

ACCOUNTABILITY OF RIGHTS DURING PANDEMIC COVID-19: ATTITUDE AND PRACTICES IN SELECT SOUTH ASIAN COUNTRIES

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ABSTRACT

The COVID-19 pandemic posed an unparalleled impact globally, compelling States to adopt a range of restrictions to curb the spread of the virus. These measures were not only radical but also were violative of the rights and liberties of people to a large extent leading to debates across intelligentsia on multifarious ethical, moral, legal and philosophical standpoints. Accusations and protests were being made against the popular governments for violating various fundamental and human rights like the freedom of religion, movement, life, education, privacy and many others. The present article *firstly* highlights the spectrum of rights and liberties impacted by the pandemic restrictions imposed. *Secondly*, it focuses on the varied philosophical standpoints for the justification of such governmental interventions. *Thirdly*, the authors undertake an assessment of people's knowledge, attitude, and practices (KAP) towards the pandemic and the steps taken by the popular government for the containment of COVID-19 spread in select South Asian countries. This discussion is also critical in the changed order where the essentiality of vaccines, the right to decide on one's health and the collective responsibility of all members of society towards wellbeing have gained crucial relevance.

Keywords: *Rights, Liberties, KAP, COVID-19, harm principle, proportionality.*

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I. Introduction: Tracing the restrictions by the State during infection outbreak and the impacted rights

GLOBALLY THE unprecedented responses taken by State Governments for containing the infection caused by SARS-CoV-2 infused a “new normal” for its citizens. Within no time of the spread of infection, orders pertaining to isolating the infected population, staying at home, mandatory social distancing, wearing masks and mandatory testing were put into practice. In the majority of jurisdictions, the aforesaid orders were not only backed up by the criminal sanctions but also were coercively enforced by the state machinery. Legally speaking such orders were well within the contours of the legislation dealing with disasters and were contended to have sustainability in the Court of Law. Nonetheless, the sweeping expectation of popular governments from its citizens to follow a prescribed code of conduct, though in their interest but because of its being *firstly*, supremely restrictive; and, *secondly*, forcefully imposed, caused restlessness amongst the populace on varied accounts.

Amongst, various concerns, primarily these measures initiated the need of revisiting the concepts defining the sanctity of rights and duty of individuals; especially during the time of emergencies. The state responses during different phases of the pandemic were contended to be inequitable consequently widening the gaps within the society and, also being in violation of human rights of leading a dignified life including noble treatment on death and even after that. It was not the case that the aforesaid measures were not founded on the historic precedents. The early years of the twentieth century saw several outbreaks in various parts of the world where such restrictions were felt to be the sole solution. In the year 1918, the Influenza pandemic¹, reportedly shattered the World which was already grappling with the mass destruction caused by World War-I (1914-18)². Though it devastated the United States causing illness of approximately twenty-five million

¹ By the War Department’s most conservative count, influenza sickened 26% of the Army—more than one million men—and killed almost 30,000 before they even got to France. See L.P. Ayres, *The war with Germany: A statistical summary* 125-126 (U.S. Government Printing Office, Washington, 1919).

² Examination of medical reports and War Department and Department of the Navy documents from the war reveals that the war and the epidemic were intertwined. See CR Byerly, *Fever of war: the influenza epidemic in the U.S. Army during World War I* (New York University Press, New York, 2005).

and death of more than six million³, the Pandemic historically is better known as the “Spanish Flu” due to uncensored reporting of the spread of infection⁴.

Amidst the widespread infection, wherein the systems were not prepared either due to War and consequent damage or due to inapt scientific research studies in virology, there was reportedly a success story of containing the infection to its minimum in Gunnison, Colorado, USA. The moment the local newspaper reported the spread of Flu in the US, sweeping prohibitions were imposed in the city whereby the health officials decided to block the boundaries of the city against the entire world⁵. The order for mandatory quarantines for outsiders before mixing with the community members was mandated in addition to diverting the entry into Gunnison. Social distancing, restrictive indoor and outdoor gatherings, closure of schools, businesses and transportations and religious places were few of the community responses to protecting its citizens from H1N1. The adopted strategy in Gunnison played the trick to the extent that on one hand where the number of casualties which touched a humongous figure of more than 40 million worldwide and more than six million in the US alone, the county reportedly had only two cases with no casualties. But unlike the Spanish Flu Pandemic, the impact of the present pandemic was unprecedented though the measures taken for containing the spread was having some commonality. The fear and panic infused globally by the excessive high-handed

³ World War I and influenza collaborated: the war fostered disease by creating conditions in the trenches of France that some epidemiologists believe enabled the influenza virus to evolve into a killer of global proportions. In turn, disease shaped the war effort by rendering much of the Army and Navy non-effective and diverting resources, personnel, and scarce human attention and energy from the military campaign. The exigencies of war also thwarted many of the efforts such as crowd mitigation and quarantines to control the epidemic. The influenza epidemic in the U.S. military, therefore, provides a cautionary tale about the power of war to change the health environment and the power of disease to influence the conduct of war. See Carol R. Byerly, “The U.S. Military and the Influenza Pandemic of 1918-19” 125(3) *Public Health Reports* 81-91 (2010).

⁴ Fourteen of the largest training camps reported influenza outbreaks in March, April, or May, and some of the infected troops carried the virus with them aboard ships to France. In the late spring and summer, influenza visited all of the armies of Europe, including the AEF, but because influenza was common in the military, and few patients became critically ill, medical officers were not alarmed. But by the late summer some saw the emergence of a new, lethal influenza. To control influenza and pneumonia, the hospital provided patients with 100 square feet of floor space, separated beds by sheets, and furnished face masks to everyone in the camp. As pneumonia spread, medical officers also sprayed the mouths and throats of 800 healthy men daily with the solution of Dichloramine-T as a preventive measure. The disaster was so powerful that it reduced American life expectancy statistics by almost twelve years. See *Supra* note 2.

⁵ R. Carroll, “Gunnison Colorado: The town that dodged the 1918 Spanish Flu pandemic”, *The Guardian*, Mar. 1, 2020, available at: <https://www.theguardian.com/world/2020/mar/01/gunnison-colorado-the-town-that-dodged-the-1918-spanish-flu-pandemic> (last visited on February 21, 2021).

governmental actions, though accepted majorly resulted in an extreme state of unhappiness and mental health issues amongst the citizens worldwide⁶.

It is been contended in varied research writings and reporting that the pandemic and the consequent governmental actions were not only harsh but also increased the divide amongst the societal groups⁷. Due to lock down which again is seen as much worse than The Great Depression economically⁸, the year 2020 saw its varied impact on the different groups of the society.⁹ The migrant workers were forced to go back to their respective hometowns due to sudden closures of workplaces. The horror stories of migrant workers travelling¹⁰ barefoot with

⁶ United Nations, *Policy Brief: COVID-19 and need for action on Mental Health*, available at: <https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf> (last visited on February 27, 2021).

⁷ Reportedly, the online classes conducted due to lockdowns lead to additional financial burdens on the families. Numerous suicides were reported wherein either the parents or the students committed suicide due to non-availability of electronic gadgets. In these unprecedented times the gap between 'have' and 'have not' was supposedly widened. See Utpal Parashar, "16-yr-old boy, who could not attend online classes, found dead in Assam", *Hindustan Times*, Jun. 24, 2020, available at: <https://www.hindustantimes.com/cities/16-yr-old-boy-who-could-not-attend-online-classes-found-dead-in-assam/story-slDE3uD0uM3MHWkqHRg3vM.html> (last visited on February 24, 2021); India Today Web-Desk, "12-yr-old Gujarat girl kills self over stress of online classes, homework", *India Today*, Jun. 24, 2020, available at: <https://www.indiatoday.in/india/story/gujarat-teen-kills-self-over-stress-of-online-classes-1692105-2020-06-24> (last visited on February 24, 2021).

⁸ Gita Gopinath, "The Great Lockdown: Worst Economic Downturn Since the Great Depression" *IMF Blog*, Apr. 14, 2020, available at: <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/> (last visited on February 21, 2021).

