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EMERGENCY POWERS, PUBLIC HEALTH & CONSTITUTIONAL CONVENTIONS IN THE POST-PANDEMIC WORLD: A STUDY

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ABSTRACT

The lockdown due to the COVID-19 pandemic has made governance of public health one of the most urgent constitutional issues of the time. In an attempt to protect citizens' lives, governments in most jurisdictions have been forced to address the issue through lockdowns, curfews, quarantines, and high-speed vaccination campaigns. Although these actions were essential through the prism of public health, they could not help but raise questions about legality, responsibility, and the safeguarding of fundamental rights. The research paper discusses the ways in which constitutional systems have sought to reconcile the crisis demands of executive power with the constitutional demands of constitutional democracy. The research paper presents a comparative analysis of how different jurisdictions, viz., the USA, the United Kingdom (UK), India, Australia, New Zealand, Canada, and South Africa, have responded to the pandemic, with reference to the European human rights framework. Laws/Acts like the UK Coronavirus Act 2020, India Disaster Management Act 2005, and Canada Quarantine Act 2005 gave legal authority to far-reaching powers. These measures were then reviewed by the courts, where proportionality, rationality or strict scrutiny was used depending on the circumstances. Some decisions were left to executive discretion, while others were invalidated for lack of legal authority, insufficient evidence, and other reasons. Constitutional conventions are also discussed in the research paper. The critical but weak pillars were parliamentary scrutiny, ministerial responsibility, cooperative federalism, and disclosure of scientific advice. Some conventions were adjusted to the circumstances of crisis, and some were killed by the executive domination. The paper finds that social health crises should be handled as constitutional incidents. They are not an exception to the rule of law. Instead, they demand that it should be strengthened by clear statutory authority, proportional structures to the restriction of rights, institutionalised structures of openness, and formal constructs to foster collaboration amid the various government levels. These safeguards have enabled governments to act effectively and legitimately in the event of an emergency. Meanwhile, they ensure that the key values of constitutional democracy will not be compromised in favour of expediency. By instilling these safeguards early, states are able to enter into future crises in a resilient manner that supports robust public health safeguards and remain loyal to the law, accountability, and fundamental rights protection.

KEYWORDS: *Emergency Powers, Constitutional Conventions, Public Health, Pandemic.*

1. INTRODUCTION

The COVID-19 pandemic was a medical and social crisis as well as a constitutional moment of high magnitude. Almost all democratic regimes were forced to act quickly and decisively, using extraordinary powers to address a threat to human health of unprecedented scale. Lockdowns, travel bans, curfews, school closures, mandatory quarantines, internet surveillance, and vaccine enforcement influenced almost every facet of everyday life. These actions were warranted, as they were necessary to safeguard lives, but they put

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states squarely at odds with the fundamental constitutional values of liberty, equality, accountability, and the rule of law.

In contrast to situations in which war or natural disasters trigger an emergency, public health crises do not come as a shock. They evolve steadily, tend to follow uncertain waves that may last months or years, and require long-term restraints rather than immediate interventions. This brought a basic constitutional inquiry viz., what is the period within which extraordinary powers can last before undermining the legality, proportionality, and democratic deliberation? It was dangerous in that the normalisation of temporary measures would become a permanent way of enlarging executive power. The pandemic clarified that emergency health governance is not only a technical regulation but also the exercise of constitutional power. The constitutional nature of each state was manifested in decisions concerning the limitation of liberties, the establishment of legal grounds, and the introduction of protective measures. They exposed governments that were based on legality or on arbitrariness. They conducted tests of the strength of the unwritten constitutional conventions, including ministerial accountability, parliamentary scrutiny, and federal or intergovernmental collaboration. These conventions frequently played a crucial role in filling gaps left by formal law, but under the pressure of exigency were sometimes extended, derailed or remodelled.

The judicial oversight role also demonstrated that the loss of judicial oversight could not occur during a crisis. In various jurisdictions, courts were addressing conflicts among religious observances, individual freedom, the right to movement, and fairness during the proceedings. Their methods also differed as some of them were deferential to executive expertise, dialogic review, which entails openness, and direct intervention where state acts are not legally authoritative or justified. These rulings settled the issue that constitutional rights cannot be suspended even during an emergency. The restrictions on them can only be reasonable and legal. As societies enter the post-pandemic era, the COVID-19 experience demonstrates that public health emergencies are both constitutional and medical phenomena. Their focus is on the relevance of legality, proportionality, and accountability, persisting, and they reform the traditions that perpetuate governance by democracy. The future task is to ensure that crises are addressed with urgency and efficacy, while still upholding the constitutional values that underpin democratic life.

2. EMERGENCY POWERS AND CONSTITUTIONAL GOVERNANCE

The use of emergency powers is a common feature of constitutional democracies whose proponents tend to legitimise them by saying that

extraordinary circumstances necessitate extraordinary responses. Not whether there are times on an emergency basis where the extraordinary is required, but how to make sure that the extraordinary is guided by the law, accountability, and the upholding of rights is the real challenge today. This challenge was brought to the fore during the COVID-19 pandemic. In contrast to wars, terrorist attacks, or natural disasters, public health emergencies occur gradually and usually recur in waves with uncertain schedules. They demand constraints that are long and ingrained in the day-to-day life. This removes the constitutional question based on the concept of a brief suspension of the normal rules and changes it to the more problematic one of a long-term adaptation. What is the duration that emergency powers can be accepted before they start undermining the normal protective mechanisms and values that constitutional democracy relies on?

2.1 LEGALITY & RULE OF LAW

The principle of constitutional governance in an emergency is legality. The legality doctrine dictates that a state's coercive action must have explicit statutory justification. In the vast majority of jurisdictions, pandemic-related measures were incorporated into pre-existing laws, which were at times extremely old and even outdated. In India, the countrywide lockdown was declared on 24 March 2020 and implemented mostly by the Disaster Management Act 2005 (DMA) under which National Executive Committee has the power to give binding orders to the states.[1] At the same time, numerous states relied on the Epidemic Diseases Act 1897, an act formulated in the colonial period to control the plague.[2] In the United Kingdom (UK), the Coronavirus Act of 2020 expanded the powers of the Public Health (Control of Disease) Act of 1984, as amended, which was invoked to impose far-reaching restrictions. In Canada, the Quarantine Act 2005 put border restrictions and quarantine requirements on the people through Quarantine Act, and the provinces implemented their own public health laws.[3] The dependence of this type of legislative structure/statutes poses some constitutional questions regarding legislative foresight. Most of these laws were not enacted, given the magnitude of pandemics like COVID-19. But broadly phrased provisions were interpreted to grant the executive broad discretion. Another argument by critics is that statutory wording and foreseeability, precision and protection are all demanded by the statutes as legal requirements. The High Court of New Zealand had maximised this stance, reasoning that the first nine days of lockdown were illegal because the government issued directives without placing binding orders under the Health Act, and therefore stressed that the

