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Assessing India's Readiness for Public Health Emergencies: Governance, Policy, and Executive Powers

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Abstract

Epidemic Diseases Act, 1897 (Empowers state governments to address epidemics).Disaster Management Act, 2005 (Provides a framework of disaster management, including emergencies in the field of public health). National Health Policy, 2017 (Aims to improve health infrastructure and emergency preparedness). Authorize the executive with great discretion to deal with public health crises in India. In times of crisis such as the COVID-19 pandemic, cyclone, flood these statutes enabled the executive to act quickly in response to the situation, such as lockdowns and healthcare regulations. Nonetheless, these wide discretionary authorities have issues of accountability of executives in terms of balancing the easier harmonization of government and non-government healthcare facilities. This essay features a critical review of the use of executive discretion in response to these emergency laws in dealing with the COVID-19 pandemic. It relies on empirical evidence on the part of stakeholders like government officials, jurists, and healthcare institutions to determine the effect of executive decisions on rights, governance, and health outcomes of the people. This paper has also examined the divergence of views in both the executive and the judicial branch regarding the issue of rights infringement with particular references of the judiciary interventions in regard to safeguarding constitutional rights. Through these issues, India will be able to reconcile the demands of population health with the demands of the constitution and will be in a better position to have a more responsible and efficient response during similar health epidemics. The study highlights the importance of a more systematic approach to executive discretion and the necessity to make sure that emergency response is effective and respectful of basic rights.

Keywords: Disaster management, public health, constitutional rights, COVID-19, Executive power

1. Introduction

Emergency is a term that is used to refer to a condition of affairs characterized by exigency where an immediate and decisive action is necessary to alleviate imminent risks or threats. In the context of public health, emergency situation is any unexpected event that is a major threat to the health and well being of the people. The definition of a Public Health Emergency reflects on how sudden and severe such events are, namely, the sudden spread of infectious diseases which directly affect the human health. Greater discretion, vested in executive power, allows the fast execution of actions that are commensurate to the seriousness and urgency of the threat of an emergency. It is essential to indicate that the use of executive discretion in the times of Public Health Emergencies should be limited with the principles of legality,

necessity, and proportionality. This discretion should be exercised selectively, making sure that the constitutional protection and the basic rights are not violated.

The present paper explores the complex legal environment within which executive discretion in cases of a public health epidemic is exercised, raising some of the most important questions that highlight the intersection between the dictates of crisis management and the rights of an individual. Firstly, it evaluates the level of executive discretion that exists as proscribed by different laws of public health emergencies in India. Secondly, the paper navigates explores the broad issue that is whether the rights of citizens in the case of the necessity to increase discretion in the circumstances of such emergencies and the jungle of remedies that people suffer due to the violation of their rights during the outbreak of a pandemic. Finally, it examines the effectiveness of judicial checks, legislative checks and external checkpoint agencies to check abuses of power, and thus hold accountable and transparent in those crisis management activities.

The present paper uses a mixed research design to explore in detail the relationship between executive discretion and individual rights during the emergence of a health crisis that is expected to impact the population. Data was collected using a sample size of 50 respondents, comprising of jurists and executives including the Director of Health Services and the Director of Public Health in the state of Odisha, India in March-April 2022. The methodology of the research is a combination of the quantitative and qualitative approach, and the main emphasis is on the qualitative personal analysis of the information received as a result of the in-depth interviews with the chosen participants. Through the triangulation of the knowledge acquired during these interviews with the appropriate legal texts and legislation, this paper seeks to offer a complex perspective of the law and practice that drives crisis management activities in the face of any public health crisis.