⁹ "Corona scare drives youth to suicide, third in UP", *ABP LIVE*, Mar. 24, 2020, available at: <https://news.abplive.com/news/india/corona-scare-drives-youth-to-suicide-third-in-up-1181371> (last visited on February 27, 2021); "Hyderabad tippler commits suicide upset at not getting liquor during lockdown", *The New Indian Express*, Mar. 28, 2020, available at: <https://www.newindianexpress.com/cities/hyderabad/2020/mar/28/hyderabad-tippler-commits-suicide-upset-at-not-getting-liquor-during-lockdown-2122690.html> (last visited on February 27, 2021); "Suicides due to lockdown: Suicide leading cause for over 300 lockdown deaths in India, says study", *The Economic Times*, May. 5, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/suicide-leading-cause-for-over-300-lockdown-deaths-in-india-says-study/articleshow/75519279.cms?from=mdr> (last visited on February 27, 2021); Akshaya Nath, "Two Covid-19 patients commit suicide at Chennai hospitals within 24 hours", *India News*, May. 28, 2020, available at: <https://www.indiatoday.in/india/story/two-covid-19-patients-commit-suicide-at-chennai-hospitals-within-24-hours-1682915-2020-05-28> (last visited on February 27, 2021); Thejesh G.N., "Non virus deaths", *Thejesh G N*, Jul. 30, 2020, available at: <https://thejeshgn.com/projects/covid19-india/%20non-virus-deaths/> (last visited on February 27, 2021); "Woman found hanging at quarantine centre in Odisha", *Sambad*, Jul. 1, 2020, available at: <https://sambadenglish.com/woman-found-hanging-at-quarantine-centre-in-odisha/> (last visited on February 27, 2021); "Covid-positive man found dead at home in Loni", *Hindustan Times*, Jun. 24, 2020, available at: <https://www.hindustantimes.com/cities/covid-positive-man-found-dead-at-home-in-loni/story-tcRzmQiyKoxK8gSB5OJqMO.html> (last visited on February 27, 2021).

¹⁰ Dev Raj, "Bihar Migrant Kills himself" *Telegraph India*, Jul. 2, 2020, available at: <https://www.telegraphindia.com/india/coronavirus-lockdown-bihar-migrant-kills-himself/cid/1784994> (last visited on February 27, 2021); Animesh Bisoe, "Lockdown Suicide' after finance anxiety", *Telegraph India*, Jul. 2, 2020, available at: <https://www.telegraphindia.com/india/coronavirus-lockdown-jharkhand-migrant-worker-commits-suicide-over-finance-anxiety/cid/1784993> (last visited on February 27, 2021); Chandrakant Viswanath, "A Different Tragedy Strikes Kerala During COVID-19 Lockdown Due to Non-Availability of Alcohol", *NEWS18*, Mar. 29,

their families flooded news channels, social media and print media wherein the preparedness of the respective governments was questioned in the backdrop of forced lockdowns. The number of suicides suddenly saw a surge, amongst which initially there were many cases even connected to the fear of consequences of being infected and subsequent institutional quarantine.¹¹

Experiences of community responses during the outbreak of the pandemic were always standing at the crossroads where the supremacy of society at large was maintained in contrast with the importance of individual rights. It was a long drawn contention that human rights and public health are intertwined and in urgent situations, the assumption is that the individual rights have to give way to the interest of the public at large. In the United States, the aforesaid approach saw a sea change post-AIDS pandemic coupled with airborne multidrug-resistant tuberculosis wherein the early strategy of dealing with the disease was extremely regressive. Initially, individuals were isolated at the very first instance and were justified on account of maintaining public health on an urgent basis.¹² Gradually, the importance of individual rights gained momentum and the infected were protected by legal and judicial imperatives resulting in the fortification of individual rights and the related sanctity attached to such rights.¹³

Further, in the year 2003, with the outbreak of SARS, the legal and ethical concerns yet again took the center stage consequent to the responses for containing the same. SARS yet again took

2020, available at: <https://www.news18.com/news/india/a-different-sort-of-tragedy-strikes-kerala-during-covid-19-lockdown-due-to-non-availability-of-alcohol-2556049.html> (last visited on February 21, 2021).

¹¹ “Coronavirus in India: Suspected Covid-19 patient who committed suicide in UP hospital tests negative”, *India Today*, Apr. 3, 2020, available at: <https://www.indiatoday.in/india/story/coronavirus-india-suspected-covid-19-patient-committed-suicide-up-hospital-tests-negative-1662942-2020-04-03> (last visited on February 27, 2021); Alok Pandey, “Coronavirus Lockdown: Unable To Care For Family, Uttar Pradesh Man Commits Suicide In Lakhimpur Kheri, Blames Lockdown”, *NDTV*, May. 30, 2020, available at: <https://www.ndtv.com/india-news/coronavirus-lockdown-unable-to-provide-food-for-family-uttar-pradesh-man-kills-self-in-lakhimpur-kheri-blames-lockdown-2237738> (last visited on February 27, 2021); Sidhi, “COVID-19: Man commits suicide after being quarantined in Madhya Pradesh”, *Deccan Herald*, Apr. 24, 2020, available at: <https://www.deccanherald.com/national/covid-19-man-commits-suicide-after-being-quarantined-in-madhya-pradesh-829304.html> (last visited on February 27, 2021); “COVID-19 suspect jumps to death at quarantine facility in Greater Noida, magisterial inquiry ordered” *India News*, Apr. 12, 2020, available at: <https://www.timesnownews.com/india/article/covid-19-suspect-jumps-to-death-at-quarantine-facility-in-greater-noida-magisterial-inquiry-ordered/577148> (last visited on February 27, 2021); Aparna Banerji, “Anxiety over COVID-19 leads to Phagwara woman’s suicide”, *The Tribune India*, Apr. 6, 2020, <https://www.tribuneindia.com/news/punjab/anxiety-overcovid-19-leads-to-phagwara-womans-suicide-66466> (last visited on February 2, 2021).

¹² Spread of AIDS and consequent fear turned the attention of public towards Quarantine, which is one of the oldest methods of maintaining public health in case of urgency; for discussions on fear, stigma and hysteria attached to AIDS, *See*, Wendy E. Parmet, “AIDS and Quarantine: The revival of archaic Doctrine” 14(1) *Hofstra Law Review* 53-90 (1985).

¹³ A.L. Fairchild, R. Bayer, *et.al.*, *Searching eyes: Privacy, the state and disease surveillance in America* (University of California Press, Berkeley, 2007).

the society back into the times when nothing was known prior hand about the disease or its treatment. Globally, the public health responses were once again focused on restrictive measures such as isolation, contact tracing, surveillance, travel advisories and so on. The said scenario not only during the first wave of the infection but even after that posed the need for rethinking the legal and ethical principles on which such public health responses should be founded. It was contended that balancing needs to be done between the actions taken in the interest of public good thereby ensuring collective good and individual rights such as liberty and privacy.¹⁴

The aforesaid unresolved concerns pertaining to the tolerability of risks of outbreaks and the inclusive precautionary principle in public health measures, additional concerns about stigma, prejudice towards a particular group, race or ethnicity along with the economic capability of countries, and cities and business activities therein. Again at the outbreak of COVID-19, despite the fact of concerns raised in the past about the utility and futility of quarantine, surveillance, and other restrictive practices for curbing the infection in the backdrop of right based approach, globally the responses of the states at the national and international level were on the same lines. Unlike previous outbreaks of deadly infections worldwide, the COVID pandemic was unprecedented. Never before, the World has seen lives coming to a halt in every aspect. The number of casualties, the number of people infected and the collateral damage are incomparable. The lockdown imposed was much more severe in its implementation and was complete for a very long time. Though the states started opening up their economies by unlocking partially in July 2020 with the restrictions in place, by the end of the year the restrictions were completely lifted. Nonetheless, the governments of each country are requesting its citizens to follow the prescribed code of conduct thereby abiding by all the safety measures.

