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ANALYZING THE CRITICAL ROLE OF ADMINISTRATIVE LAW IN EMERGENCY PUBLIC HEALTH MEASURES.

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ABSTRACT.

The purpose of this research paper is to analyse the critical role of administrative law in emergency public health measures. During the time of the public health crises, such as pandemics like covid, malaria and etc. During those crises the government has often adopted the urgent measures and has taken action to safeguard the public and make sure about the safety of the public. The comparative analysis of both national and international legal research and legal frameworks, this research paper will show how government and the administrative law has balanced the individual citizenship rights as well as collective protection during those health crises.

KEYWORDS – Public health emergencies, Individual rights, Emergency power, Collective protection, Health crises.

INTRODUCTION.

The pandemic like COVID -19 and Malaria has highlighted about the critical role of administrative law in emergency public health measures. Recently COVID -19 pandemic has played a vital role in administrative law in responding to public emergencies. The Government of all over the world as faced this pandemic and the emergency crises rises all over the world. The Government throughout the world has invoked the emergency powers and imposed some restrictions like lockdown to avoid the spread of the virus. The balance between public safety and individual liberties becomes an important legal concern of the government. This research paper will explore how the government and the administrative law deals with civil liberties and assesses the legality and examines the mechanisms of accountability and judicial oversight that come into play during such critical periods.

REVIEW OF LITERATURE.

According to the study by Goutham Shivshankar, Parliamentary committees played a significant role during the pandemic

by studying and making recommendation as to the improvement of COVID situation. Though the exercise of executive power in the emergency is the basis of administrative law, judiciary has recognised the need to delegate sufficient autonomy to the administrative authorities to grasp and respond to the emergency swiftly. National disaster management authority has taken measures to ease the COVID situation by making social distancing compulsory. After the COVID situation are settled, several courts has adopted varied styles of response to check the legality of administrative action.

Objectives of the study .

1. To study about the administrative law how it works during the emergency period.
2. To analyse the government how it analysis the power during the emergency and delegated power of authority in public health emergencies.
3. To compare the both national and international action and approach during public health emergencies in administrative law.

Research methodology.

1. Research methodology for analysing the critical role of the administrative law in public health emergencies is that of both qualitative and quantitative approach,
2. comparative analysis study of both national and international actions and approach.
3. case study analysis of public health emergencies.

Emergency power.

Definition.

Emergency power are the special power that is govern by the government or the higher government officials like President to take immediate actions in the extraordinary situation like war, terrorist attacks and natural disasters (earthquakes, wildfires and etc) and health emergencies like pandemics (COVID – 19), epidemics (Ebola) and etc. During the health crisis or the emergency period the power are used rapidly but the administrative powers are excepted to be temporary power.

Types of emergency.

Emergency situations generally differs. The common reasons for the declaration of a state of emergency during war, invasion, unrest, insurrection, natural disaster, or a threat to national independence or the functioning of public institutions. Emergencies are unpredictable, there are types of emergency; therefore, most of the countries only defines the general references of a state of emergency, such as “extraordinary circumstances”, “international crisis”, “particular urgent situations”, or “times of war” as prescribed in many Western European constitutions. Similarly, the types of threats and emergency are not provided in detail, generally in formulas such as “threats to the constitutional order”, “serious and immediate threats to public order” or “threat to territorial integrity and independence”.

The Primary Legislative Framework for India’s Covid-19 Response.

A recent survey of Indian administrative service officers suggests that the bureaucracy overwhelmingly felt that India had ‘enough laws and rules’ to respond to the crisis . A large part of the response has been through administrative action under the framework provided by the Epidemic Diseases Act, 1897 (the EDA) and the newer Disaster Management Act, 2005 (the DMA). Apart from these two national statutes, there are several other national and state enactments dealing with the subject of public health, either directly or incidentally, with provisions for quarantine, vaccination, disinfection, and other issues concerning outbreak of epidemic diseases (Gowd et al, 2021). In this paper, I focus primarily on the statutory frameworks under the EDA and the DMA.