2. Indian preparedness to deal with a health emergency:

The Epidemic Diseases Act, 1897, is a landmark in the Indian legal history of the regulation of the epidemics situation in the country[1]. This legislation was enacted in the fight against the spread of dangerous epidemic diseases that gives the authorities the tools needed to prevent, control, and manage outbreaks in an effective manner. The Act has a number of provisions that give the government a proactive role during the epidemics such as the issue of prescribing and containment measures that are temporary in curbing the spread of the disease. It is applicable in the whole country, thus offering uniformity in the way the measures to contain the disease are approached. The Disaster Management Act, 2005, is a broad based legislative framework that is supposed to tackle the multifaceted nature of disaster issues in India [2]. The Act was enacted in reaction to the rising rate of occurrence and severity of disasters, with the intention of institutionalizing disaster preparedness, mitigation, response, and recovery measures, at the national, state, and local levels. The most critical provisions in the Act is the creation of numerous authorities, committees, and executive bodies with certain roles and responsibilities in disaster management. The Act also specifies the role and duties of the Central and State Governments in managing disasters such as fund allocation, procurement process, and liaisons with other ministries and departments. It creates organizations like the National Disaster Management Authority (NDMA), State Disaster Management Authority (SDMA), and District Disaster Management Authority (DDMA) to develop disaster management plans, co-ordinate relief and rehabilitation activities, and also see to it that the measures necessary to counter the effects of disasters are well implemented. There are numerous other legislations in the Indian legislative environment that respond to the need to cater to the public health crisis, with an aim of safeguarding the health of the citizens and dealing with the crisis effectively. Among the crucial legislative actions, one can

distinguish the Right to Health Bill, 2021[3], and The Public Health (Prevention, Control and Management of Epidemics) Bill, 2020[4], that are aimed at offering the frames to address the right on healthcare and manage the epidemic diseases. These bills will enable the executive branch to take orders and take the required actions in case of emergencies that will coordinate the response toward health crises. Equally National Health Policy, 2017[5], Aims to enhance health infrastructure and emergency preparedness.These laws highlight the role of legislative acts in enhancing preparedness, response, and coordination of actions in the event of emergencies in the realm of the health sector. They both offer a legal basis of crisis management as well as serve to identify points of additional legislative development to increase the crisis management capacity and safeguard the welfare of the population.

3. The use of executive discretion in health emergency legislations:

An empirical study. We can, and we will do everything under the sun to save human lives and we are legally mandated to do it through the laws of public health emergency, said an Additional Director of Public Health in the Joint Health Directorate in Odisha. This assertion highlights the high degree of executive discretion provided by the laws on the public health emergencies. It shows a strong belief in the power of using all possible legal forces to protect human lives, which means that health authorities are ready to take decisive measures in case of emergencies. This statement underscores the extensive authorities in the executive branch to take the actions that it sees necessary to protect public health, which may include mobilizing resources up to enforcing rules that govern public health. These assertions validate the proactive role of health authorities in dealing with emergencies and underscore the role of executive leadership in safeguarding the health of the population during emergencies. The government adopted a set of executive orders to combat the spread of COVID-19 pandemic within Odisha. Lockdown was effected to limit the movement. Certain orders were meant to control the private healthcare establishments. These were the capping of the fees to make healthcare services accessible, the identification of the private hospitals as COVID centers in order to increase the number of beds, and the reservation of beds when specific diseases are needed in order to treat the most urgent cases. Moreover, the government recruited privately practicing and retired doctors into government work as well as demanded the help of the personnel of the private health establishments in the treatment and vaccination campaigns. The DMMs were to directly oversee the resources of the private hospitals in order to maximize their use and to be able to respond to the pandemic efficiently. In these executive orders, the government stressed its role in reducing the impact of the pandemic by using regulatory tools to increase access to, capacity and coordination of healthcare across the private sector. These orders can be represented graphically in the following way.