1 Singh, A. K. (2021). Pandemic Governance in India: the ongoing shift to ‘national federalism’. In *Comparative Federalism and Covid-19* (pp. 278-297). Routledge.
2 Epidemic Diseases Act 1897 (India).
3 Quarantine Act 2005 (Canada).

government was not meeting the criterion of legal clarity. This ruling demonstrates that no alibi to evade statutory procedures can accommodate the government's imposition of emergencies in constitutional democracies.[4]

2.2 SEPARATION OF POWERS & LEGISLATIVE OVERSIGHT

The effect of emergency governance is usually to tilt the constitutional balance in favour of the executive. COVID-19 led global executives to exert enormous control over people's lives, introducing regulations and orders with minimal oversight from parliament. This development had been criticised by the Constitution Committee of the UK House of Lords as government by decree, and for the excessive use of secondary legislation, which would compromise the sovereignty of parliament.[5] The Coronavirus Act 2020 itself included sunset provisions and a six-month renewal; however, many restrictive measures were introduced under the 1984 Public Health Act without debate.[6] In India, there was little role for Parliament, and the majority of decisions were centralised in the Ministry of Home Affairs with the DMA. Canadian provinces had a tendency to use orders-in-council which did not involve the lengthy legislative procedure.[7] Constitutional government requires that the legislature play a significant role in times of crisis. Balancing mechanisms that can be used include time-limited emergency powers, mandatory conditions of reporting, and retrospective approval. Where there were weak such mechanisms, constitutional conventions of ministerial accountability were put under pressure. In the UK, as an example, the practice of ministers giving enough information to Parliament to question executive decisions was obeyed only to a limited extent; scientific advice was regularly published after decisions had been made.[8] This diluted the distinction between the powers of the law and the responsibility of the politics.

RIGHTS & PROPORTIONALITY

The most contested constitutional issue during the pandemic was the limitation of rights. Across jurisdictions, governments restricted freedom of movement, assembly, association, and in some cases, religious worship and bodily autonomy. Constitutional frameworks permitted such restrictions only if they met the test of proportionality. The ‘European Court of Human Rights (ECHR)’

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4 McLay, G. New Zealand's Legal Response to COVID-19: The Challenge of Executive Overreach, Continuity of Parliamentary Control?. *Parliaments in the COVID-19 Pandemic: Between Crisis Management, Civil Rights and Proportionality Observations from Asia and the Pacific*, 141.

5 Griglio, E. (2020). Parliamentary oversight under the Covid-19 emergency: striving against executive dominance. *The Theory and Practice of Legislation*, *8*(1-2), 49-70.

6 ibid.

7 Canadian Provincial Orders-in-Council on COVID-19 (2020–21).

8 House of Lords Constitution Committee (n 6).

in the case of Vavřička v Czech Republic[9] had upheld compulsory childhood vaccinations, with the reasoning that such measures pursued legitimate public health aims and were proportionate.[10] In pandemic-specific litigation, the ECtHR in CGAS v Switzerland[11] initially found that a blanket ban on public assemblies violated Article 11 of the ECHR, because the restriction was overly broad and not accompanied by sufficient safeguards. The Supreme Court of India in Jacob Puliyel v Union of India[12] held that forced vaccination was unconstitutional, recognising bodily integrity as part of the right to life under Article 21. In the United States of America (USA), in the case of Roman Catholic Diocese of Brooklyn v Cuomo[13], the Supreme Court invalidated capacity limitations on religious gatherings on the grounds that restrictions should not be discriminatory against worship over other secular activities. All the above decisions emphasise that proportionality is the constitutional compass, even in emergencies, and that restrictions must be evidence-based, necessary and reviewable.

2.3 CONSTITUTIONAL CONVENTIONS & ACCOUNTABILITY

While legality and proportionality provide legal guardrails, constitutional conventions ensure accountability in practice. In Westminster systems, conventions such as ministerial responsibility, parliamentary scrutiny of delegated legislation, and disclosure of advice to Parliament play a vital role. During the pandemic, many of these conventions were strained. The UK government was criticised for failing to involve Parliament adequately before implementing lockdown measures.[14] In India, the conventions of cooperative federalism were strained, as states grumbled that the central directives issued under the D.M.A. left them scant elbow room to tailor policies to local needs. In Canada, norms of federal-provincial interactions moderated and shaped the coordinated yet often contested response, with provinces pushing back against federal encroachment in health policy.[15] These are illustrations that constitutional government does not operate solely on the basis of law but also on conventions. The failure of conventions lies in the emergence of unchecked

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9 Vavřička and Others v. Czech Republic, App. Nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, and 43883/15, European Court of Human Rights (Grand Chamber), Judgment of 8 April 2021.

10 McWhirter, R., & Clark, M. (2023). Expertise, Public Health and the European Convention on Human Rights: Vavřička v Czech Republic. *The Modern Law Review*, *86*(4), 1035-1048.

11 Communaute Genevoise d'Action Syndicale (CGAS) v. Switzerland, no. 21881/20, European Court of Human Rights (Third Section), Judgment of 15 March 2022.

12 Jacob Puliyel v. Union of India, WP(C) 607 of 2021, Supreme Court of India, judgment dated May 2, 2022.

13 Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. ___ (2020).

14 House of Lords Constitution Committee (n 6).

15 Quarantine Act 2005 (Canada); Canadian Parliamentary Debates, April 2020.

emergency powers, which will result in long-term harm to democratic accountability.

3. PUBLIC HEALTH CRISES & RULE OF LAW

The COVID-19 pandemic compelled governments to find a fine balance between immediate societal health requirements and the long-term requirements of constitutionalism. The root of this tension lies in the rule of law, which demands transparency, responsibility, and political reasonableness in the exercise of public power. By definition, emergencies are a test of these principles. However, a constitutional order wedded to the rule of law cannot simply suspend them; it must apply them to the circumstances of crisis. This part reviews the rule of law in action under pressure, with particular regard to legality, transparency, proportionality, and temporality as elements of constitutional governance during public health emergencies.

