

## Disaster Management – Indian Legal Scenario

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### Introduction

In recent times disasters have emerged as a serious threat to life on earth and human security due to their inherent devastating effects. In the past few years, human race has faced many catastrophes, some natural and other man-made. Natural disasters have been taking more lives and, especially more in the developing countries. The Indian subcontinent is susceptible to natural and man-made disasters, and is one of the most disaster prone regions in the world. Close to 56 million Indians hit by disasters (both natural and man-made) every year. Floods, droughts, cyclones, earthquakes, landslides, avalanches etc. are the major natural disasters that are increasingly affecting India. Though disaster is not a new phenomenon or alien to Mother Nature, often it creates situation in which its mitigation becomes unpredictable and prevention impossible. Out of the 35 States/Union Territories in the country, 25 are disaster prone and 139 districts have been identified as multiple-hazard prone. Man-made disasters are another area that needs attention. Industrial disasters, chemical disasters, fire and train accidents are common man-made disasters. It is a known fact that a lot of human suffering and misery due to disasters can be mitigated by taking timely action and preventive measures. It is now an accepted fact that natural disasters are acts of God but losses incidental to it are acts of men. India has been victim to various kinds of disasters from time immemorial due to its unique geo-climatic conditions. Natural calamity issues have always been a major concern that it affects humanity and especially the future generations. Experience has shown that destruction from disasters can be minimized by a well-functioning disaster management system. Though the subject has been given wide importance at International level by providing an adequate legal coverage even long back, our national effort on the same topic was hardly any till very recently. In India we had no such plans as part of our existing legal regime till the recent Tsunami struck the Indian continent. The government of India has come up with legislation<sup>1</sup> with the objective to provide for requisite institutional mechanism for drawing up and monitoring the implementation of the disaster management plans to ensure measures by various wings of Government for understanding a holistic, co-ordinated and prompt response to any disaster situation. India realized the need for developing machinery to deal with disasters. It has come out with the piloting of Disaster Management Act, 2005 envisaging the establishment of disaster management authorities not only at the national level but also at the state and district level.

### Meaning of “Disaster”

Disaster is a severe disruption on function of community or social, which cause large loss of human life, property, social-economic and environment. It is a sudden, calamitous event that seriously disrupts the functioning of a community or society and causes human, material, and economic or environmental losses that exceed the community's or society's ability to cope using its own resources. Though often caused by nature, disasters can have human origins. The Government declares the Disaster for a specified time span, called “State of Disaster Emergency” based on the recommendation of the competent authority in charge of disaster management.

Etymologically three meanings are attributed to the term disaster:

- I. A state of extreme and usually irremediable ruin. The term is used in this sense when there is a great and sudden calamity.

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<sup>1</sup> Disaster Management Act, 2005

- II. An event that bring terrible loss resulting in lasting distress, severe affliction and injury to life. The term is used in this sense when there is a violent upheaval that causes great destruction or brings about a fundamental change.
- III. An act that has disastrous consequences. The term is used in this sense when there is total destruction or devastation.

A disaster occurs when a hazard impacts on vulnerable people. The combination of hazards, vulnerability and inability to reduce the potential negative consequences of risk results in disaster. A disaster takes place when the following three conditions occur at the same time<sup>2</sup>:

- When people live in hazardous places like, for example, close to an active volcano, on unstable slopes where landslides are likely to happen, or close to rivers which could flood.
- When a hazardous phenomenon occurs, it can be natural or human-made.
- When the phenomenon also causes a lot of damage, especially where no preventive measures have been taken.

### **Disaster Management**

Disaster management is the systematic activities to prevent or reduce the effects and impact of disasters. Disaster management constitutes the whole aspect of development of law and regulation, policy, strategy, procedure, plan, and the implementation of activities before, during and after disaster, encompassing disaster prevention and mitigation, disaster risk reduction, disaster preparedness, disaster emergency operation and response, and disaster recovery.

According to clause 2(e) of The Disaster Management Act, 2005<sup>3</sup> the term "disaster management means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for-

- (i) Prevention of danger or threat of any disaster;
- (ii) Mitigation or reduction of risk of any disaster or its severity or consequences;
- (iii) capacity-building;
- (iv) Preparedness to deal with any disaster;
- (v) Prompt response to any threatening disaster situation or disaster;
- (vi) Assessing the severity or magnitude of effects of any disaster;
- (vii) Evacuation, rescue and relief;
- (viii) Rehabilitation and reconstruction;

### **Constitution of India and Disaster Management**

Constitution of India under Article 21 expressly guarantees the fundamental right of 'Right to life' to all persons. The Supreme Court of India has given a wider interpretation to the scope of Article 21 to include the Right to have a clean and healthy environment. The scope of the Right to Life has been further widened by the Supreme Court of India to include the Right to Sustainable Development. In Tehri Dam case involving construction of a dam across a river in the high mountain ranges in the Himalayas, the Supreme Court of India has held that disaster management is part of the Right to Sustainable Development. Thus, the constitution of India imposes a constitutional duty on the part of the Central and State Governments to formulate proper disaster management policies and programmes

<sup>2</sup> Arjun.K.Sharma, *Disaster Management: Awareness and Preparedness*, 1(Akshad, New Delhi, 2012).