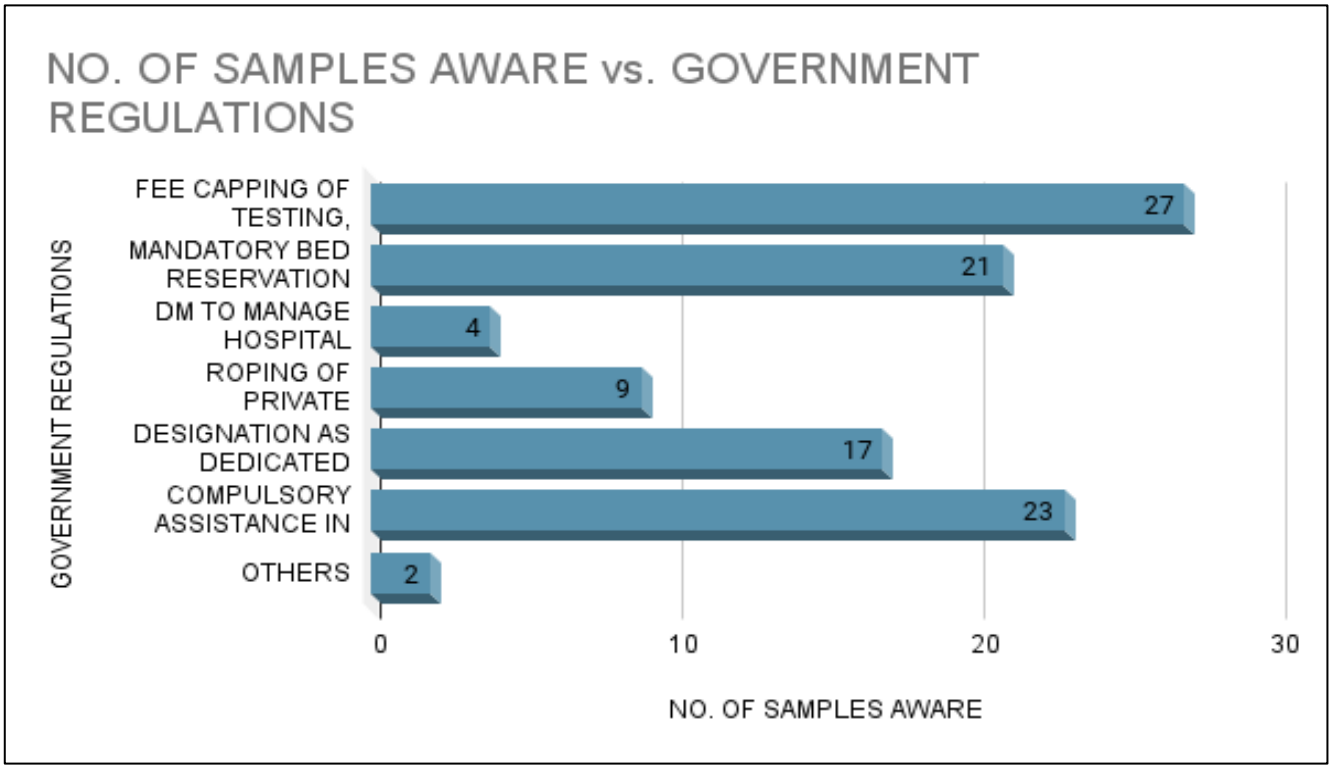

Figure 1

In response to the question of whether the orders made on the basis of health emergency acts violate the rights of both citizens and institutions, 17.7% of jurists answered in the affirmative, and executive members unanimously denied these claims. It is noteworthy that 60% of executive staff vehemently claim that such orders do not in any way violate any rights but 40% of the staff admit that in some cases, some of the rights may be violated. On the other hand, a large number (82.3 percent) of jurists considered that such orders indeed violated some rights to varying extents. Based on these statistics, it can be concluded that the people who belong to the executive branch tend to consider any action taken under emergency laws not to violate the rights of the citizens, and jurists are more likely to think otherwise. This difference in point of view highlights the difference in the interpretation and evaluation of the effects of the emergency actions on the individual liberties and the institutional rights. These differences in perception underscore the complexities of balancing the needs of the public health with constitutional protection in the times of crisis and in this regard, legal analysis and deliberation should be more subtle to effectively resolve the tensions between the two.