3.1 LEGALITY & FORESEEABILITY

This is the essence of the rule of law that any limitation to liberty must be so precise that it does not allow queer application of powers. This principle was tested again and again during the pandemic. An example of such a case in New Zealand was Borrowdale v Director-General of Health, which held that directions to stay at home issued within the first nine days of the lockdown were void, since they were in the form of advice rather than orders as provided by the Health Act 1956. The Court then, though, did not reverse the subsequent orders, but repeated that a government of laws must be maintained by observance, even in the most complete anarchy, of the forms of law. Critique: In India, too, the blanket national lockdown under the Disaster Management Act 2005 received criticism for inadequate statutory foresight, with the Act being written and enacted on the basis of natural disasters rather than long-term public health crises. The voluminous application of the secondary legislation created under the Public Health (Control of Disease) Act 1984 became a point of concern in the UK. Overnight rules were implemented too often, and discussed retrospectively and altered all too easily and frequently. That was deplored by the Constitution Committee of the House of Lords as poisonous to legal certainty and parliamentary sovereignty. These experiences have shown that legality must be more than a simple statutory specification. It also demands mechanisms that allow citizens to anticipate, understand, and question limitations that affect their basic rights.

3.2 TRANSPARENCY AND RATIO-DECENDI

Transparency in decision-making is also required by the rule of law. Pandemic actions were frequently grounded in scientific facts and professional recommendations, but most governments moved slowly in releasing data. In the

United Kingdom, the Scientific Advisory Group on Emergencies (SAGE) did not first publish its membership or minutes, and was accused of secret science. It was not until due pressure that documents were released, and a constitutional expectation of extraordinary restrictions being supported by reasonable reasons and publicly available evidence.[16] The Supreme Court of India, exercising suo motu jurisdiction, mandated disclosure of the national plan for oxygen allocation, vaccine procurement, and pricing by the central government of India. The Court stressed that transparency was not merely desirable but constitutionally mandated under 'Article 21' (right to life) and 'Article 14' (equality), since opaque decision-making risked arbitrariness.[17] In Canada, Privacy Impact Assessments were belatedly conducted with respect to federal quarantine and contact-tracing measures, highlighting that transparency was sometimes reactive rather than built into the design of emergency governance.[18] Transparency ensures that restrictions are not perceived as arbitrary impositions but as constitutionally justified measures. By requiring governments to explain the basis for their decisions, the rule of law maintains legitimacy even in emergencies.

3.3 PROPORTIONALITY AND RIGHTS LIMITATION

It is also the case that the rule of law functions through material restrictions on powers, principally the principle of proportionality. Proportionality came to dominate constitutional analysis when it came to pandemic restrictions across jurisdictions. In the case of Vavřička v Czech Republic[19], the ECHR upheld compulsory vaccination against childhood diseases, reaffirming that public health constitutes a legitimate aim under Article 8 of the ECHR, provided measures are proportionate. During the pandemic, courts applied proportionality to assess blanket bans, curfews, and mandatory vaccinations. In the United States, the Supreme Court in Roman Catholic Diocese of Brooklyn v Cuomo[20] applied strict scrutiny to strike down New York's limits on religious gatherings, reasoning that they were not neutral or generally applicable, since comparable secular businesses were treated more favourably. This was representative of a rights-first strategy: even in times of emergency, limitations on basic rights should be subject to strict scrutiny. In Jacob Puliyel v Union of

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16 McKee, M., Altmann, D., Costello, A., Friston, K., Haque, Z., Khunti, K., ... & West, R. (2022). Open science communication: the first year of the UK's Independent Scientific Advisory Group for Emergencies. *Health Policy*, *126*(3), 234-244.

17 Arora, T. (2023). Pandemic and community's sense of justice through suo motu in India. In *Judicial Activism in an Age of Populism* (pp. 134-154). Routledge.

18 Health Canada, *Privacy Impact Assessment on Federal Quarantine Orders* (2021).

19 Vavřička and Others v. Czech Republic, App. Nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, and 43883/15, European Court of Human Rights (Grand Chamber), Judgment of April 8, 2021.

20 Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. (2020), United States Supreme Court, judgment dated November 25, 2020.

India[21]The Indian Supreme Court also used proportionality to the policy of vaccination, saying that governments could promote vaccination, but the introduction of obligatory measures was declared illegal and was not justified without a provable need. In South Africa, the Gauteng High Court in De Beer v Minister of Cooperative Governance invalidated large swathes of lockdown regulations for lacking rational and proportionate justification, although the judgment was later narrowed on appeal.[22] Similarly, the Supreme Court of Appeal in British American Tobacco v Minister of Cooperative Governance[23] struck down a ban on tobacco sales, holding that it lacked evidentiary support and unjustifiably restricted rights. These cases illustrate that proportionality served as a crucial safeguard, compelling governments to justify intrusions with evidence and tailoring, even under pressing circumstances.

3.4 TEMPORALITY & SUNSET CLAUSES

A final dimension of the rule of law in public health emergencies is temporality. Extraordinary powers to the executive are constitutionally acceptable only if they are time-bound. The UK Coronavirus Act 2020[24] contained two-year sunset provisions with a proviso of six-monthly renewal through votes. Although critics argued that retrospective debates on legislations will dilute the genuine and reasonable scrutiny. In Canada, the federal government decided not to invoke the Emergencies Act, 1988, for the pandemic, in part because of its stringent parliamentary and time limits. Rather, they prefer to rely on ordinary statutes such as the Quarantine Act. The Disaster Management Act of India lacks express sunset clauses for nationwide emergencies, raising concerns that the powers once granted to the executive may get extended indefinitely without legislative reconsideration. The aspects of Sunset clauses, renewal debates, and post-legislative scrutiny are not mere procedural luxuries but constitutional necessities. They recognise that emergencies are dynamic and ensure that extraordinary powers do not ossify into permanent features of governance. Without such temporal limits, the risk is that emergency governance becomes the new normal and erodes the baseline of ordinary constitutional order.

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21 Jacob Puliyel v. Union of India, WP(C) 607 of 2021, Supreme Court of India, judgment dated May 2, 2022.

22 *De Beer v Minister of Cooperative Governance* [2020] ZAGPPHC 184.

23 Minister of Cooperative Governance and Traditional Affairs and Another v British American Tobacco South Africa (Pty) Ltd and Others, Case No. 309/21, Supreme Court of Appeal, South Africa, judgment dated June 14, 2022.

24 Coronavirus Act 2020, c. 7, United Kingdom, legislation.gov.uk, accessed September 8, 2025.

4. CONSTITUTIONAL CONVENTIONS IN EMERGENCY GOVERNANCE

Constitutional law is not sustained by formal rules/ regulations alone. In many democratic systems, particularly Westminster-derived constitutions, constitutional conventions play a vital role in regulating the exercise of executive power. They are non-legal norms, developed through practice and sustained by political accountability, that ensure constitutional propriety where legal rules are silent. During the unprecedented pandemic of COVID-19, the constitutional conventions were tested in unprecedented and unparalleled ways. Governments relied on delegated legislation, bypassed legislatures, and invoked extraordinary powers. In doing so, they revealed both the resilience and fragility of conventions as instruments of constitutional governance.

