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Legal Framework of Disaster Management in India along with the Functioning of NDRF

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ABSTRACT

Mother Nature has bestowed us with natural resources but at the same time the disasters that have been caused by the environment in forms of earthquakes, cyclone, tornadoes have caused great amount of havoc and turmoil to the Indian Subcontinent. India, is one of the countries that has been a victim against catastrophic events due to its geo-climatic conditions; man-made caused debacles which have further aggravated the tragedies, as those fundamentally affected are the poor, labourers, children and the rural areas. The natural disaster renders men to lose their economic status, shelter and sometimes even their family. The under developed and the developing countries are mostly the ones that get severely affected due to such natural disasters and the impact on the country's economic, social and cultural status sometimes become irreparable. The sneaking threats of environmental change and its massive impact on the event of natural disasters incited the global community to go for a reworking of the disaster management system in all parts of the world. At the global and the national level, there has been significant concern over common catastrophes. Thus to meet such exigencies India has formulated certain legislations that help to recuperate the loss and destruction caused by the natural disasters. The Disaster Management Act 2005, was enacted by the legislature to provide relief to the victims of the disasters and that minimum standard of relief is provided to the citizens of the country. This paper aims to focus and examines the Indian legislations and the Constitutional provisions that have been enacted to minimize the damages from, and counteract such natural disasters and also the loopholes of the laws that exist in its implementation.

Keywords – disaster, legislations, constitutional provisions.

I. INTRODUCTION

The word “Disaster” is derived from the Middle French “*désastrel*” and from the Old Italian *disastro*, which in turn comes from the Greek pejorative prefix (dus-) “bad”+ *αστήρ* (aster), “star”. The origin of the word disaster (“bad star” in Greek and Latin) comes from an

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astrological theme in which the ancients used to refer to the destruction or deconstruction of a star as a disaster. Disaster is an occurrence or series of incidents that give rise to casualties and damage or loss of human life and property, ecosystem, infrastructures, essential services or means of livelihood on a scale, beyond the normal capacity of the affected community to cope with. Disaster may also be explained as a “catastrophic situation in which the normal pattern of life or eco-system has been disrupted and extra-ordinary emergency interventions are required to save and preserve lives and or the environment”.³

India has been usually a casualty against cataclysmic occasions by prudence of its outstanding geo-climatic conditions. Floods, dry seasons, twisters, shakes and torrential slides have been a discontinuous miracles. About 60% of the landmass is slanted to tremors of various forces; in excess of 40 million hectares is slanted to floods; about 8% of the full scale area is slanted to twisters and 68% of the district is powerless against drought. In the decade 1990-2000, thousands of people lost their lives and around 30 million people were impacted by disasters reliably. The hardship with respect to private, organization and open assets has been galactic.

With huge material progression, the loss of lives and property caused due to of normal disasters has not reduced. As a matter of fact, the human expense and money related adversities have mounted. It was in this setting that the United Nations General Assembly, in 1989, proclaimed the decade 1990-2000 as the International Decade for Natural Disaster Reduction with the target to lessen loss of lives and property and confine financial harm through purposeful global activity, particularly in creating nations.

In the last part of the 1990s and the early part of this century signified a watershed in Disaster Management in India. The Orissa Super Cyclone and the Gujarat Earthquake demonstrated the nation a hard exercise. The experiences of the accomplices like the state, purposeful fragment and the organizations wherever helped in beginning the orchestrating cycle identifying with availability and alleviation of disasters.

An inventive step towards this way was set up by The High Powered Committee on Disaster Management in 1999, which introduced its report in 2001. A noteworthy proposal of the warning gathering was that at any rate 10% of plan resources at people in general, state and district levels be held and dispensed for plans that expressly address locales, for instance, balance, decline, preparation and lightening of catastrophes. Furthermore unprecedented for the masterminding history of India, coordinators gave an alternate segment named 'Disaster

³ Government of India on Disaster Management in India, Ministry of Home Affairs, Government of India, 2011, p.1 (September 4, 2020, 9 am) <https://rgnul.ac.in/PDF/2e10b025-4906-4da8-adcf-dcf492683753.pdf>.

