreak of Middle East Respiratory Syndrome outside the Middle East, and the government's early secrecy about which hospitals were involved caused public fury. The legislature rewrote the Infectious Disease Control and Prevention Act in two rounds, in 2015 and 2018 (Song et al., 2020). Article 76-2 let health authorities require hospitals, companies and individuals to hand over information about patients and suspected patients, and require telecom companies to provide location data, without a warrant. Article 34-2 obliged the government to publish patients' movements.

When COVID arrived, Korea needed no emergency legislation. In February 2020, authorities traced a cluster linked to the Shincheonji religious group using card records, CCTV footage and phone location data. In May 2020, after an outbreak linked to nightclubs in Seoul's Itaewon district, the city obtained the names and numbers of 10,905 people whose phones had connected to base stations near the clubs for more than thirty minutes over a twelve-day period (Song et al., 2020). Several of the clubs were gay venues. Many people feared being outed more than they feared the virus, and authorities had to offer anonymous testing to get them to come forward. Surveillance aimed at a virus can still expose people's private lives.

A constitutional complaint followed. On 25 April 2024 the Constitutional Court unanimously upheld the part of Article 76-2 that allows the collection of personal details of suspected infected persons, finding it did not violate the right to control one's personal information (Constitutional Court of Korea, 2020Hun-Ma1028, 2024). It dismissed the challenge to the Itaewon collection itself without ruling on it, because the collection had ended and the data had been destroyed. The Court treated the provision as a tool for exceptional and temporary situations. Critics in Korea pointed out that it never examined the separate question of privacy in one's location. Either way, the provision remains in force, now with the Court's approval.

Korea lifted most distancing rules in April 2022, and gathering limits lapsed. In September 2020 its disease control centre was raised to an independent agency, the Korea Disease Control and Prevention Agency. Articles 76-2 and 34-2 remain.

Korea is uncomfortable for both accounts. Its tracking worked, and pretending otherwise is dishonest. And its courts reviewed the system and approved it. V-Dem's 2020 assessment

found that Korea did not infringe democratic standards at all (V-Dem Institute, 2020a). Look at why. The international standards for emergency measures ask whether a measure has a legal basis, a time limit and a proportionate scope. Korea's tracking had a clear statute, and it needed no time limit because it was never an emergency measure. It was permanent law passed in calm conditions after MERS. Under those standards, a permanent power scores better than a temporary one.

That is the ratchet in its most effective form. It turns after the previous crisis, when a legislature fixes the last emergency's failures by giving the state powers it will hold for every future one.

The United Kingdom: a sunset clause on the wrong Act

British debate often treated the Coronavirus Act 2020 as the legal basis for lockdown. It was not. That Act dealt with emergency registration of health workers, school closures, court procedure, sick pay and much else. The lockdown rules themselves were regulations made by ministers under the Public Health (Control of Disease) Act 1984, using an urgent procedure that let them take effect at once with parliamentary approval afterwards. The Court of Appeal rejected a challenge to the first lockdown regulations, holding that ministers had the power to make them (*R (Dolan) v Secretary of State for Health and Social Care*, 2020).

The distinction matters, because only the Coronavirus Act had an expiry date. Its temporary provisions lapsed after two years, and the House of Commons had to vote every six months to keep them alive. Ministers expired many provisions early. Almost all the rest lapsed at the end of 24 March 2022. The sunset clause did its job.

Not everything went. The remote court provisions, which allowed hearings by video and audio link, were made permanent by the Police, Crime, Sentencing and Courts Act 2022, and a provision on coroners' inquests was carried into the Judicial Review and Courts Act 2022. These are not sinister powers. Remote hearings arguably widen access to justice. But they fit the pattern exactly: procedural, and invisible to most citizens. Nobody marched about video links in magistrates' courts. The UK Health Security Agency, set up in 2021 to replace Public Health England, is the other lasting change.

The lockdown regulations were revoked, and the legal duty to self-isolate in England ended in February 2022. The power to make such regulations in the 1984 Act has not been touched. The next government that wants to lock down England will use the same section, the same urgent procedure and the same after-the-event approval.