The COVID-19 pandemic is unique not only for the magnitude of its impact but also due to the universality of resentment shown against the state responses¹⁵, especially regarding the stay at

¹⁴ Lawrence O. Gostin, Ronald Bayer, *et.al.*, “Ethical and Legal Challenges Posed by Severe Acute Respiratory Syndrome: Implications for the control of severe infectious disease threats” 290 (24) *The Journal of the American Medical Association* 3229-3237 (2003).

¹⁵ “Hundreds protests against US Corona virus Lockdown restrictions amid spreading resentment” *The New Indian Express*, Apr. 19, 2020, available at: <https://www.newindianexpress.com/world/2020/apr/19/hundreds-protest-against-us-coronavirus-lockdown-restrictions-amid-spreading-resentment-2132162.html> (last visited on February 27, 2021); Meredith Deliso, “Residents protest coronavirus Stay at home orders in 5 States: Protests occurred in Colorado, Illinois, Florida, Tennessee and Washington”, *ABC News*, Apr. 20, 2020, available at: <https://abcnews.go.com/US/residents-protest-coronavirus-stay-home-orders-states/story?id=70233220> (last visited on March 3, 2021); Joel Bose, “Frustration mounts with Stay At Home Orders as weeks turns to months”, *NPR*,

home orders, wearing masks and mandatory testing.¹⁶ The rules were seen to be flouted by people across the world resulting in the imposition of sanctions in form of fines or imprisonment.¹⁷ The front line workers going for taking the samples of the people in destines zones or working in hospitals continuously without any break and away from their families, were frequently attacked by the residents of that area.¹⁸ Those who were institutionally quarantined

Apr. 20, 2020, available at: <https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838596667/frustration-mounts-with-stay-at-home-orders-as-weeks-turn-to-months> (last visited on March 3, 2021); Marco Delia Cava, “‘This will blow over’: In States without Stay At Home Orders, American celebrate freedom as death toll climbs”, *USA Today*, Apr. 2, 2020, available at: <https://www.usatoday.com/story/news/nation/2020/04/02/states-without-stay-home-orders-residents-celebrate-freedoms/5105303002/> (last visited on March 3, 2021).

¹⁶ Apoorva Mandhani, “Lawyer moves HC against Rs. 500 fine for not wearing mask in car, seeks Rs. 10 Lakh compensation”, *The Print*, Sep. 16, 2020, available at: <https://theprint.in/judiciary/lawyer-moves-hc-against-rs-500-fine-for-not-wearing-mask-in-car-seeks-rs-10-lakh-compensation/504026/> (last visited on March 3, 2021);

¹⁷ “2000, People penalized in two days for not wearing mask: Noida Police”, *Outlook*, Nov. 29, 2020, available at: <https://www.outlookindia.com/website/story/india-news-nearly-2000-people-penalised-in-2-days-for-not-wearing-mask-noida-police/365643> (last visited on January 27, 2021); “Mumbai’s 12 police zones to fine 1,000 maskless people per day”, *Deccan Chronicle*, *Deccan Chronicle*, March 3, 2021, available at: <https://www.deccanchronicle.com/nation/current-affairs/030321/mumbais-12-police-zones-to-fine-1000-maskless-people-per-day.html> (last visited on March 3, 2021).

¹⁸ Doctors, Nurses and other front-line workers were reportedly attacked in varied cities in USA, Philippines, Australia, Kabul, Afghanistan, Syria and many others. The reasons for such attacks during pandemic were different depending on the local context. Such attacks were announced by the majority of governments to be dealt with serious punishments. Additionally, there were checklists released by International agencies such as the Red Cross for preventing such incidences of violence were released wherein the recommendation is also made towards the adoption of a collaborative approach; See, International Committee of the Red Cross, “Safer COVID-19 response: checklist for health-care services”, available at: https://healthcareindanger.org/wp-content/uploads/2020/05/4469_002_Safer_COVID-19_Response-Checklist_for_Health-care_Services-Lr_1.pdf (last visited on March 3, 2021); Donna McKay, Michele Heisler, *et.al.*, “Attacks against health-care personnel must stop, especially as the world fights COVID-19” 395 *The Lancet* 1743-1745 (2020). “Health workers become unexpected targets during COVID-19”, *The Economist*, May. 11, 2020, available at: <https://www.economist.com/international/2020/05/11/health-workers-become-unexpected-targets-during-covid-19> (last visited on March 3, 2021); K. Semple, “Afraid to be a nurse”: health workers under attack”, *The New York Times*, Apr. 27, 2020, available at: <https://www.nytimes.com/2020/04/27/world/americas/coronavirus-health-workers-attacked.html> (last visited on March 3, 2021); “Assaults on corona warriors continue as doctors, health workers attacked in Delhi, U.P”, *The Statesman*, Apr. 15, 2020, available at: <https://www.thestatesman.com/india/assaults-corona-warriors-continue-doctors-health-workers-attacked-delhi-1502877767.html> (last visited on March 3, 2021); Amarnath Tewary, “Coronavirus: Police medical team attacked in Bihar”, *The Hindu*, Apr. 16, 2020, available at: <https://www.thehindu.com/news/national/other-states/coronavirus-police-medical-team-attacked-in-bihar/article31353013.ece> (last visited on February 27, 2021); Anurag Dwary, “Attacks on doctors, healthcare workers rise amid COVID-19 pandemic”, *NDTV*, Apr. 2, 2020, available at: <https://www.ndtv.com/india-news/attacks-on-doctors-healthcare-workers-rise-amid-covid-19-pandemic-2204547> (last visited on February 21, 2021); “Doctors come under attack in India as corona virus stigma grows”, *Japan Times*, Apr. 14, 2020, available at: <https://www.japantimes.co.jp/news/2020/04/14/asia-pacific/doctors-india-coronavirus-stigma/> (last visited on February 21, 2021); In the initial phase of coronavirus infection, the newspaper reports were flooded with the incident of health workers being attacked by the local residents on the account of collection of samples for testing the infection. See Venkatesha Babu and Ranjan, “Covid-19 update: Front-line health staff battle attacks”, *Hindustan Times*, Apr. 3, 2020, available at: <https://www.hindustantimes.com/india-news/front-line-health-staff-battle-attacks/story-7UOwmiA4RlhFa5Y2fHYNgL.html> (last visited on February 21, 2021); Mohit Khanna, “Ludhiana residents hostile to covid frontline workers collecting data”, *Hindustan Times* Aug. 20, 2020, available at: <https://www.hindustantimes.com/cities/ludhiana-residents-hostile-to-covid-frontline->

were trying to escape from such centres.¹⁹ The revenue collected by the state agencies²⁰ for not wearing masks depicted the attitude of the people wherein such irresponsible behavior was not only putting their lives at stake but also endangering others.

The populace across the countries in the world could fall into two categories. The majority of the people fell into the category that was following the prescribed code of conduct despite the fact of absolute curtailment of freedoms and liberties. The success stories of countries which were able to curtail the spread of infection was majorly due to the “self-promoted preventive behavior” of its citizens. But on the contrary, there was a significant number of people who were flouting the security measures. The aforesaid contrast seen in the behavior of the people initiated the debate that how far individual responsibilities are important and crucial during such emergencies than their rights. Secondly, how far such rights can be curtailed and to what extent the individual can be imposed the “rightful” behavior backed up by criminal sanctions in case of violations for attaining a larger good.

workers-collecting-data/story-QjQJwaTEV1QFAzn35OJsIJ.html (last visited on February 21, 2021); Arti Altstedter, Bhuma Shrivastava, *et.al.*, “Doctors come under attack in India as Coronavirus stigma grows”, *Bloomberg*, Apr. 14, 2020, available at: <https://www.bloomberg.com/news/articles/2020-04-13/doctors-come-under-attack-in-india-as-coronavirus-stigma-grows> (last visited on February 27, 2021).