4.1 MINISTERIAL RESPONSIBILITY AND ACCOUNTABILITY

One of the central conventions of Westminster democracy is the collective ministerial responsibility, wherein, the Cabinet is collectively accountable to the Parliament for its executive decisions, particularly those of national significance. During the pandemic, this convention was a bit diluted and strained. In the United Kingdom, announcements of lockdown measures by the Prime Minister were often made in press conferences even before Parliament was informed or given the chance to debate them.[25] This inversion of accountability, surely contravened the spirit of collective responsibility, if not the letter, thereby reducing the Parliament's role to post-facto scrutiny of decisions already implemented.

In India, collective ministerial responsibility under the provision of Article 75[26] of the Constitution formally remained intact, but decision-making under the Disaster Management Act 2005 was centralised and left state governments with little scope for independent decision-making. This undermined the convention of cooperative federalism, which was long recognised by the Supreme Court of India as a structural principle of the Constitution. The pandemic of COVID 19 had illustrated, how conventions of intergovernmental dialogue and respect for state autonomy can be side-lined under the garb of centralised emergency governance.

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[25] House of Commons Public Administration and Constitutional Affairs Committee, *Coronavirus Act 2020 Two Years On* (HC 978, 2022).

[26] Article 75, Constitution of India, 1950, Part V - The Union, Government of India, accessed September 8, 2025.

4.2 PARLIAMENTARY SCRUTINY OF DELEGATED LEGISLATION

Another convention under stress was the parliamentary control of delegated legislation. In Westminster practice, while broad statutory powers may be conferred on ministers, it is expected that the Parliament scrutinises regulations effectively, and that ministers justify the scope and necessity of delegated legislation. During the pandemic, however, both the UK and Indian governments leaned heavily on delegated legislation with minimal parliamentary oversight. The UK government had issued hundreds of regulations under the Public Health (Control of Disease) Act 1984[27], often bringing them into force before parliamentary debate. The Constitution Committee of House of Lords criticised this as "government by decree," warning that it not only risked undermining parliamentary sovereignty, but also its accountability. In India, similar patterns emerged and executive guidelines and orders under the DMA were issued without regular parliamentary debate, inspite of the fact that it had sweeping impact on the fundamental rights of the people. Here, the convention that delegated legislation should be subject to close legislative oversight was disregarded, leaving judicial review as the primary check.

4.3 DISCLOSURE OF SCIENTIFIC AND POLICY ADVICE

Conventions also regulate the disclosure of advice and information to legislatures. In the UK, there is a long-standing expectation that ministers will disclose sufficient information to Parliament to allow meaningful scrutiny, though not necessarily all confidential advice. During the pandemic, this convention was tested by the opacity of the 'Scientific Advisory Group for Emergencies' (SAGE). Membership lists and minutes were initially withheld, and were disclosed later, only after mounting criticism.[28] The delayed publication eroded trust in decision-making, suggesting that the conventions of transparency require firmer institutionalisation when public health emergencies justify significant restrictions on citizen's rights including fundamental rights. In Canada, the similar concerns arose around the disclosure of modelling data and the advice that underpinned quarantine and travel restrictions. While Privacy Impact Assessments were eventually made public, they were still reactive rather than active, illustrating the weakness of relying solely on conventional disclosure practices in the situations involving emergencies.[29] In India, demands for the the publication of expert committee reports on vaccine policy and oxygen allocation reached the Supreme Court. The Supreme Court

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27 Public Health (Control of Disease) Act 1984, c. 22, United Kingdom, legislation.gov.uk, accessed September 8, 2025.

28 House of Commons Science and Technology Committee, *Science Advice in a Crisis* (HC 407, 2021).

29 Health Canada, *Privacy Impact Assessment on Federal Quarantine Orders* (2021).

of India directed the government to disclose its national plans. The Court's intervention demonstrated that when conventions of transparency falter, judicial insistence on ratio-decendi i.e reason-giving/ rationale becomes a substitute safeguard.

4.4 INTERGOVERNMENTAL CONVENTIONS AND FEDERAL COOPERATION

Federal states rely not only on formal division of powers but also on conventions of cooperation. These include joint ministerial councils, intergovernmental agreements, and practices of consultation. During the pandemic, these conventions were diluted and were often strained. In Canada, the health is largely provincial subject, yet border control and quarantine are federal. Thus, effective pandemic response therefore depended on conventions of cooperative federalism. For the most part, the federal-provincial coordination functioned satisfactorily although with limitations, and political tensions arose over vaccine procurement and distribution. To the contrary, the Centre government of India used its powers under the DMA and issued uniform nationwide directives, leaving little space for state discretion or variation. State governments called this as inconsistent with the spirit of cooperative federalism and challenged. Thus the convention lacked legal enforceability of desired level. In Australia, the National Cabinet a body of federal and state leaders was elevated to central prominence, replacing the Council of Australian Governments (COAG). Although its decisions lacked legal force, the convention of intergovernmental coordination gave them political weight and led to its effective enforcement upto reasonable desired level.[30] These variations highlight that conventions of intergovernmental cooperation are central to pandemic governance, but their resilience depends on political will. It is now evident and thus can be concluded that where conventions were respected, coordination was smoother and tensions deepened where these conventions were ignored,.

4.5 FRAGILITY AND TRANSFORMATION OF CONVENTIONS

The pandemic exposed how fragile constitutional conventions can become under pressure. Unlike formal constitutional provisions, conventions are not enforceable by courts. Their observance rests largely on political morality and the force of public accountability. When governments prioritised speed and centralisation, it was often the conventions that gave way first. In the United Kingdom, ministerial responsibility weakened as major announcements were made directly to the public rather than in Parliament. In India, the principle of cooperative federalism was overshadowed by directives issued from the central government to the states. In Canada and Australia, intergovernmental

[30] Australian Government, *Communiqué of the National Cabinet* (March 2020).

cooperation conventions endured, but were redefined using new frameworks, including the National Cabinet. These trends reveal that conventions can be changed in times of national crisis, but unless they are properly strengthened, they can be eroded over time. The major takeaway from the pandemic is that conventions protecting transparency and legislative review are too crucial to rely on political goodwill alone. They might require legal reinforcement to be effective. Legal protection might be through measures like sunset clauses, periodic reporting, and being obligated to disclose information in a manner that allows conventions to still be operational in case of future emergencies.