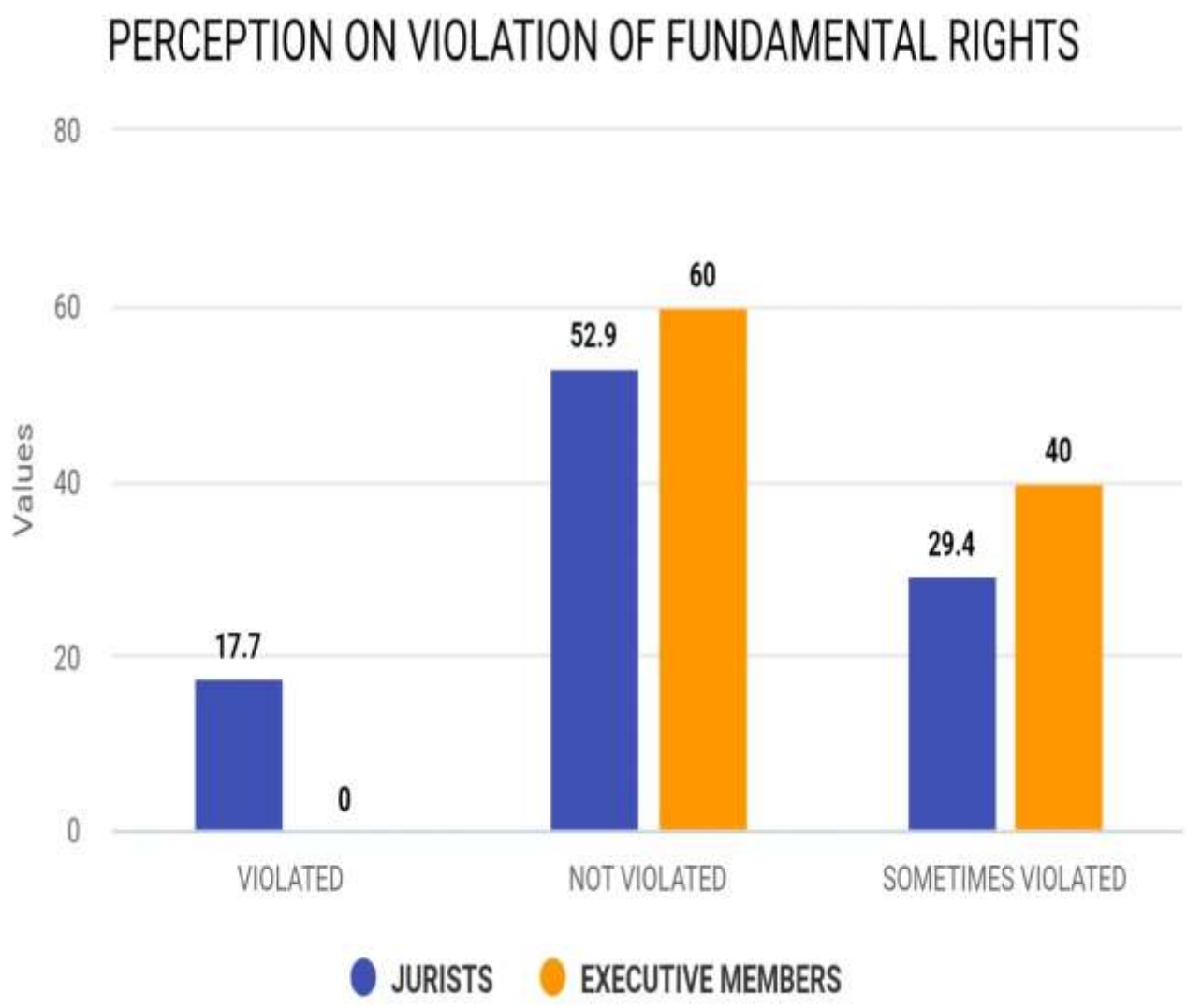

Figure 2

People can appeal to the courts in case of alleged violation of their rights due to the executive orders. Various examples of judicial interventions in the context of the COVID-19 pandemic can serve as examples of an active judicial system that tries to protect the welfare of the population and adhere to constitutional norms. The courts acted in the Rare Metabolic Life Sciences Pvt. Ltd. case and in the Shashank Deo Sudhi case to control the pricing of COVID testing so that the citizens would not be charged exorbitant prices when the country is in crisis due to the pandemic. Equally, the Courts provided guidelines on how to safeguard the health and well-being of the children in the protection homes, owing to the vulnerable condition of such people during the pandemic. In a separate case, the Courts allowed the transportation of people to acquire food to the animals during the lockdown, which is important in terms of the protection of humanitarian issues even at the time of very strict limitations. The court further held that schools could not be prohibited to charge tuition fees at the time of lockdown as it was the best way of balancing the interests of schools to remain in business and the rights of students and parents. These judicial interventions are most vital in the maintenance of the rule of law and accountability in the application of emergency measures, which help in availing remedies to people to redeem their rights and