Management: The improvement perspective' in the 10th five-year plan record (Planning Commission, 2002).

After a few years a couple of foundations with a focused request on disaster the heads have come up in various bits of the country. The Ministry of Home Affairs (Disaster Management Division), National Institute for Disaster Management (New Delhi), Gujarat State Disaster Management Authority (GSDMA), Orissa State Disaster Management Authority (OSDMA), Disaster Mitigation Institute (Ahmadabad) can be seen as exercises taken the right way.

There has additionally been a deliberate exertion with respect to the state to standard Disaster Mitigation activities in Rural Development plans. One of its model is the coordination between the Ministry of Rural Development and the Ministry of Home Affairs, which is presently the nodal service for coordination of alleviation and reaction and generally catastrophic event the board, for changing the rules of plans, for example, Indira Awas Yojna (IAY) and Sampoon Grameen Rojgar Yojna (SGRY) with the goal that the houses built under IAY or school structures/network structures developed under SGRY are tremor/twister/flood safe.⁴

II. CAUSES AND EFFECTS OF NATURAL DISASTERS

It the worldwide level, there is an expanding consensus around c associating catastrophe hazard decrease with natural disaster management. The Hyogo Framework for Action (HFA) calls for efforts to “encourage the sustainable use and management of ecosystems, through better land-use planning and development activities to reduce risk and vulnerabilities.”

Natural disaster is the reduction of the earth’s limit to meet social and biological destinations and requirements. Potential impacts are differed and may add to an expansion in weakness and the recurrence and force of characteristic risks. A few models include: land corruption, deforestation, desertification, rapidly spreading fires loss of biodiversity, land, water and air contamination, environmental change, ocean level rise and ozone exhaustion and so forth.

Disasters are occasions of ecological boundaries which are inescapable substances of this living world. The major ecological changes driving risks and weaknesses of disasters are environmental change, land-use changes also, normal asset corruption.

- **Environmental degradation causing disasters**: Environmental changes are known to generate or aggravate disasters especially of hydro-meteorological origin.
- **Ecological disaster causes causalities**: Humanity will be influenced in the close future

⁴ Vishal Singh on Disaster management in India, (Sep 5, 2020 12 PM) https://www.devalt.org/newsletter/jan05/of_2.htm.

because of a decrease in environment administrations for example the temporary, recreational, administrative what's more, supporting administrations. Environmental Degradation diminishes biomass efficiency, impacts employments, water, food, wellbeing, lodging and the general economy, imperiling network limit to adapt.

- **Disasters affect the ecosystem** - Catastrophes cause essential and optional effects on the condition, influencing characteristic cycles, assets and environments, subsequently making conditions for future catastrophes or for a complex crisis.
- **Alleviation and recuperation compromise natural maintainability**: Environment is traded off during the natural disaster. The Disaster Management Board comes up with redressal and recuperation measures to restore the environment in its old form.⁵

III. LEGAL FRAMEWORK UNDER NATURAL DISASTER

STATE LAWS - Under the current plan of disaster management, cataclysmic event the State Government is to a great extent having the obligation to formulate measures. The state government should attempt the obligation of salvage, alleviation and restoration. The disasters will manage under the direct supervision of the concerned nodal ministers or departments. However, nonetheless, the focal government with its assets, physical and monetary, gives the required assistance and help to aid projects. The function of focal government is steady as far as supplementation of physical and money related assets.

CONSTITUTIONAL PROVISIONS – The Indian constitution provides us with provisions related to environment and human rights. Article 21 of the Indian Constitution states “ No person shall be deprived of his life or personal liberty except according to National legislations”. The right to life has been employed in a diversified manner in India. Besides the mere right to survive as a species, quality of life, the right to live with dignity and the right to livelihood etc. are also with the purview of Article 21.

The Constitution of India provides that all are equal before the law and shall be accorded equal protection of the law. 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.