5. COMPARATIVE GLOBAL JURISDICTIONAL ANALYSIS

During the COVID-19 pandemic, emergency public health governance took different paths across jurisdictions, depending on differences in constitutional frameworks, legal culture, and political culture. Although constitutional designs varied, some common themes were apparent, such as the increased power of the executive, the relegation of legislatures, the differing degrees of judicial review, and the tension over constitutional conventions. This part examines experiences in the United States, the United Kingdom, India, Canada, Australia, New Zealand, South Africa, and Europe to draw comparative lessons on the interaction between emergency powers and constitutional law and political conventions during the pandemic.

5.1 UNITED KINGDOM

In the UK, emergency measures were implemented under two main statutes: the Public Health (Control of Disease) Act 1984 and the Coronavirus Act 2020. The former, as amended, enabled ministers to impose sweeping restrictions through regulations; the latter was enacted as fast-track primary legislation granting additional powers in health, education, and economic support.[31] The Coronavirus Act 2020 included sunset clauses and six-monthly renewal debates, intended as safeguards. Yet, in practice, the most restrictive measures, stay-at-home orders, business closures, and limits on assembly were made under the 1984 Act, often coming into force immediately with little or no prior debate.[32] This reliance on secondary legislation prompted the House of Lords Constitution Committee to criticise what it called "government by decree," observing that Parliament had been sidelined during the most intrusive restrictions in peacetime history.[33] Judicial review provided some oversight. In R (Dolan) v Secretary of State for Health, claimants challenged the legality of the first English lockdown. The Court of Appeal affirmed the regulations and

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31 Coronavirus Act 2020 (UK).

32 Public Health (Control of Disease) Act 1984 (UK).

33 House of Lords Constitution Committee, *COVID-19 and the Use and Scrutiny of Emergency Powers* (HL 15, 2021).

observed that they were authorised by statute and proportionate.[34] Nevertheless, in Leigh v Commissioner of Police of the Metropolis, the High Court ruled that the police had not lawfully conducted an assessment of a proposed vigil, thereby underlining that, during lockdown, Article 11 rights were to be evaluated on a case-by-case basis.[35] These examples show that the courts did not like second-guessing the policy of public health, yet demanded the procedural legality and rights-sensitive implementation. Even constitutional conventions went to work. The collective ministerial responsibility became watered down with most announcements of lockdowns being done in televised press conferences prior to the debate in parliament. It had a degrading effect on the tradition of proper parliamentary review of delegated legislation, with regulations often being retroactive. The situation regarding transparency was not good at the beginning: SAGE membership and advice remained hidden until they were exposed under political pressure.[36] This UK experience, therefore, points to weaknesses of conventions in times of crisis and the necessity of statutory reinforcement of scrutiny and transparency processes.

5.2 INDIA

One of the strictest lockdowns in the world was enforced in India through the Disaster Management Act 2005 (DMA). The Ministry of Home Affairs, relying on section 10(2)(l), issued nationwide closures which started 24 March 2020 and bound all the states.[37] This type of centralisation marginalised state autonomy and challenged the tradition of cooperative federalism, a constitutional structure that the Supreme Court has identified as an element of the constitutional structure.[38] The role played by parliament was periphery with the majority of actions being executive orders as specified in the DMA or state regulations as specified by the Epidemic Diseases Act 1897. Soon after there were issues of fundamental rights. In Gujarat Mazdoor Sabha v State of Gujarat, the Supreme Court invalidated state orders which gave a waiver to factories against labour laws ruling that emergency cannot justify permanent suspension of rights.[39] The Court declared in Jacob Puliyel v Union of India that compulsory vaccination infringed bodily autonomy, however, a vaccination programme was not illegal provided that it was voluntary.[40] Perhaps the biggest intervention was the suo motu proceedings of the Court in Re Distribution of Essential Supplies and Services, whereby the government was instructed by the

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34 *R (Dolan) v Secretary of State for Health* [2020] EWCA Civ 1605.
35 *Leigh v Commissioner of Police of the Metropolis* [2022] EWHC 527 (Admin).
36 House of Commons Science and Technology Committee, *Science Advice in a Crisis* (HC 407, 2021).
37 Ministry of Home Affairs, Order under DMA (24 March 2020).
38 *S R Bommai v Union of India* (1994) 3 SCC 1 (SC).
39 *Gujarat Mazdoor Sabha v State of Gujarat* AIR 2020 SC 4601.
40 *Jacob Puliyel v Union of India* (2022) SCC OnLine SC 533.

Court to reveal oxygen distribution plans and vaccine acquisition plans.[41] The Court emphasized transparency as a part of the right to life in Article 21 exposing the dialogue to judge and hold a legislature accountable without necessarily invalidating a piece of legislation.

The Indian experience shows how federal conventions are feeble. Central directives did not give states much latitude in policy making creating the contestation politically. However, there were constitutional principles and judicial review especially proportionality, non-arbitrariness, and the right to life which exercised substantial restraints. The pandemic confirmed that cooperative federalism, in spite of being a convention, needs codification of mechanisms in the emergency laws to avoid over-centralisation by the executive.

5.3 USA

The constitutional system of emergencies in the United States is federal: the states have police power of health and safety, and the federal government through statutory delegations. This division influenced reactions and lawsuits during the pandemic. States enforced lockdowns, masking and vaccination requirements; federal agencies served with workplace safety, health and transportation regulations. The Supreme Court's pandemic jurisprudence revealed two themes: strict scrutiny of rights restrictions and limits on agency power. In Roman Catholic Diocese of Brooklyn v Cuomo, the Court struck down capacity limits on religious services, holding that they discriminated against worship compared to secular businesses.[42] In Tandon v Newsom, the Court applied the same reasoning to strike down California restrictions on home gatherings.[43] These cases showed that even during emergencies, rights classified as "fundamental" trigger the highest constitutional protection. Constitutional conventions in the US, such as intergovernmental cooperation, were uneven. Some states resisted federal guidance, reflecting the political polarisation of federalism. The pandemic solidified the rule that in a time of crisis, federal agencies may not extend their authority beyond that endowed to them in legislative acts, whereas states still have a wide constitutional latitude to act within their police powers.

5.4 CANADA

The constitutional system of Canada allocates the main responsibilities in the field of public health to the provinces, whereas the federal government exercises control over the borders and quarantine. The federal government used

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41 *In Re Distribution of Essential Supplies and Services during Pandemic* Suo Motu Writ Petition (Civil) No 3 of 2021 (Supreme Court of India).

42 *Roman Catholic Diocese of Brooklyn v Cuomo* 592 US ___ (2020).