The UK COVID-19 Inquiry reported on core political decision-making in November 2025. Its chair summarised the response as "too little, too late," and the report found that a mandatory lockdown one week earlier would have meant around 23,000 fewer deaths in England in the first wave (UK Covid-19 Inquiry, 2025). Lockdown sceptics dispute that modelling. The wider finding rests on more than one model: the government failed to prepare and failed to act in time. The report also called for greater parliamentary scrutiny of emergency powers.

Put those findings together and the British lesson is not the usual civil-libertarian one. The problem was not that the state used too much power. It used its power late, badly and with little scrutiny. The answer is power with better rules: clear triggers, a duty to plan in advance, real parliamentary control. Britain had a sunset clause. It was attached to the wrong Act.

The United States: the ratchet in reverse

American public health power belongs mainly to the states. When COVID arrived, governors mostly used general emergency statutes written for short disasters such as wildfires and tornadoes. The federal government acted through agencies. The Centers for Disease Control and Prevention imposed a national eviction moratorium. The Occupational Safety and Health Administration required large employers to make workers either vaccinate or test weekly.

The Supreme Court halted both. In *Alabama Association of Realtors v. Department of Health and Human Services* (2021), it found the CDC likely lacked statutory authority for the moratorium and lifted the order keeping it in place. In *National Federation of Independent Business v. Department of Labor* (2022), it blocked the vaccine-or-test rule on the ground that a workplace safety agency likely could not regulate a general public health risk in this way. Both rulings turned on where the power came from, not on whether the policy was wise.

The bigger change came from state legislatures, and it went the opposite way from the ratchet. Between January 2021 and May 2022, state legislators introduced 1,531 bills on

emergency health powers. Sixty-five laws limiting emergency authority were enacted in twenty-five states, against seventeen strengthening laws in twelve (Center for Public Health Law Research, 2023). Some limits were modest, such as caps on how long a governor's order can run without the legislature. Some were not. Montana barred the use of quarantine to separate people who have probably been exposed to a disease but are not yet sick.

The national emergency ended in April 2023 and the federal public health emergency in May 2023. The United States withdrew from the World Health Organization with effect from 22 January 2026, having already rejected the 2024 amendments to the International Health Regulations on sovereignty grounds.

The United States is the strongest evidence against the permanent-emergency account. In many states, public health powers are narrower in 2026 than in 2019. Calling that a victory for liberty would be a mistake. Quarantine of exposed people is one of the oldest and least controversial tools of disease control. A state that has banned it has not protected its citizens. It has disarmed itself before the next outbreak.

What the pattern shows

Country	**Measure**	**Outcome by September 2026**
India	National lockdown and movement orders under the Disaster Management Act	Lapsed (March 2022)
India	Regulation-making power under the Epidemic Diseases Act, 1897	Still standing
India	Protection of health workers (2020 amendment)	Made permanent

Country	**Measure**	**Outcome by September 2026**
India	Aarogya Setu as a condition for services	Cut back by court
India	State vaccine mandates	Cut back by court
India	National Crisis Management Committee	Made permanent (2025)
India	Consent-free processing of health data in an epidemic	Made permanent (DPDP Act, s. 7(g))
South Korea	Collection of personal and location data without a warrant (Art. 76-2)	Still standing (upheld 2024)
South Korea	Publication of patients' movements (Art. 34-2)	Still standing
South Korea	Distancing and gathering limits	Lapsed (April 2022)
South Korea	Korea Disease Control and Prevention Agency	Made permanent (2020)
UK	Coronavirus Act 2020 temporary provisions (most)	Lapsed (March 2022)
UK	Remote court and tribunal provisions	Made permanent (2022)

Country	Measure	Outcome by September 2026
UK	Lockdown and self-isolation regulations under the 1984 Act	Lapsed; power to remake them still standing
UK	UK Health Security Agency	Made permanent (2021)
US	State emergency public health powers	Cut back by legislatures
US	CDC eviction moratorium	Cut back by court (2021)
US	OSHA vaccine-or-test rule	Cut back by court (2022)
US	Federal national and public health emergencies	Lapsed (2023)

Every measure that lapsed or was cut back is something ordinary people felt directly: being told to stay home, being barred from a shop, being made to download an app, being told to vaccinate or lose a job. Every measure that survived is either invisible to most people or popular. The invisible ones are data powers, institutions, court procedure and dormant legal powers that nobody notices until they are used again. The popular one is India's protection for health workers. Nobody campaigns for the right to assault a nurse.