protect their rights during times of distress. Conversely, the executive staff members are in support of the balanced manner of approach by the courts, which they believe they ought to balances the rights of individuals towards the wider need of making society safe. They believe that their court should evaluate their action based on the pressing imperative to safeguard human lives in the event of a stated emergency to public health and not a pedantic or over legalistic method. According to the executive, any decision made during a crisis ought to aim at the greater good of the people, although it might have to interfere with some freedoms of individuals in the short run. They argue that strict actions taken to check the transmission of such illnesses as COVID-19 are needed to protect the health of the population and avoid its mass destruction, and it is highly probable that they should be considered in the context of this overall goal. Such an outlook shows the clash between the rights of individuals and the responsibility of the state to protect people and notes the multifaceted aspects of the mutual relationship between competing interests in the time of crisis. The executive appeals to the judicial interpretation and malleability on emergency actions and their interpretation, with regard to the supremacy of safeguarding the lives of people and reducing the effects of a menace of communicable diseases. The degree of satisfaction of the executive officers with the role of judiciary in terms of protecting the rights of citizens and limiting the discretion of the executive in the crisis condition COVID-19 was mostly positive. It is however significant to note that few respondents volunteered to give their feedback even with the promise of its strict confidentiality, possibly due to the fear of a possible contempt action against them. This tendency implies a hesitant attitude of executive officers in the discussion of judicial interventions, which implies the fear of the legal consequences of their statements. The unwillingness of some of the respondents highlights the fragility between executive and judicial authority and the delicacy of the nature of the topic regarding the extent of executive power and the involvement of the judiciary in censure of government activities in times of crisis. This kind of reluctance underscores the difficulties of evaluating the relationship between branches of government and the difficulty of holding everyone accountable and yet maintaining the separation of powers. The ability of the courts to do so in issues of executive discretion in case of a health emergency is, however, limited by the use of forum exclusion clauses, including those in Section 4 of the Epidemic Diseases Act, 1897[6], and Section 71 and 73 of The Disaster Management Act, 2005[7], as well as Section 14 of the Rajasthan Public Health Act[8]. The clauses define that the executive branch can make certain decisions related to the response to any health crisis threatening the people and this decision is unreachable to the judicial review, which essentially makes the decision resistant to the judicial court. These clauses place a greater emphasis on the rapid and decisive executive action during a time of crisis by outlined particulars that shield certain actions even though they may be deemed illegal under normal circumstances and thereby prevent unnecessary interference and prolongation of the legal system action in relation to the efficient handling of an emergency.

Conclusions and recommendations: The legal framework of such emergencies of public health in India is quite complex and it requires a subtle underline between the crisis management needs and the safeguarding of individual rights. The appointment of a Public Health Emergency as part of legal regulations is a key tool of facilitating prompt and efficient reactions to mitigate risks associated with it and ensuring the safety of the general population. Nevertheless, the discretionary exercise of executive power in cases of such emergencies should be restrained by the principles of legality, necessity, and proportionality so that constitutional protections should be met and essential human rights should be respected. The judicial control is important towards maintenance of rule of law as well as accountability in taking emergency measures. It offers them channels through which people can demand redressal and

safeguard their rights in the context of emergency. However, the power of the courts to mediate in issues of executive discretion in the case of health emergencies is restricted because of the presence of forum exclusion clauses, indicating the difficulties in the balancing of the powers of the various arms of government. In order to overcome such challenges, this paper recommends four things to be followed.

Creation of Executive Accountability Procedures: Propose a law that would provide accountability in the decision-making procedures of the executive in times of public health emergencies through transparency.

Increased Judicial Checks and Balances: Empower the courts to check executive actions taken in the face of a public health emergency by ensuring that those decisions are in tandem with the constitutional rights and the law.

Capacity Building and Training: Invest in capacity building and training initiatives to government officials, judicial officers among other stakeholders in responding to public health emergencies. This would also involve the education on constitutional rights, the law, and international standards regarding the emergency management. Besides, provide expert training on crisis communication, conflict management, and human rights-based approaches to emergency response to provide people with knowledge and skills to work in difficult legal and ethical situations.This would be characterized by training on constitutional, legal and international guidelines on emergency management.

Public Participation and Consultation: Pass a law on meaningful public participation and consultation in the formulation and execution of emergency measures. This would entail consultation of affected communities, civil society groups as well as other stakeholders to provide input, answer concerns and also make sure that the emergency responses are inclusive, equitable and responsive to the needs of all members of the society. Create avenues of citizen feedback and participation in order to foster transparency, accountability, and legitimacy in decision making.

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