<sup>3</sup> Disaster Management Act, 2005 was a response to the *Yokohama Strategy 1994, The Geneva Mandate on Disaster Reduction 1999 and Hyogo Framework for Action 2005*. The Act has been published in Gazette of India on 23/12/2005.

as a part of their efforts to attain sustainable development. This position emerged from the judiciary's trust with several tragedies including the manmade disaster in Bhopal.<sup>4</sup>

Article 14 states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 14 can be used to challenge government sanctions for mining and other activities with high stakes on human rights and environmental impact, where the permissions are arbitrarily granted without adequate consideration of environmental impacts.<sup>5</sup>

The Constitution of India under Article 39-A has provided that the opportunities for hearing justice should not be denied to any citizen by reason of economic or any other disabilities. For the effective implementation of Article 39-A a new legislation, namely, Legal services Authorities Act, 1987<sup>6</sup> was enacted. But implementation of this particular Act was delayed for 10 years. Under section 12 Clause (e) of Legal services Authorities Act, victims of disasters are eligible for free legal services. By virtue of this provision they can institute or defend a case. In a mass disaster of catastrophic nature whether it is natural or man-made, the victims are subjected to face loss of life, becoming homeless, destruction of person and property, damage to environment and the degree of the damage is such that it exceeds the coping capacity of the community of affected area. Further, to avoid such situations the Legal services Authorities has to make endeavor to help the victims and the local administration for reducing the further damage and assisting them to adopt disaster mitigation policies and strengthening their capacities. In order to give effect to the above objectives the Apex Court has designed a scheme named "Scheme for Legal Services to the victims of disasters through Legal services Authorities"

#### **Disaster Management – Legal Framework in India**

India was, until recently, reactive and only responded to disasters and provided relief from calamity. The Bhopal disaster underlined the need for a policy, aimed at prevention rather than cure, and highlighted the urgency to enforce the people's right to know and their active participation in all developmental projects affecting them and their environment. The Bhopal disaster's magnitude and impact awakened the world to a new species of hazards that brought about drastic changes in the whole concept of disaster management.<sup>7</sup>

#### **The Environment (Protection) Act (EPA), 1986**

So, after the Bhopal Gas Leak Tragedy, the Indian Parliament enacted the Environment (Protection) Act (EPA), 1986 for the purpose of safeguarding and protecting the environment from unregulated industrial or other activities. Under the EPA, the central Government is entrusted with responsibility to take all the measures for protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. It prohibits persons carrying on any industry, operation or process from discharging or emitting any environmental pollutants in excess of prescribed standards. The EPA imposes obligations on persons handling any hazardous substance to follow prescribed procedure and comply with prescribed safeguards.

#### **The Disaster Management Act, 2005**

The Disaster Management Act, 2005 came into the statute book on 26 December 2005 by a Gazette notification, exactly on the first anniversary of the devastating tsunami of 2004, in which nearly 13,000 people in India alone were killed and 18 million people were affected. The Act provides a legal and

<sup>4</sup> Dr. Francis Julian, *Legal Aspect of Disaster Management and Rehabilitation: Indian scenario*, Disaster Management Law, at 81, (ILI, New Delhi, 2006)

<sup>5</sup> Anil K. Gupta, Sreeja S. Nair (eds.), *Environmental Legislation for Disaster Risk Management* 15(IIPA, Delhi, 2012)

<sup>6</sup> Legal services Authorities Act, 1987

<sup>7</sup> P. Leelakrishnan, *Environmental Law in India*, 161 (Butterworths, New Delhi, 1999)

institutional framework for the effective management of disasters and for matters connected therewith or incidental thereto. The Act has been enacted as the central Act to deal with the management of disasters. This act envisaged a three tier Disaster Management structure in India at National, States and District levels. It envisaged the creation of the National Disaster Management Authority (NDMA), headed by the Prime Minister, and State Disaster Management Authorities (SDMAs) headed by respective Chief Ministers, to spearhead and implement a holistic and integrated approach to Disaster Management in India.<sup>8</sup>

Through the Disaster Management Act, the Government of India has decided to put in place, necessary institutional mechanisms for drawing up and monitoring the implementation of disaster management plans, ensuring measures by various wings of Government for prevention of and mitigating the effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. More specifically, the main objectives of Disaster Management Act are as follows:

- Promoting a culture of prevention, preparedness and resilience at all levels through knowledge, innovation and education.
- Encouraging mitigation measures based on technology, traditional wisdom and environmental sustainability.
- Mainstreaming disaster management into the development planning process.
- Establishing institutional and techno-legal frameworks to create an enabling regulatory environment and a compliance regime.
- Ensuring efficient mechanism for identification, assessment and monitoring of disaster risks.
- Developing contemporary forecasting and early warning systems backed by responsive and fail safe communication with information technology support.
- Ensuring efficient response and relief with a caring approach towards the needs of the vulnerable sections of the society.
- Undertaking reconstruction as an opportunity to build disaster resilient structures and habitat for ensuring safer living.
- Promoting a productive and proactive partnership with the media for disaster management