The Constitution Act of 1976 (Forty Second Amendment) invariably incorporated

⁵ Disaster management (September 6, 2020, 3 pm) https://www.physio-pedia.com/Disaster_Management.

environmental protection and improvement as a part of state policy. Article 48 A provides that the state shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A (g) imposes a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Thus, protection of natural environment and compassion for living creatures was made the positive fundamental duty of every citizen.⁶

As far as constitutional provisions are concerned, entry 56 of list I (Union List) envisages legislative control of the Central Government over ‘regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest.’ As regards the power of state governments, entry 17 of list II (state list) provides that states can legislate on the subjects of ‘water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.’

On the conjoined reading of these provisions, two broad conclusions may be drawn regarding their implications for disaster management. One, these constitutional provisions pertain exclusively to water that arguably may have impact on only certain specific natural disasters such as flood and drought. Insofar as other manmade disasters like industrial accidents, and natural disasters like earthquake, cyclones, landslides, avalanches etcetera are concerned, these provisions are silent and therefore irrelevant for them. Two, even with respect to the water related natural disasters, the constitutional scheme of things are decisively weighed in favour of the central government as the provisions of entry 17 of list II are made subject to the overriding provisions of entry 56 of list I. In other words, the states competence to make laws on water and related issues is confined only to their territorial jurisdiction beyond which it is the other state or the Central Government that can make laws. Interestingly, while enacting the Disaster Management Act, 2005, the Central government invoked the provisions under entry 23, namely, ‘Social Security and Social Insurance; Employment and Unemployment’ in the concurrent list to draw constitutional competence to pass the legislation.⁷

STATUTORY LEGISLATIONS - The Disaster Management Act 2005 was enacted to act as the foundational act in the country. It serves a multitude of purposes including providing a

⁶ Anil K. Gupta, Sreeja S. Nair and Swati Sing on Environmental Legislation for Disaster Risk Management (September 12, 202 6pm) https://nidm.gov.in/PDF/modules/Legal_new.pdf

⁷ Rajendra Kumar Pandey on LEGAL FRAMEWORK OF DISASTER MANAGEMENT IN INDIA (September 19, 2020, 7pm) http://ili.ac.in/pdf/p13_rajendra.pdf

compendious structure within which the state, district and local bodies are constituted and officials are designated to discharge their assigned tasks and responsibilities in the management of disasters. The act creates a centralized body to impose its authority both in planning and execution of disaster management plans and policies in the country and through this it aims to create a flawless model of disaster management in India.

The National Disaster Management Authority (NDMA) is there at the apex level to formulate policies and approve the national plan for disaster management apart from orchestrating the enforcement and implementation of the policies for disaster management. The NEC or the National Executive Committee acts as the executive arm of the NDMA, its primary function is to assist the NDMA in discharge of its functions and to make sure that the plans and policies are being properly implemented and the plans are being complied with or not. The States have been stripped of their power of acting as the final authority in formulating and executing their plans for disaster management. They now have to follow the NDMA and comply with the direction issued by the NEC.

At first glance this may seem to be very time efficient but in any crisis situation, expeditious and appropriate response is the essence, and since the field functionaries, the State Governments and the line departments and ministries of the Union Government are aware of the field situation, they would be in better position to provide timely and effective response, if they are fully authorized to do so. Therefore proper delegation is also necessary. This is seen in the formation of the District Disaster Management Authority (DDMA).

The DDMA is effective and potent in making the district disaster resilient, along with that the DDMA seems to be placed in such a peculiar position that if it takes an instigating approach for long term prevention and short term mitigation of disasters in the district, it can wrest the commanding charge of disaster management from the higher authorities, at least in the case of the district concerned.

The creation of the National Disaster Response Force or NDRF by the Act has proved to be decisive. Previously the task of saving the lives of people in disaster stricken places was the responsibility of the security forces and the people who did not have specialised training and logistics to undertake the rescue operations in a safe and proper manner and as a result many lives were lost, lives which could have been saved by professional intervention. What was required were specialists who could carry on these actions calmly during such calamities.