The Epidemic Diseases Act, 1897

The EDA is a colonial statute that has continued to remain in force in independent India by virtue of a constitutional provision that continued pre-constitutional laws. It is an extremely short statute that confers very wide powers on state governments and more limited powers on the central government, to prevent the spread of dangerous epidemic diseases.

Section 2 of the EDA empowers the government of a state to ‘take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak’ of a dangerous epidemic disease where the government is satisfied that the state or any part of it is ‘visited by, or threatened with, an outbreak of any dangerous epidemic disease’, and if it ‘thinks that the ordinary provisions of the law for the time being in force are insufficient for the purposes’.

In the wake of Covid-19, certain amendments were made to the EDA at both the national level and state level. At the national level, the EDA

was first amended through an ordinance (issued by the executive under art 123 of the Constitution) that was later ratified and enacted by parliament. This amendment criminalized acts that cause damage or loss to property and acts of violence upon healthcare workers. In addition, certain state governments such as the governments of Telangana and Karnataka, issued regulations under the EDA providing for institutional structures to contain Covid-19.

The Disaster Management Act, 2005

The DMA is parliamentary legislation that provides for the effective management of disasters. Section 2(d) of the DMA defines 'disaster' to include 'a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes'. Though some commentators have argued that the DMA was not aimed at pandemics or public health disasters others have argued that this is contrary to the plain meaning of the DMA and that this disregards prior instances where the machinery of the statute has been invoked in the context of epidemics. I proceed on the basis that the DMA squarely applies to pandemic situations. Indeed, as early as 2008, the National Disaster Management Authority issued the 'National Disaster Management Guidelines for Biological Disaster Management', which contains a sub-chapter titled 'Management of Pandemics'.

Public health crisis.

1. Pandemics.

The Coronavirus disease 2019 (COVID-19) pandemic is a global outbreak of coronavirus – an infectious disease caused by the severe acute respiratory syndrome coronavirus 2.

Coronavirus was first detected in China in December 2019, this virus were spreading rapidly to the other countries across the world. This rapidly spreading coronavirus has led WHO (World Health Organisation) to declare a Public Health Emergency of international concern on

30 January 2020 and to characterize the outbreak as a pandemic on 11 March 2020.

The Covid-19 pandemic has made a huge impact across the world, and India has been no exception. The World Health Organization's (WHO) tracker has reported that around 42 million confirmed cases Covid-19 in India, making it the second affected country in the world through confirming cases in India. The number of Covid-19 cases in India is around 505,279 in 2022 (World Health Organization, 2022). The first covid 19 case was found in the southern state of Kerala towards the end of January 2020. The country has since seen three 'waves' of the pandemic, the first peaking in September 2020, the second in May 2021, and the third in January 2022. In second wave the cases has reached the peak at the time the country's public health system was get collapsed, and it led to scarcity of key medical resources.

Administrative procedural law and the Covid-19 pandemic.

1. Regulatory Changes

- Governments often need to rapidly adapt regulations to respond to health crises. This can involve bypassing standard procedures for rulemaking, which typically require public notice and comment.

2. Emergency Powers

- Many jurisdictions grant emergency powers to public health officials, allowing for expedited decision-making. This raises questions about accountability and the limits of such powers.

3. Public Participation.

The pandemic highlighted the importance of maintaining public participation in administrative processes, even during

emergencies. Balancing urgency with transparency is crucial.

4. Judicial Review

- Courts often play a role in reviewing the actions of administrative agencies during emergencies, examining whether agencies acted within their authority and followed procedural requirements.

5. Adaptation of Procedures

- Many agencies adapted their procedures to accommodate remote work and public engagement, using technology to facilitate meetings and hearings.

6. Impact on Regulations

- The pandemic may lead to long-term changes in regulatory frameworks, particularly in health and safety, and could prompt a reevaluation of how administrative procedures are structured for future emergencies.

7. Legal Challenges

- Actions taken by governments in response to the pandemic faced numerous legal challenges, focusing on issues like lockdown measures, mask mandates, and vaccination requirements, all of which are influenced by procedural law.

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