43 *Tandon v Newsom* 593 US 61 (2021).

the Quarantine Act 2005 to provide measures of the border and isolation conditions during the pandemic.[44] The provinces imposed lockdowns and mandates through their own public health statutes. In particular, the COVID-19 crisis did not rely on the federal Emergencies Act 1988, in part due to its high degree of parliamentary control and restrictions based on rights. The proportionality of restrictions was put to the test by charter litigation. The courts mostly held that restrictions on mobility, assembly and worship were reasonable restrictions under section 1 of the Charter, as long as they were evidence-based and time-limited. However, in Canadian Frontline Nurses v Canada (AG), the government was struck by the Federal Court as unreasonable and unconstitutional, in response to convoy protests, by using the Emergencies Act, a ruling that is currently on appeal.[45] The doctrine and convention of cooperative federalism was relevant. The provinces and the federal government worked together in the procurement and distribution of vaccines, but there were differences regarding funds and requirements. Transparency norms were pushed to the limit: Privacy Impact Assessment of quarantine and data collection was not done in time.[46] On the whole, Canada serves as an example of how constitutional federalism and the Charter implemented checks, whereas political traditions of collaboration made a workable, albeit disputed, pandemic response possible.

5.5 AUSTRALIA & NEW ZEALAND

The cases with Australia and New Zealand demonstrate opposite policies. However, states and territories in Australia were the first to implement lockdowns, mandates, whereas the Commonwealth had to manage the border closures, and this was done via the Biosecurity Act 2015.[47] In Palmer v Western Australia[48] the High Court of Australia affirmed a very stringent state border closure and dismissed arguments that it infringed upon implied constitutional freedoms. Equally, the New South Wales Supreme Court did confirm this in Kassam v Hazzard[49], noting statutory empowerment and proportionality. They indicate that the courts have deferred to the legislative and executive judgments in cases of emergency provided that the statutory power is evident. In New Zealand, procedural legality was of the fore. The first nine days of lockdown in Borrowdale v Director-General of Health was held unconstitutional since the binding restrictions were not duly promulgated under statute although the

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44 Quarantine Act 2005 (Canada).

45 *Canadian Frontline Nurses v Canada (AG)* 2024 FC 42.

46 Health Canada, *Privacy Impact Assessment on Quarantine Orders* (2021).

47 Biosecurity Act 2015, New South Wales, Australia, legislation.nsw.gov.au, accessed September 8, 2025.

48 Palmer v Western Australia, HCA 5, High Court of Australia, judgment dated November 6, 2020, reasons published February 24, 2021.

49 Kassam v Hazzard, NSWSC 1320, Supreme Court of New South Wales, judgment dated October 15, 2021.

measures were substantively reasonable. This demonstrates a high regard to the rule of law: even during emergencies, the executive order has to be issued according to the proper legal form. The establishment of the National Cabinet which substituted COAG transformed conventions of federalism in Australia. Though not formally established within the law, its decisions were authoritative politically, which reflects the manner in which conventions change in response to crisis.

5.6 SOUTH AFRICA AND EU

Under the Disaster Management Act 2002 South Africa had a high executive rule-making in its response. Regulations were struck down as irrational and disproportionate by the Gauteng High Court in De Beer v Minister of Cooperative Governance although this has been limited on appeal.[50] The ban of sale of tobacco was later struck down in Minister of Cooperative Governance v British American Tobacco, when the Supreme Court of Appeal did not find evidence to justify it. These rulings demonstrate how the courts of South Africa apply the rationality review as a protection provided by the constitution against unreasonable emergency actions. In Europe the ECtHR used a rights-sensitive approach that was sensitive to crisis. In Vavricka v Czech Republic, there was affirmation on compulsory vaccination as proportionate in Article 8 ECHR.[51] In CGAS v Switzerland, a total prohibition of demonstrations was disproportionate as per Article 11.[52] The European tradition reflects an intermediate way: providing the states with a margin of appreciation yet with the need of evidence, tailoring and time-constraints.

5.7 COMPARATIVE STUDY: LESSONS LEARNT

Various lessons can be learnt across jurisdictions. First, legality demands statutory power, as well as adherence to procedure: New Zealand and South Africa demonstrate that formality is necessary. Second, proportionality stands as the constitutional virtue: be it strict scrutiny in the US, rationality in South Africa, section 1 of the Canadian Charter, governments had to prove that restrictions were based on evidence. Third, conventions are important: parliamentary scrutiny in the UK, cooperative federalism in India and Canada and intergovernmental cooperation in Australia all turned out to be important, but delicate. Fourth, it involves notions of temporality: the use of sunset clauses and arguments on renewal can avoid the normalisation of emergency governance. These experiences taken collectively verify public health

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50 *De Beer v Minister of Cooperative Governance* [2020] ZAGPPHC 184.

51 *Vavřička and Others v Czech Republic* App nos 47621/13 and others (ECtHR, 8 April 2021).

52 *Communauté genevoise d'action syndicale (CGAS) v Switzerland* App no 21881/20 (ECtHR, 15 March 2022).

emergencies as not constitutional vacuums, but constitutional events. They transform the perception of legality, rights, and conventions; making their marks that will determine the crises in the future.

6. COVID-19 PANDEMIC: JUDICIAL REVIEW AND RIGHTS PROTECTION

One of the main constitutional questions in the COVID-19 pandemic was the judiciary role. As governments worldwide have enforced blanket-like limitations on liberty, assembly, worship and freedom of movement, democracies across the globe called upon their courts to rule on whether executive measures remained within the parameters of the constitution. Jurisprudence which developed shows three trends, namely; structured deference to executive expertise, dialogic review to demand transparency and proportionality, and rights-protective intervention where restrictions were either discriminatory or procedurally unlawful.

6.1 ORGANISED DEFERENCE TO EXECUTIVE EXPERTISE.

The traditional judicial reserve of courts in examining executive action during emergencies is based on a recognition of institutional restraint of judicial expertise into the field of matters of public health. This deference was manifested inter-jurisdictiously. In the United Kingdom, the constitutionality of lockdown measures was usually not successful. The Court of Appeals in R (Dolan) v Secretary of State for Health[53] maintained regulations enacted under the Public Health (Control of Disease) Act 1984[54] by establishing that they were enacted by statute and did not interfere with the European Convention on Human Rights. The Court pointed out that during a catastrophe in which rapid changes were taking place, a margin of discretion was to be given to those who made the decisions. Equally, in the case of Kassam v Hazzard[55], the Supreme Court of New South Wales supported the imposition of mandatory vaccine orders to specific groups of workers highlights that such orders were rationally linked to their intended purposes of protecting the public and were authorized by law. These rulings represent a doctrine of judicial judicial deference, by which courts did not surrender any scrutiny, but instead confined it to the aspects of legality, reasonableness and statutory mandate, leaving the substantive policy judgements to the executive. This strategy ensured the

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53 R (Dolan) v Secretary of State for Health and Social Care, EWCA Civ 1605, Court of Appeal (Civil Division), United Kingdom, judgment dated December 1, 2020.