¹⁹ Sib Kumar Das, “Migrant workers escape from quarantine centre in Odisha”, *The Hindu*, May. 3, 2020, available at, <https://www.thehindu.com/news/national/other-states/migrant-workers-escape-from-quarantine-centres-in-odisha/article31496359.ece> (last visited on February 21, 2021); Arvind Ojha, “Delhi: 57 migrants jump walls, escape from quarantine centre in Tilak Nagar”, *India Today*, May. 5, 2020, available at: <https://www.indiatoday.in/india/story/delhi-57-migrants-jump-walls-escape-from-quarantine-centre-in-tilak-nagar-1674771-2020-05-05> (last visited on February 21, 2021); Farai Mutsaka, “Zimbabwe names people who escaped filthy quarantine centres”, *CTV News*, Jun. 10, 2020, available at: <https://www.ctvnews.ca/world/zimbabwe-names-people-who-escaped-filthy-quarantine-centres-1.4977665> (last visited on February 21, 2021); “Nepal reports 593 new corona virus cases; Panic after 21 escape Quarantine facility”, *News 18 World*, Jun. 26, 2020, available at: <https://www.news18.com/news/world/nepal-reports-593-new-coronavirus-cases-panic-after-21-escape-quarantine-facility-2688977.html> (last visited on February 21, 2021); “Corona virus: Kenya quarantine escapees arrested while drinking at bar”, *BBC News*, Apr. 23, 2020, available at: <https://www.bbc.com/news/world-africa-52374254> (last visited on February 21, 2021); “More escapes from quarantine centres”, *The Herald*, Jun. 2, 2021, available at: <https://www.herald.co.zw/more-escape-from-quarantine-centres/> (last visited on February 21, 2021).

²⁰ Gayathri Mani, “Rs. 1.5 Cr. In four days as COVID-19 challans in Delhi; maximum collection from mask violaters”, *Indian Express*, Nov. 24, 2020, available at: <https://www.newindianexpress.com/cities/delhi/2020/nov/24/rs-15-crore-in-four-days-as-covid-19-challans-in-delhi-maximum-collection-from-mask-violaters-2227347.html> (last visited on February 21, 2021); It was reported by the senior police officer in the reporting that people are fined in addition to registration of FIR where people violated regulations pertaining to social distancing or gathering more than the required numbers. See Saurabh Trivedi, “Police collect 26 Cr. In COVID19 fines”, *The Hindu*, Nov. 21, 2020, available at: <https://www.thehindu.com/news/cities/Delhi/police-collect-26-crin-covid-19-fines/article33145952.ece> (last visited on February 21, 2021).

II. State Responses against Covid-19: Underpinning the dilemmas and philosophical standpoints for State interventions

Globally lives altered dramatically in the initial phases of pandemic COVID -19, and the impact was seen without any discrimination in almost all the States irrespective of their positioning in the global order. None of the countries was prepared to deal with the deadly contagion. Initially, each country in its own way was attempting to check the spread of the infection in its own ways but, the commonalities among the measures were the restrictions imposed on the freedom and liberties of the individuals. As mentioned aforesaid, lockdowns, stay at home orders, restrictive movements, wearing masks, and institutional quarantines were the common State responses. These measures collaterally gave unlimited powers to the state agencies for the implementation of the same. This resulted in complex situations universally wherein the “necessity” and “utility” were not only seriously questioned and debated, but as discussed in the preceding sections were aggressively resented. As the pandemic aggravated in its next phase the restrictions increased multifold which further raised the concerns about being grossly violative of rights, freedoms and liberties of the citizens.

In these unprecedented times, the debate around rights and duties of the individuals along with the grounds and extent of state interference gained momentum which initiated the need for redefining the basic concepts for a dignified life afresh. Surprisingly, the spectrum of rights affected during the pandemic not only shattered the foundations of the right based approach in a democracy but the attached stringent criminal sanctions and their implementation aggravated the damage. Though, the adopted measures and the consequent criminal sanctions for violations were time and again justified by the respective states on account of the “only” option available in the given situation.

Popular governments across the globe were seen issuing orders amongst which some were the indications of moral and ethical dilemmas before such governments. But some of the orders so issued for the sake of containing the infection were the outright negation of not only a dignified life but also of a dignified death. For instance, the orders pertaining to forced cremations in Sri Lanka of those who died due to COVID-19 infection who otherwise due to their essential

religious practice were supposed to be buried is one of the examples of the numerous negations done in the name of curbing the spread. It took around ten months for this order to come to an end, though the last report stated that in absence of clear guidelines those who left for heavenly abode are waiting for the burials as per their religious and customary rights²¹. The horror stories were not only limited to the lapses on behalf of the state. There were numerous instances across the region where either the relatives were not able to see the departed loved ones or where the departed were refused to be claimed by their own. Initially, when there was very little known about the disease and its spread there were instances of refusals for cremation by the authorities or a huge backlog of those who need to be cremated.

It was not that the Asian Countries, in specific, were witnessing such human right violations but in the developed nations such as the USA, Germany, and France, the prohibitions imposed on the religious gatherings and visit to religious places were seen against the well-established legal tenets and were protested by the citizens. For instance, in the United States of America movement of around 90% of the total population was restricted by April 2020 by the stay-at-home/ shelter-in-place orders. The major concern raised against such orders was the attached criminal sanctions in case of violations. The implementation of such orders by the police was not taken as a welcome move in light of well settled rights regime by virtue of the First Amendment wherein for instance religious services are well protected within its ambit. Therefore, the orders passed in San Francisco implicating complete prohibition and the orders of restrictive religious services in Florida and Alabama were taken as violations of their basic rights²². Additionally, the Fourth Amendment, which keeps a check on “unreasonable searches and seizures” was seen to be a frequent phenomenon during pandemics wherein the random testing was done on a mandatory basis during their inter-intra city movements.²³

²¹ “Sri Lanka ends forced cremations of Covid-19 Victims”, *The Hindu*, Feb. 26, 2021, available at: <https://www.thehindu.com/news/international/sri-lanka-ends-forced-cremations-of-covid-19-victims/article33940422.ece> (last visited on February 27, 2021).

²² A. Lee, “These states have implemented stay at home orders. Here’s what that means for you”, *CNN*, Apr. 7, 2020, available at: <https://edition.cnn.com/2020/03/23/us/coronavirus-which-states-stay-at-home-order-trnd/index.html> (last visited February 21, 2021).

²³ MA Rothstein, “The Coronavirus Pandemic: Public health and American Values” 48(2) *Journal of Law Medicine & Ethics* 354-359 (2020); R.L. Haffajee and M.M. Mello, “Thinking Globally, Acting Locally—The U.S. Response to Covid-19” 382(22) *The New England Journal of Medicine* (2020)..

Never before the world has seen civil liberties and public health imperatives being at crossroads for such a long time and to such a degree. The uncertainties attached to the COVID-19, its treatment coupled with rudimentary measures in place added to the dilemmas which almost all the systems faced in convincing people about the proportionality of the restrictive measures to that of the posed danger by the pandemic. As mentioned in the preceding section that the resentment toward public health policy when it comes to sacrificing individual interests. Especially during outbreaks, has a long history. Further, civil liberties have always been respected by courts of maximum jurisdictions, but, restricting the same has always been justified on account of urgency. The courts have always emphasized the proportionality, scope and duration of such measures. The court while adopting the protective approach has emphasized the fact that such measures should corroborate the principle of equity and equality wherein such interventions should not be directed toward a particular group adding more to its vulnerabilities²⁴.

Restrictions imposed with added surveillance were more of a policy issue rather than legal during such emergent times. Nonetheless, individual rights and liberties were the collateral damages. Mill at the end of his celebrated work *Logic* (1843), justifying rules said that the testing ground for any rule of practice is its conformity to the happiness quotient for mankind, thereby meaning that promoting happiness has to be the ultimate purpose behind any rule or regulation. But, according to him, the happiness quotient can be the justification but not the only guide behind the actions. He asserted that the ultimate aim of all the actions undoubtedly is the promotion of happiness and should act as a controlling factor behind all actions, but the promotion of happiness can't be treated as an end itself. Actually, for him "happiness cannot be constant and immediate end because some virtuous actions will produce more pain than pleasure on a given action" and just for this reason they can't be termed as unacceptable, if otherwise they "it can be shown that on the whole more happiness will exist in the world if feelings are cultivated which will make people, in certain cases, regardless of happiness"²⁵.