The Act provides for establishing several institutions at the state and district levels with adequate financial and administrative powers keeping the National Disaster Management Authority (NDMA) at the top, creation of the National Disaster Response Force (NDRF) and of the National Institute of Disaster Management (NIDM) with the comprehensive mandate or planning and promoting training and research in the area of disaster management. It provides documentation and development of national level information base relating to disaster management policies, prevention mechanisms and mitigation measures. The act also provides guidelines for creation of National Disaster Response Fund, National Mitigation Fund, establishment of funds by State Government and Allocation of funds by Ministries and Departments for Emergency procurement.

#### **The National Policy on Disaster Management, 2009**

The National Policy on Disaster Management was approved by the Government of India in November, 2009. This comprehensive policy document lays down policies on every aspect of holistic management of disasters in the country. The objectives of the National Policy on Disaster Management are:<sup>9</sup>

- Promoting a culture of prevention, preparedness and resilience at all levels through knowledge, innovation and education.

<sup>8</sup> Dr. R.J. Yadav(ed.), *Disaster Management in India: Acts, Policies, Guidelines* 51(Paradise Publishers, Jaipur,2011).

<sup>9</sup> National policy on Disaster Management 2009, National Disaster Management Authority, pg 8

- Encouraging mitigation measures based on technology, traditional wisdom and environmental sustainability.
- Mainstreaming disaster management into the developmental planning process
- Establishing institutional and techno-legal frameworks to create an enabling regulatory environment and a compliance regime.
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### **Salient Features of the National Policy on Disaster Management**

The policy aims to minimize the loss to lives, livelihoods and property, caused by natural or manmade disasters with a vision to build a safe and disaster resilient India by developing a holistic, proactive, integrated, Multi-disaster oriented and technology driven strategy. With this National Policy in place in India, a holistic and integrated approach will be evolved towards disaster management with emphasis on building strategic partnerships at various levels. The themes underpinning the policy include Community based Disaster Management, Capacity development in all spheres, Consolidation of past initiatives and best practices and Cooperation with agencies at National and International levels with multi-sectoral synergy.<sup>10</sup>

### **The National Disaster Management Plan, 2016**

The National Disaster Management Plan (NDMP) provides a framework and direction to the government agencies for all phases of disaster management cycle. The NDMP is a “dynamic document” in the sense that it will be periodically improved keeping up with the emerging global best practices and knowledge base in disaster management. It is in accordance with the provisions of the Disaster Management Act, 2005, the guidance given in the National Policy on Disaster Management, 2009 (NPDM), and the established national practices. The plan covers all phases of disaster management: prevention, mitigation, response and recovery. It provides for horizontal and vertical integration among all the agencies and departments of the Government. The plan also spells out the roles and responsibilities of all levels of Government right up to Panchayat and Urban Local Body level in a matrix format. The plan has a regional approach, which will be beneficial not only for disaster management but also for development planning. It is designed in such a way that it can be implemented in a scalable manner in all phases of disaster management. It also identifies major activities such as early warning, information dissemination, medical care, fuel, transportation, search and rescue, evacuation, etc. to serve as a checklist for agencies responding to a disaster. It also provides a generalized framework for recovery and offers flexibility to assess a situation and build back better. To prepare communities to cope with disasters, it emphasizes on a greater need for Information, Education and Communication activities. The NDMP is consistent with the approaches promoted globally by the United Nations, in particular the Sendai Framework for Disaster Risk Reduction 2015-2030, which is a non-binding agreement in which

<sup>10</sup> Dr. R.J.Yadav, *Disaster Management in India act: Policies: Guidelines* 142 (Paradise Publishers, Jaipur, 2011).

the signatory nations will attempt to comply with on a voluntary basis. India has agreed to make all efforts to contribute to the realization of the global targets by improving the entire disaster management cycle in India by following the recommendations in the Sendai Framework and by adopting globally accepted best practices. The four priorities for action under the Sendai Framework are:<sup>11</sup>

- 1. Understanding disaster risk
- 2. Strengthening disaster risk governance to manage disaster risk
- 3. Investing in disaster risk reduction for resilience
- 4. Enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction

### Conclusion

Therefore it is concluded that the need of the hour is to promote a people-centered human rights based disaster risk reduction strategies. There is a plethora of enacted laws in India to save environment and prevent disasters, but due to lack of proper implementation and enforcement people are still suffering. The vulnerability analysis in disaster management shall consider human rights issues among their social, economic and cultural criteria. Disaster management fundamentally deals with a response to human misery and losses of people’s livelihoods and assets, while disaster risk management is concerned with mitigating or preventing such losses; both processes tend to be rather anthropocentric. The response towards disaster management must arise from all the sides with a humanitarian approach so as to attain the objectives of human rights based perspective during times of disaster.

<sup>11</sup> *National Disaster Management Plan, 2016* ( NDMA, New Delhi, 2016)