54 Public Health (Control of Disease) Act 1984, c. 22, United Kingdom, legislation.gov.uk, accessed September 8, 2025.

55 Kassam v Hazzard, NSWSC 1320, Supreme Court of New South Wales, judgment dated October 15, 2021.

preservation of institutional balance, but endangered the rights protection without the solid legislative control.

6.2 DIALOGIC REVIEW AND NUDGING BY THE JUDICIARY.

In certain jurisdictions, courts acted dialogically and forced governments to justify their reasons, reveal their plans, or improve policies without abstaining to them with one hand. This was the example of the Indian Supreme Court. In Re Distribution of Essential Supplies and Services during Pandemic, the Court ordered the central government to publish its oxygen policies and vaccination policies, as transparency was a part of the constitutional right to life under Article 21. The Court did not overturn the policies but provided rational criteria and periodic disclosure and thus institutionalised accountability by dialogue. In Jacob Puliyel v Union of India[56], the Court ruled that vaccination programmes were constitutional except that no one should be coerced into it, and the governments could not withhold the information about adverse events since transparency was important. The same tendencies were characteristic of South Africa. Even when the Gauteng High Court ruled the lockdown regulations irrational and struck down vast parts of them in De Beer v Minister of Cooperative Governance[57], the appeal courts replicated the judgment by emphasizing the importance of rational justification through evidence. Subsequent cases, including the litigation to ban the sale of tobacco, solidified the notion that governments have to give plain justifications on rights-intrusive actions. These are the examples of dialogic review: the general validity of emergency powers was accepted in the courts but they required procedural reasonability, transparency, and evidence.

6.3 RIGHTS-PROTECTIVE INTERVENTION

In cases where the executive actions had a direct violation of the fundamental constitutional rights without proper justification, the courts exercised a stronger role. The best example of jurisdiction in the United States was the pandemic jurisprudence of religious freedom by the Supreme Court. In Roman Catholic Diocese of Brooklyn v Cuomo[58], the Court blocked the capacity restrictions placed on religious services in New York, and found that they discriminated against worship under the Free Exercise Clause because they offered greater treatment to worship than similar secular services. In the Tandon v Newsom

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56 Jacob Puliyel v. Union of India, WP(C) 607 of 2021, Supreme Court of India, judgment dated May 2, 2022.

57 De Beer v Minister of Cooperative Governance and Traditional Affairs, Gauteng Division of the High Court, Pretoria, Case No: 21542/2020, judgment date June 30, 2021.

58 Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. ___ (2020), United States Supreme Court, judgment dated November 25, 2020.

case[59], the ban of the private meetings was deemed unconstitutional due to the same reasons. These rulings indicated that the subjecting of emergency action to close examination was forthcoming where they involved the most fundamental rights, and assertions of blanket deference were unacceptable. In New Zealand, the Borrowdale v Director-General of Health[60] case, by the High Court, the initial nine days of lockdown were illegal since statutory binding restrictions were not issued. Although the basis of the actions was understandable, the Court emphasized that procedural legality is essential. Emergencies do not justify dispensation of statutory formality. In the South Africa case of Minister of Cooperative Governance v British American Tobacco[61], the Supreme Court of Appeal struck a ban on the sale of tobacco, because it did not have adequate evidence support, and because it restricted rights disproportionately. This was a powerful claim of protection of rights where rationality review prevailed otherwise.

6.4 JUDICIAL REVIEW: LIMITATIONS

Nonetheless, the interventions could not stop courts being accused of being deferential or inactive. In the UK parliamentary review was the sole immediate check with judicial review, but actions were mostly upheld by courts. The Supreme Court in India has not been spared as it has been accused at the beginning of being laissez fair only to take on an active role in transparency and accountability. In the United States, the results were politically polarised: claims about religious liberty were successful, and more general ones, against lockdowns and mandates, had been mostly denied. Institutional capacity also restricts the power of judicial review. The courts rely on the governmental disclosure of evidence, and they can not replace scientific judgment by their own judgment. This formed asymmetry: governments had managed to make actions justified by small amounts of data, and challengers had a hard time proving that it was unnecessary. Pandemic showed that the protection of rights can not be based only on courts, there is a need to have powerful legislative control and solid conventions of responsibility.

6.5 JUDICIAL REVIEW: LESSONS LEARNT

According to comparative jurisprudence, constitutional design can be learnt in three ways. To begin with, procedural legality is not a bargain: as Borrowdale

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59 Tandon v. Newsom, 593 U.S. 61 (2021), United States Supreme Court, judgment dated April 9, 2021.

60 Borrowdale v Director-General of Health, NZHC 2090, High Court of New Zealand, judgment dated August 19, 2020.

61 Minister of Cooperative Governance and Traditional Affairs and Another v British American Tobacco South Africa (Pty) Ltd and Others, Case No. 309/21, Supreme Court of Appeal, South Africa, judgment dated June 14, 2022.

demonstrates, even substantively justified acts should be performed in statutory form. Second, proportionality is the generic protection: be it with the strict scrutiny (US), section 1 of the Charter (Canada), or rules of rationality (South Africa), the courts demanded specificity and justification. Third, there is a need to promote judicial dialogue: the courts can strengthen the transparency and evidence-based policy without paralyzing the emergency governance.

Finally, judicial review in the pandemic did not concern the choice between the freedom and life. It was regarding making sure that in achieving the public health, governments were answerable, accountable, and governed by the law.

7. POST-PANDEMIC REFLECTIONS: SUGGESTIONS TOWARDS A CONSTITUTIONAL SETTLEMENT

The legacy of the pandemic makes it possible to consider the way constitutional democracies should be ready to face new crises. COVID-19 demonstrated weaknesses in the statutory frameworks, disclosed the vulnerability of conventions, and challenged judicial checks. Going forward, constitutional settlement will need the introduction of some form of safeguards that do not de-institutionalise the executive ability to respond to crises, but still maintain the rule of law.

7.1 CLARITY OF LEGAL AUTHORITY

A repeat is that specific legislative power is required. The use of old or general framework statutes the Epidemic Diseases Act 1897 in India, the Public Health (Control of Disease) Act 1984 in the UK, provincial legislation in Canada provided a grey area on the breadth of emergency powers. In Borrowdale judgment, New Zealand, it was vividly stressed that the clarity of form and procedure are essential to the constitution. Legislatures must also make sure that emergency health authority is drafted with specificity using triggers, scope and safeguards. Inclusion of sunset provisions, renewal controversies and standards that can be reviewed by the court are not luxuries but necessities by the constitution.