²⁴ Wendy E. Parmet and Michael S. Sinha. "COVID-19- The law and Limits of Quarantine" 382(15) *The New England Journal of Medicine* (2020); The orders of emergency curfews and quarantine have been upheld by Federal Courts when they are supported by facts demonstrating that the such measures are necessary for restoring peace and security. See *United States v. Chalk*, 441 F.2d 1277 (4th Cir. 1971).

²⁵ John Stuart Mill, *On liberty, Utilitarianism, and other Essays* xviii (Oxford University Press, United Kingdom, 2015).

The ethical dilemmas faced by the governments regarding precautionary measures taken during pandemics were not only abstract but were difficult to appreciate in their executions. But talking from the other side that is, from that of citizens who were at receiving end, the Covid outbreak was the time for them to put all the moral theories of virtuous right action proposed by the philosophers in the past into action. The choice which was posed was between the stringent application of individual liberties and the minimization of the avoidable causalities by containing the spread of infection. It can't be denied that any public health intervention in such difficult times requires individual liberties to give way to the health of a larger population. Mandatory tests, contact tracing, surveillance, isolation, quarantine, and lockdowns were the initiatives which were taken for the sake of the common good.

As far as the justification of backing up such measures by criminal sanctions is concerned, since the prime purpose of criminal sanctions is not only to prevent an individual from harming others but also himself, such sanctions for violations during a pandemic were serving both the purpose. Further, as per the principle of least restrictive or coercive means which encompasses varied measures for ensuring public health, the authoritative state measures should be the last resort when all other measures such as education, discussion and facilitation have failed to achieve their desired goal²⁶. Thus any kind of coercive action or incarceration should be preceded by the least restrictive measures, but since the spread of the infection was unprecedented both in terms of the number of falling ill and the resulting causalities the state governments were not left with much of options to follow the ideal norm of proportionality.

Despite the fact that the crisis posed by the virus mandated to following the moral commandments of being good and responsible citizens, the discussed in the previous section proved it to be otherwise. Though in numbers such people were not in majority but in light of the communicability of the infection the state was not left with any option but to put criminal sanctions. Personal sacrifices of individual freedoms and liberties are the moral mandates to be

²⁶ This principle has been enshrined in the Siracusa principles. It is a set of internationally agreed upon legal principles that establish the justified conditions for the restriction of civil liberty According to these principles restriction of liberty must be legal, legitimate and necessary and use the least restrictive means that are reasonably available. Further such restrictions should be applied indiscriminately. See REG Upshur, "Principles for the justification if Public Health Intervention" 93(2) *Canadian Journal of Public Health* 101, 102 (2002).

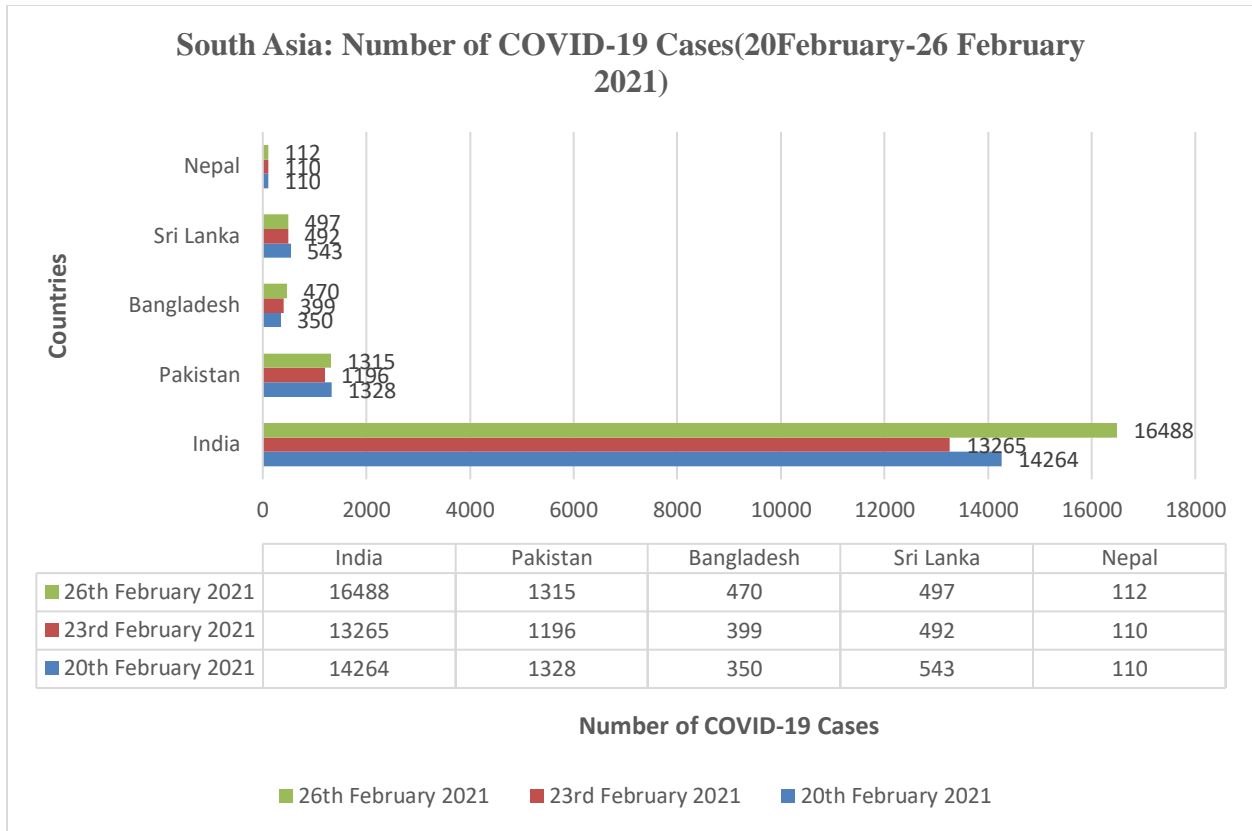
followed, which again turn the spotlight toward the self-reported preventive behavior. Such behavior reflects the unsaid responsibility that an individual holds towards everyone and which becomes much more crucial in such critical times.