So Agamben was wrong about what he feared. Lockdowns did not become permanent anywhere in our sample, and in the United States the reaction against them cut public health powers below where they started. But the permanent-emergency account is right about something Agamben barely watched. Data powers did ratchet, in Korea through its Constitutional Court and in India through a new privacy statute, and in both cases by ordinary law, which lasts longer than any emergency order. Ginsburg and Versteeg were right about the crisis itself. Courts and legislatures pushed back in all four countries. But nobody files a

petition against a definition clause in a data protection bill two years after the lockdown ended.

Korea also exposes a flaw in how emergency measures are judged. The standards drawn from international human rights law ask whether a measure is lawful, necessary, proportionate, non-discriminatory and limited in time. A temporary decree with no clear statute fails. A permanent statute passed in calm conditions passes. The standards reward exactly what should worry us most.

China shows what happens to the same tools with no independent check at all, and it shows it during the emergency rather than after. Its health code system gave every user a green, yellow or red code that decided whether they could travel or enter public places. In June 2022, depositors who had lost access to their savings at four rural banks in Henan province tried to travel to Zhengzhou to protest. Their codes turned red. Local authorities later admitted that 1,317 depositors had been given red codes without authorisation, and five officials were disciplined (Wu, 2022). Health data collected for disease control was turned against a protest about money within months. The system was dismantled when China abandoned zero-COVID in December 2022. In the democracies we studied, courts and legislatures slowed this kind of reuse. They did not rule it out, and in Korea and India they approved the permanent collection that makes it possible.

The international rules do little about any of this. The 2024 amendments to the International Health Regulations created a new top alert level, the "pandemic emergency," and entered into force in September 2025 for all but the eleven states that rejected them (World Health Organization, 2025). The World Health Assembly adopted a Pandemic Agreement in May 2025, but it cannot open for signature until an annex on sharing pathogens and their benefits is agreed, and that deadline has slipped to May 2027 (Konrad-Adenauer-Stiftung, 2026). The sovereignty fears behind the American withdrawal were largely misplaced. The WHO cannot order lockdowns or compel vaccination. The rules that decide what a state may do to its own people in a pandemic are still national rules, and that is where reform has to happen.

Conclusion

The fight over pandemic powers will not be won or lost on lockdowns. Lockdowns are too visible to last. It will be won or lost on data collection, data reuse and the old statutes that sit unreformed until the next emergency.

India has the most at stake. Its lockdown power sits in a disaster law with no time limit and no requirement of parliamentary approval. Its epidemic law defines nothing and limits nothing. Its new data law permits consent-free processing in an epidemic without any deletion date tied to the epidemic's end. The problem is not that the state has power. A state facing a pandemic needs power. The problem is that the power has no shape.

A national public health law of the kind India has been drafting since 2017 should define what an epidemic is, who can declare one and on what evidence. Any order restricting movement or assembly across a state or the country should expire after a short period unless the legislature votes to renew it; Britain's sunset clause worked for the Act it covered, and it should cover the powers that matter. Data collected in an epidemic should be usable only for disease control, carry a fixed deletion date tied to the end of the declared epidemic, and be barred by express words from use for policing, tax, immigration or anything else, because Henan shows what happens when that bar is left unwritten. The government should report to Parliament at fixed intervals on which powers it used, against whom and with what data. And the statute should write in the test that *Puttaswamy* and *Jacob Puliyel* already supply, so that courts are not left to rebuild it case by case, months after the harm.

None of this would have stopped India from fighting COVID. All of it would have made the response more accountable while it ran and easier to dismantle afterwards.

Korea carries the warning. The moment legislatures are most willing to grant permanent powers is right after an epidemic, when the failures are fresh and the opposition is exhausted. India has not had that moment yet. When it comes, the question will not be whether the state can lock people in. That has been answered: yes, for a while. The question will be whether the state gets to keep what it learned about people while they were locked in.

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