7.2 INCORPORATING PROPORTIONALITY AND RIGHTS IMPACT ASSESSMENT

The comparative jurisprudence proves that courts relied mostly on the proportionality as the main tool to check restrictions. The measure was disproportionate in the case of South Africa at British American Tobacco[62] when there was no evidence to support the act. The right to bodily integrity was

[62] *Minister of Cooperative Governance v British American Tobacco South Africa (Pty) Ltd* [2022] ZASCA 89.

safeguarded in Jacob Puliyel in India by banning forced vaccination but permitting voluntary programs.[63] Statutory frameworks in future must include the right to impact assessment and put the governments on publication of proportionality justification in restricting the right where they do. Incorporating proportionality at the legislative level would make courts not the only protector of rights during an emergency.

7.3 STRENGTHENING THE PARLIAMENTARY SCRUTINY.

The pandemic demonstrated the total ease at which legislatures were pushed aside by executive powers. Parliamentary sovereignty was undermined in the UK where lockdown rules were debated in retrospect.[64] Orders-in-council were highly applied in Canada without a timely debate in parliament.[65] The constitutional compromise must incorporate stronger parliamentary mechanisms on emergency regulations, which could be fast-track committees, the draft orders must be laid beforehand, or there should be an assured debate within a set number of days.

7.4 INSTITUTIONALISING TRANSPARENCY

Connection Transparency was found as a legal and traditional protection. In the UK, SAGE advice, oxygen allocation plans in India and Privacy Impact Assessments in Canada were only published once judicial or political pressure was put on them. This pro-active model kills trust. The proactive transparency that is needed during constitutional settlement must be established as a requirement in statutes: the scientific advice, modelling assumptions and impact assessment should be published, with strict exceptions allowed. This would institutionalise standards of ministerial disclosure and turn them into binding obligations.

7.4 INTERGOVERNMENTAL CONVENTIONS AND FEDERALISM.

In federations, cooperative conventions were needed and irregularly acknowledged. The allocation of vaccines in Canada provided an example of the possibilities and shortcomings of cooperative federalism. The marginalisation of states was centralised in India, which gave rise to conflict. The establishment of the National Cabinet in Australia indicated the flexibility of conventions but their vulnerability too, as the discussions in it were not subject to freedom-of-information laws.[66] Codification of the

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63 *Jacob Puliyel v Union of India* (2022) SCC OnLine SC 533.

64 House of Lords Constitution Committee, *COVID-19 and the Use and Scrutiny of Emergency Powers* (HL 15, 2021).

65 Canadian Provincial Orders-in-Council on COVID-19 (2020–21).

66 Australian Government, *Communiqué of the National Cabinet* (March 2020).

intergovernmental protocols to handle emergencies in the legislatures should be employed to enhance the strengthening of the federal cooperation so as to have organized consultation, statements and dispute resolution.

7.5 GLOBAL HEALTH GOVERNANCE AND INTERNATIONAL DIMENSIONS.

National borders do not halt the emergence of public health. In September 2025, under the amendments of 2024, to the International Health Regulations (2005), new higher reporting, equity and transparency requirements will be introduced.[67] These reforms emphasize the increasing overlap of domestic constitutional government and the international health law. States should incorporate the international obligations in the domestic emergency legislation, which should be coherent with the constitutional rights. This will also help in avoiding use of international obligations as scapegoats to international restrictions that are disproportional at home. According to the comparative study, six principles of constitutional settlement are proposed:

- **Transparency:** Emergency powers must be very specific in statutes, with triggers and scope.
- **Temporality:** Sunset clauses and renewal debates need to be made so as to ensure that emergency powers are not ossuified.
- **Proportionality:** The assessments and evidence-based justifications should be required to be proportional.
- **Oversight:** Timely supervision of urgent regulations has to be ensured in legislatures.
- **Timely:** The data on scientific advice and implications should be released on time.
- **Collaboration:** The intergovernmental consultation should be codified in federal statutes.

Such principles would constitutionalise the lessons of the pandemic, establishing frameworks strong enough to keep the population safe and provide the constitutional democracy.

8. CONCLUSION

The COVID-19 pandemic was not a public health crisis only. It was an historical moment in the constitution. It showed the conflict between the emergency governance and constitutionalism and it challenged the strength of legality, proportionality and conventions in democracies. The comparative history reveals that the emergency powers are constitutional measures.

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[67] World Health Assembly, *Amendments to the International Health Regulations (2005)*, adopted 1 June 2024 (WHO Doc A77/INF/2).

Lockdowns, mandates, and restrictions do not qualify as technocratic actions but rather, are actions of public power that must be legally empowered, controlled by legislation, and subject to judicial review. Where the law was weak - as in the Borrowdale case in New Zealand where courts were demanding a form of process. Where there was evidence of failure of proportionality as in the case of South Africa tobacco ban, courts struck down measures. Where there was no transparency such as with oxygen distribution in India or SAGE advice in the UK where judges and parliaments stepped in. These illustrations are to support the idea that constitutional principles do not lose their relevance even during the emergencies. Conventions on the constitution were also important. The dependence of the UK on the secondary legislation revealed the vulnerability of conventions of parliamentary scrutiny. Centralisation in India due to DMA undermined cooperative federalism. Canada and Australia showed the worth of the intergovernmental conventions but both have shown the same in the area of transparency and accountability. The pandemic proved that it is not possible to leave conventions to the morality of politics but provide them with the statutory support. The role of the judiciary was ambivalent but very necessary. There are instances where courts showed structured deference and dialogic as well as rights-protective intervention where courts showed necessary. Through their interventions, they should demonstrate the courts as not policy-makers but as protectors of the law, justice, and responsibility. Judicial review has no replacement of strong legislative review but rather as an extra-guard. The lessons should be incorporated into the constitutional settlement in the post-pandemic world. The statutory structures have to be revised to be clear, temporal and proportional. The parliaments need to recover their role by the process of enhanced scrutiny. Openness should be formalised. Conventions between governments should be codified. Constitutional rights have to be balanced with international obligations. This is the only way that emergency governance could be in line with constitutional democracy. Public health emergencies are constitutional cases and transform the boundaries of rights and powers as well as the conventions that constitutes the democratic life. Emergencies cannot be considered exceptional gaps to constitutional law; they are occasions that establish constitutional identity. Democracies have a challenge that they must make sure that as they react to the crisis, they do not turn their backs on the very principles which made them democracies.