III. Self-reported prevention behavior during a pandemic: Revelations in Select South Asian Countries

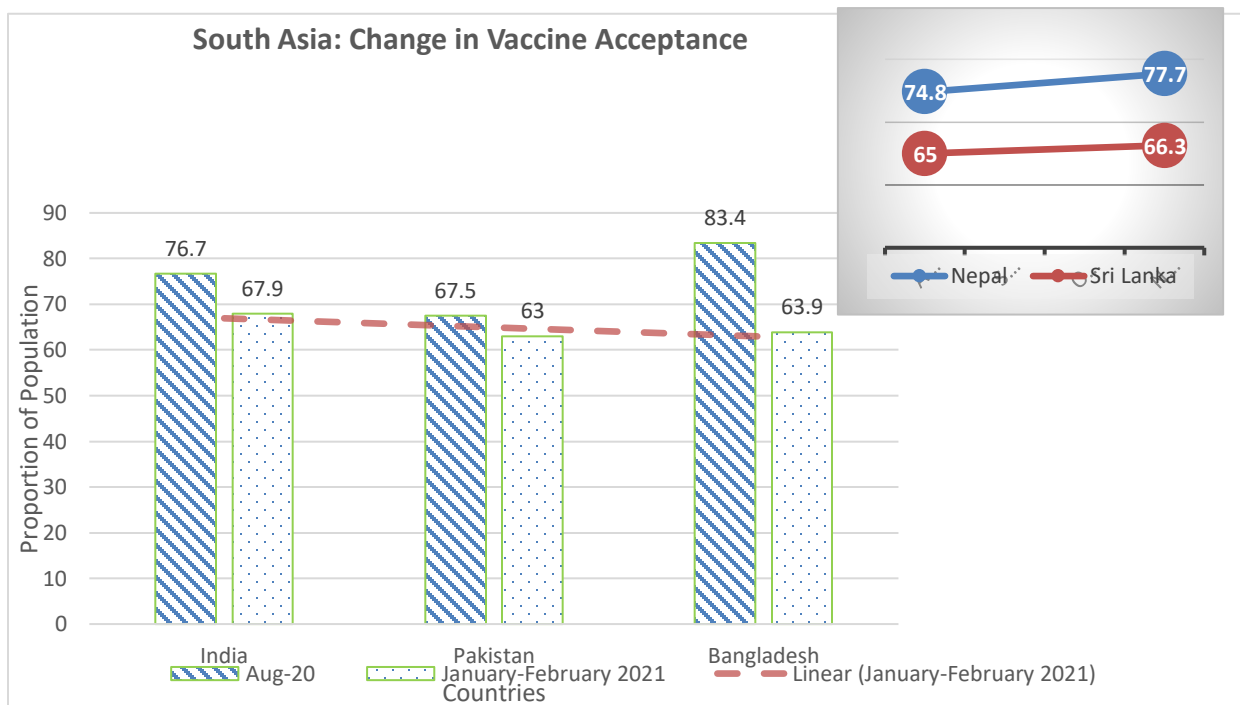
In India, the first confirmed case of COVID-19 was reported on January 30, 2020. He was a student who had travelled from Wuhan, China and had successfully recovered from the infection on 14th February 2020.²⁷ After a 14-hour voluntary public curfew named 'Janta Curfew,' India immediately announced a complete nationwide lockdown for 21 days (*i.e.*, up to April 14, 2020) which only allowed essential services to operate over the entire 130 million population of India.

The battle against COVID-19 is still unending in India, with the threat of a fresh wave looming large. Seven to nine states are already under threat of complete and partial lockdown; developing an understanding of the population's knowledge, attitude, and practices during the pandemic time attain greater importance. Similar trends are also seen in other South Asian countries. In Nepal, Bangladesh, Sri Lanka, and Pakistan, in February 2021, the number of cases has stagnated or risen nominally. Figure 1 depicts the number of instances of COVID-19 between February 20, 2021 to February 26, 2021 in different South Asian countries. Only Pakistan has shown a marginal reduction in the number of cases. The seven-day average number of COVID-19 instances for all the South Asian countries has increased from their previous seven-day average figure. Patterns of congestion, urbanization, and sanitation, similar to that of India, are also seen in these countries. India has already witnessed the re-emergence of clusters of cases due to the factors mentioned above. These countries are also on the threshold of a prospective new wave of infection.

²⁷ Jay Saha, Bikash Barman *et. al.*, "Lockdown for COVID-19 and its impact on community mobility in India: An analysis of the COVID-19 Community Mobility Reports" 116 *Children and Youth Services Review* 2020.



Additionally, along with these new waves of infections transcending the regions are critical issues related to availability, acceptability, effectiveness, and vaccination coverage against the COVID-19 virus. The region is home to about 25 per cent of the total world population. Thus,



vaccine acceptance among this considerable population will impact its efficacy around the world too. John Hopkins Centre for Communications Programmes reported the change in the population's share who would opt for the vaccine when made available. Figure 2 depicts the change in vaccine acceptance between August 2020 and January-February 2021. An alarming trend is witnessed in this figure- three large and populated states of the region, namely India, Pakistan, and Bangladesh, have shown a sharp decline in vaccine acceptance among the population. This does not auger well for the world because the three countries together account for 22.64 per cent of the world's total population. Vaccination against COVID-19 is entirely voluntary.

A declining trend of its acceptance among the people of large countries can prove disastrous for the worldwide efforts of curbing the negative impact of the virus. This needs to be understood in the context of a raging debate between people's rights to be vaccinated and the state's role in ensuring it. Sadly, such a trend is also seen in the United States, one of the world's worst-hit countries. More than 500,000 people in the United States have died from COVID-19, the largest number of deaths in any country across the globe. Many people in a community need to be vaccinated to reach herd immunity, the level at which the spread of COVID-19 would become difficult. Herd immunity levels vary depending on the infectiousness of diseases, but WHO has said 75 per cent of the population needs to be vaccinated to reach it. That is a much higher percentage than has reported they would be willing to get a vaccine in South Asia.

Knowledge, Attitudes, and Practices (KAP) about COVID-19 in South Asia: Public observance of government-established preventive measures is of critical importance to preventing disease spread. Adherence is influenced by the public's knowledge and attitudes toward COVID-19. The knowledge, attitudes, and practices people maintain about the infection play a vital role in influencing a society's willingness and preparation to accept social, and behavioral measures formulated by the health authorities for curbing the spread of the virus. People's knowledge and acceptance of such measures go a long way in adopting self-promoted safety rules. Also, people's awareness plays a crucial role in curbing the spread of false, stigmatized information about the infection. The world has been inflicted by COVID-19 disease for more than a year now. Sustaining a safety protocol for citizens by different governments worldwide will not be possible without a self-administered preventive behavior of the

population. The world has learned various lessons from the disease outbreak of the past like SARS. Studies conducted during those infections revealed that understanding people's panic and emotions during the conditions is critical for developing an effective strategy against the disease.

Not applying recourse to people's fears, knowledge, and understanding could further complicate measures to contain the disease's spread. Misplaced fear of stigma, of being associated with COVID-19 in any way, has led people to refuse COVID-19 testing, go to great lengths to hide a positive diagnosis, and even boycott preventive behaviors. False belief in their self-immunity has also led people to avoid self-protective actions. Such misinformation about vaccines' ill-effects had impacted their acceptance among the population when it was made available. Evidence shows that public knowledge is essential in tackling pandemics.²⁸ Assessment of public awareness and understanding of the virus provides more significant insights into present public perception and practices. This helps identify traits that affect the public to adopt healthy practices and responsive behavior.²⁹

KAP studies provide baseline information to determine the type of intervention required to change misconceptions about the virus. Assessing the KAP related to COVID19 among the general public would help give better insight to address poor knowledge about the disease and develop preventive strategies and health promotion programs. Assessing public knowledge is also essential in identifying gaps and strengthening ongoing prevention efforts. Researchers across the globe have found them useful to evaluate and realize the impact of the current scenario. Thus, this study investigates the self-promoted practices of South Asia residents toward COVID-19 during the pandemic.

The bulwark of rights and responsibility is precariously balanced. During such pandemic times, this balance is more fragile. As mentioned in the previous section, when governments are forced to implement restrictive measures, their coercive attitudes were questioned by activists, civil society members, and the general public alike. They were questioned on account of people's infringing rights to visit workplaces, religious places, tourist places, and attend social gatherings.

²⁸ Gowokani Chijere Chirwa, "Who knows more, and why? Explaining socioeconomic-related inequality in knowledge about HIV in Malawi" 7 *Scientific African* (2020); Gowokani Chijere Chirwa, Jacob Mazalale, *et.al.*, , "An evolution of socioeconomic related inequality in teenage pregnancy and childbearing in Malawi" *Plos One* (2019).

²⁹ Sir John Daniel, "Education and the COVID-19 pandemic" 49 *Prospects* 91-96 (2020).

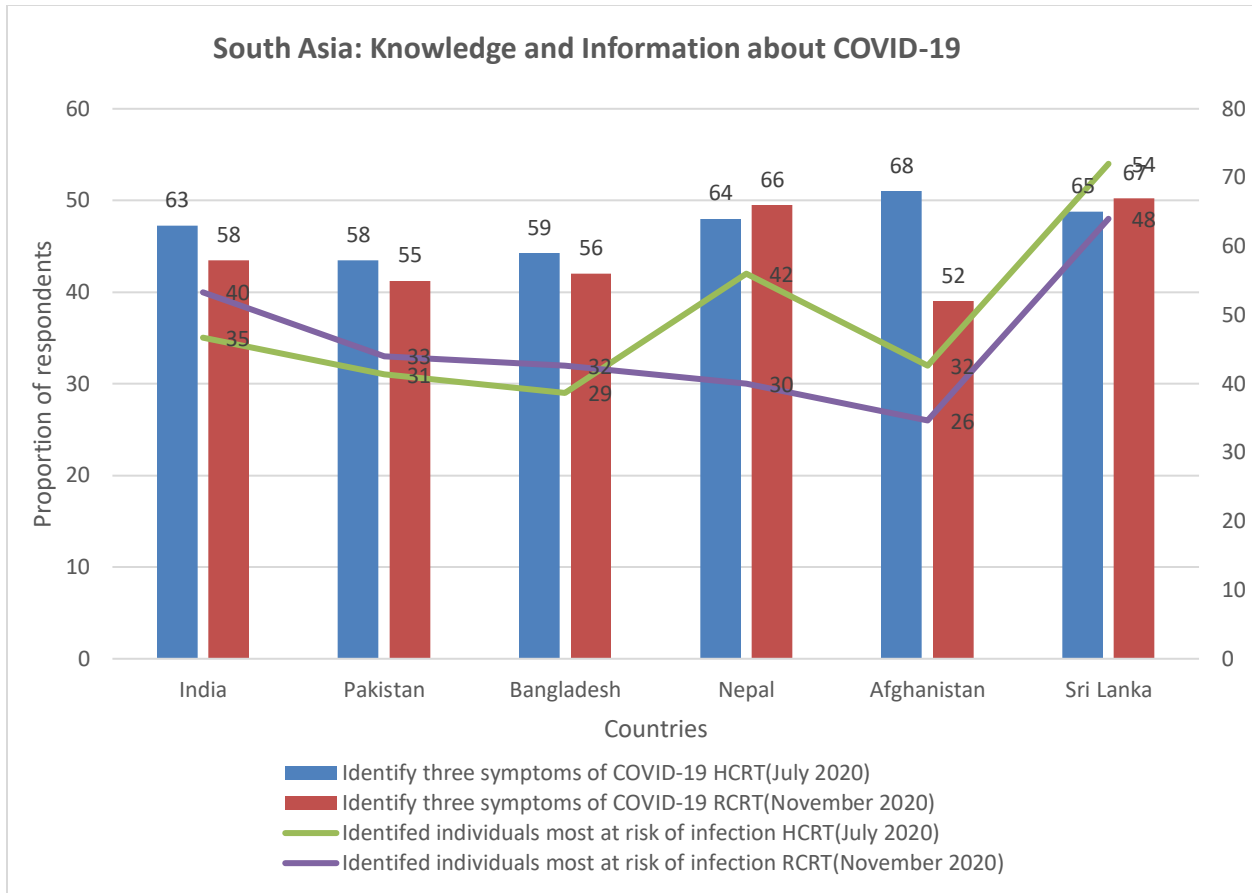
With a reduction in COVID-19 cases worldwide, governments started to relax the norms of movement, people-gatherings, and social events. During such relaxations, the 'responsibility' of adopting preventive behaviors was heavily laid on people. But, large-scale carelessness was witnessed, and people were seen not adopting responsible behavior worldwide. The resultant second wave in different parts of the world, including South Asia, is mostly a consequence. Data gathered by John Hopkins Centre for Communications Programmes also substantiates numerous such news reports in national dailies³⁰. The study focuses on the differential in knowledge and, more importantly, on self-reported people's preventive behaviors in South Asian countries.

For this study, data about knowledge, information, and people's preventive behaviors were studied for two time periods:

1. July 2020- High Covid restrictions time. (HCRT)
2. November 2020- Relaxed Covid restriction time. (RCRT)

Knowledge and Information about COVID-19: Lack of information during a pandemic exaggerates the citizens' fear, panic, and anxiety. Communications about the effects of the virus, precautions to be followed, and identifying the population's high-risk cohort are integral components of developing an effective strategy for curbing the virus's spread by the governments.

³⁰ "Crowds seen without Masks in Delhi day after highest Covid-19 surge in a month", *Mint*, Feb. 27, 2021, available at: <https://www.livemint.com/news/india/crowds-seen-without-mask-in-delhi-day-after-highest-covid-19-surge-in-a-month-11614418899645.html> (last visited on March 3, 2021); Imran Ayub, "Drive to fine people without masks not yielding positive results in Karachi", *Dawn*, Nov. 25, 2020, available at: <https://www.dawn.com/news/1592275> (last visited on March 3, 2021); Kohinur Khyum Tithila, "Covid-19: Dhaka division worst at wearing face masks", *Dhaka Tribune*, Jul. 28, 2020, available at: <https://www.dhakatribune.com/health/coronavirus/2020/07/28/dhaka-division-worst-in-bangladesh-for-wearing-masks> (last visited on March 3, 2021).

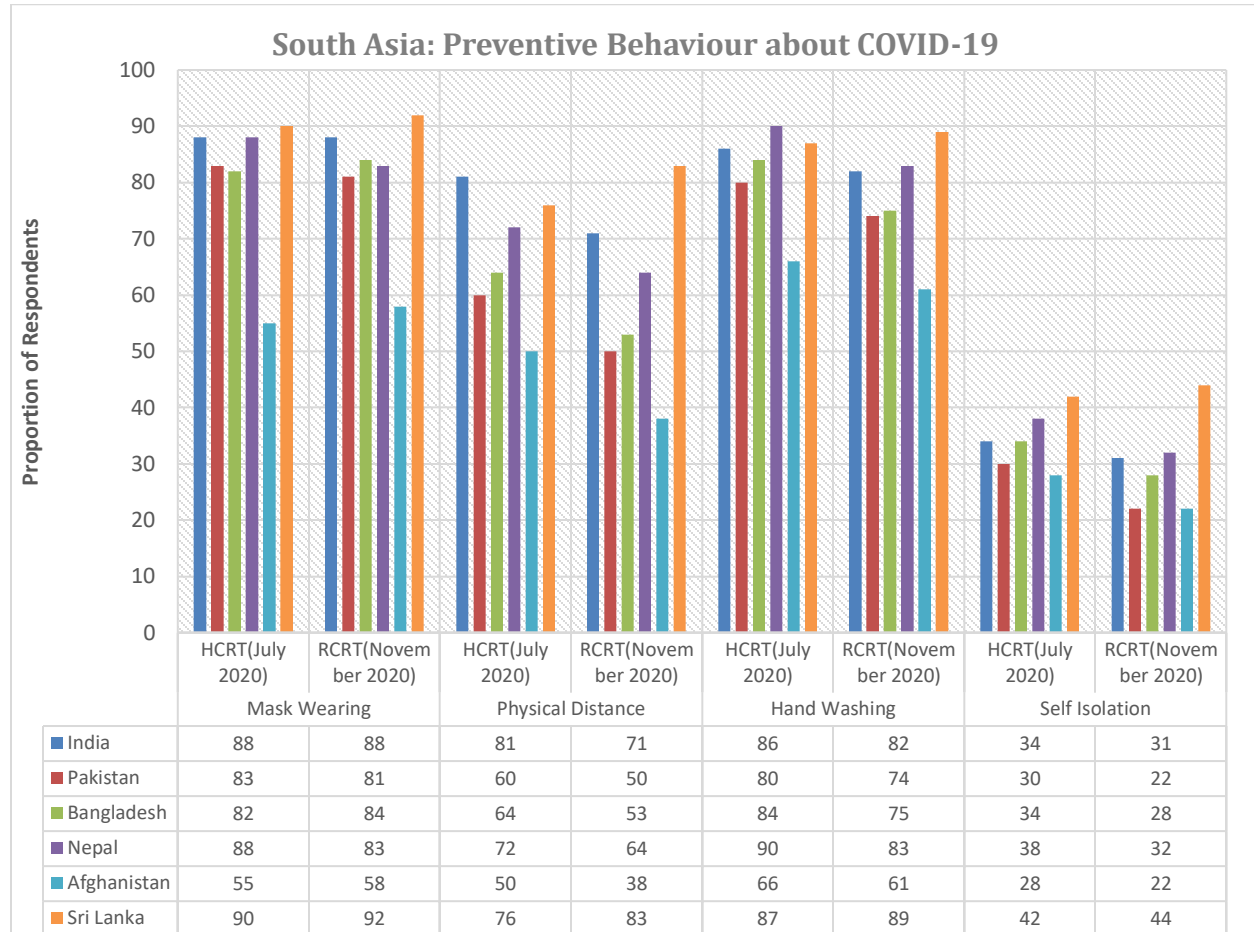


Source: John Hopkins Centre for Communication Programme, COVID-19 Resources

It is clear from the figure that knowledge and information about symptoms of COVID-19 in South Asian countries between the two time period - high restriction time and low restriction time shows a reduction in the knowledge of the people surveyed in all the countries except Nepal. The proportion of people surveyed who could identify the individuals with a high risk of infection declined in Nepal, Afghanistan, and Sri Lanka and marginally increased in India, Pakistan, and Bangladesh. It can be concluded that with changing time, the virus also mutated and acquired additional secondary symptoms. People during the more relaxed restrictions time period are unaware of those, and this also points to the careless attitude of people towards their responsibility of fighting against the virus.

Preventive Behaviour about Covid-19: It is contended that people across South Asia have become careless about self-promoted preventive behavior. With governments relaxing the

stringent restrictions imposed earlier, there has been an increase in COVID-19 positive cases across most South Asia countries. The entire region is staring at a probable 'second' or 'third' wave of the virus.



Source: John Hopkins Centre for Communication Programme, COVID-19 Resources

Since the virus tends to mutate quickly³¹, certain crucial self-promoted preventive behaviors that WHO has outlined for restricting the spread of the COVID-19 virus. Four universal preventive behaviors have been identified. These include: Wearing of Mask, keeping a 1m distance between people, frequent washing of hands, and self-isolation if sick³².

³¹ Centre for Disease Control and Prevention, “About Variants of the Virus that causes COVID-19”, CDC, Feb. 12, 2021, available at: <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited on March 3, 2021).

³²Government of India, “An Illustrative Guide on COVID appropriate Behaviour” (Ministry of Health and Family Welfare) available at: <https://www.mohfw.gov.in/pdf/Illustrativeguidelineupdate.pdf> (last visited on March 3, 2021).

Out of these four established COVID-19 protective behaviors, not wearing a mask is the only behavior that attracts penal action. Almost all South Asia countries have declared fines of varying amounts since the spread of the virus last year. These states hiked the fine amount during the virus peak periods³³. The fine amount was reduced between high COVID restriction time (HCRT) and relaxed COVID restriction time (RCRT). Further relaxations were offered like wearing the mask not compulsory in a private vehicle, etc. Since out of all the established COVID-19 protective behaviors, mask-wearing was enforced by the states stringently, there is little or no reduction in the percentage of people who followed it between the HCRT period and RCRT period. It is clear from the figure that there was no reduction in the proportion of respondents who followed mask-wearing between India's two time periods. Pakistan and Nepal witnessed a decline between the HCRT and RCRT periods. Bangladesh, Afghanistan, and Sri Lanka saw a marginal increase between the two time periods.

The other three protective behaviors were adopted by a far lesser proportion of the respondents. One prime reason for this was the non-binding and relaxed nature of the state's role in ensuring its enforceability. There was a widescale news report from different cities of the region, where during the flexible restriction period, huge crowds gathered at various market places during the festival season. People did not practice social distance³⁴. The data depicted in the figure also substantiates the same. Except for Sri Lanka, all South Asian countries witnessed a marked reduction in the proportion of respondents following one meter's social distance as an essential safeguard against the spread of COVID-19 between high COVID restriction time (HCRT) and

³³ "Penalty for not wearing mask in public up from Rupees 500 to Rupees 2000", *The Hindu*, Nov. 20, 2020, available at: <https://www.thehindu.com/news/cities/Delhi/penalty-for-not-wearing-mask-in-public-up-from-500-to-2000/article33136507.ece> (last visited on March 3, 2021).

³⁴"Huge crowd seen at Delhi's Sadar Bazar market ahead of Diwali amid huge surge in COVID cases", *Economics Times*, Nov. 12, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/watch-huge-crowd-seen-at-delhis-sadar-bazar-market-ahead-of-diwali-amid-huge-surge-in-covid-cases/videoshow/79192600.cms?from=mdr> (last visited on March 3, 2021); Bella Jaisinghani, "Diwali weekend witnesses big crowds at glittering Mumbai markets", *Times of India*, Nov. 14, 2020, available at: <https://timesofindia.indiatimes.com/city/mumbai/diwali-weekend-witnesses-big-crowds-at-glittering-mumbai-markets/articleshow/79218020.cms> (last visited on March 3, 2021); M.D. Kamruzzaman, "Eid preparation horde may worsen pandemic in Bangladesh", *Anadolu Agency*, May. 23, 2020, available at: <https://www.aa.com.tr/en/asia-pacific/eid-preparation-horde-may-worsen-pandemic-in-bangladesh/1851461> (last visited on March 3, 2021).

relaxed COVID restriction time (RCRT). In Pakistan and Bangladesh, only about 60-64 per cent of respondents reported following social distance even during the high restriction periods and fell sharply to about 50-53 per cent during the relaxed restrictions time. Hordes of people thronged to market places for festivals and religious gatherings all across this region. Frequent hand washing was also not followed rigorously. All South Asian countries showed a reduction in practicing this self-promoted prevention behavior also. Again, Sri Lanka established a marginal increase from high restriction time to low restriction time.

IV. Conclusion: Redefining liberties in altered realities

Vitally important benefits are provided by the political states and it can be argued that such benefits in the absence of states can't be secured. Based on the defence of etatism it can't be denied that in return for these benefits unreasonable sacrifices are not expected from its citizens by the state. It is not that the society will be pushed into a state of utmost chaos in absence of a state but the balancing of conflicting interests will be next to impossible in absence of uniform rules which mandatorily are to be followed by each member of the society. Further, it can be contended that in absence of criminal sanctions not everyone will be violating the rights of others; nonetheless, in such absentia of uniform rules, right-thinking members of the society believing in a just and peaceful society will come into conflict with each other.

Before the COVID-19 pandemic never before the world has witnessed a majority of Governments putting extreme restrictions on the rights and liberties of its citizens to the extent of completely locking them inside their respective boundaries for such a long time. Surprisingly, the majority of the populace agreed to the necessity of these extremely restrictive and archaic orders of isolation, quarantine and prohibited inter and intra territorial movements but for a very short time period. Gradually, with time the restrictions imposed by the governments started to stifle the populace and restricted their movement within their homes. Space constraint and associated stress in most cases became a root cause for people flouting such established rules and frequently coming into conflict with the state and its regulation meant totally for their "collective" as well as "individual" benefit. Later, during relaxed COVID restriction time (RCRT), large scale flouting of self-promoted preventive behaviours were witnessed.

Thus, the pandemic aggravated the debate between balancing the rights of the people, the conditions and extent to which the government can curb them, and people's responsibility to follow the practices that can bolster "the collective" goods, and well-being of others. This is clear when the restrictions were relaxed, the onus of curbing the spread of the virus weighed mainly on the public and their practices, but soon the cases began to rise again. Thus, COVID-19 created a new format for governance where the governments worldwide had to impose strictures on citizens and at the same time motivate citizens to adopt acceptable preventive behavior practices for restricting the virus's spread. COVID-19 showed that the two sides of the coin are not just the people's rights and the extent to which the governments can curb these rights during these times but also that the 'response' of the people has to balance with the 'response' of the government.