The formation of the NDRF has made it possible to accomplish this task with its battalions strategically positioned in different parts of the country in such a way that quick and effective

response could be carried out in a flash in case occurrence or likelihood of the occurrence of disaster. As with other Government organisations, funding has been the most criticised aspect of this previous Acts dealing with disaster management, to that effect the Disaster Response Fund has been envisioned to be created at the national, state and district levels for meeting any threatening disaster situation or disaster. The National Disaster Response Fund is to be composed of an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf provide as well as any grants or donations made voluntarily individuals or organisations for the purpose of disaster management.

There are undoubtedly some deficiencies in the Act. The Act only contains passing references relating to joining forces with the local authorities and communities in planning, executing and monitoring the disaster management related activities in the particular area which would ensure more effective enforcement of policies and plans. The Act seems oblivious of the fact that the whole canvas of disaster management activities gets confined to the active and willing support and cooperation of the local community in absence of which the task of making the country disaster resilient becomes very cumbersome and difficult.⁸

IV. THE NDRF

The significance of the National Disaster Response Force(NDRF) cannot be downplayed as stated above they are a multi-disciplinary, multi-skilled specialist force capable of responding to any natural disaster or emergency. The composition of the NDRF is an important factor which contributes to their success rate, each battalion consists of 1149 personnel which includes 18 self-contained specialist teams of 45 members. Each team comprises specialists such as medical officers, engineers, paramedics, Electricians and dog squads. These battalions are placed strategically in 10 different locations across the country and teams are placed at 22 different cities and inaccessible regions. Their success in mitigation of natural disasters also stems from how efficiently and seamlessly they function. Their functioning can be separated into 3 stages, the first stage which can be called the ‘non-disaster’ period generally consists of tasks such as skill upgradation, training other stakeholders, forming a resilient community, familiarization activities and mock drills. The second stage comes into effect when there is an impending disaster in sight, during this period the NDRF performs proactive deployment of their teams to the areas which are likely to be affected. The final stage is when the deployed teams carry out their specialized functions on the site of the disaster.

⁸ Rajendra Kumar Pandey on LEGAL FRAMEWORK OF DISASTER MANAGEMENT IN INDIA (September 19, 2020, 7pm) http://ili.ac.in/pdf/p13_rajendra.pdf.

V. NDRF AND COVID 19

The NDRF continued to battle natural disasters throughout the country while the danger of covid-19 loomed over their heads since while conducting rescue operations the teams were constantly in danger of catching an infection or spreading it to others being rescued. There were many reports of NDRF personnel contracting Covid-19 while carrying out operations in places such as West-Bengal after amphan had hit, in Assam after the floods and in Mumbai during heavy rain. In reaction to the pandemic, the NDRF has adopted a new Standard Operating Procedure(SOP) for all types of operations and brought in changes in daily routine, accommodation norms and protective suits. It is inevitable that the NDRF has to continue their services throughout this pandemic due to structure collapses and floods during the monsoon season thus they have devised a new SOP to prevent spreading of the disease from asymptomatic personnel to the person being rescued. This new procedure include regular health and temperature checkups, testing before operations are carried out, wearing protective suits and maintaining proper hygiene.⁹

VI. DISASTER MANAGEMENT ACT OF STATES

In the domain of debacle of disaster management, the states are pioneer in contrast with the focal enactment in India. While the focal government was currently in negotiations and consultations for finishing the Disaster Management Act, the executives pioneered the province of Gujarat to get the Gujarat State Disaster Management Act, 2003 ordered in the exact year to accommodate the apparatus, assets and the cycles for efficient and viable administration of catastrophes in the state. The trigger for establishment of the Gujarat Act originated from the humongous death toll and property in the wake of the Bhuj seismic tremor of 2001. The momentous undertaking of Gujarat was followed by Bihar to sanction the Bihar Disaster Management Act, 2004. These endeavours on the part of serious calamity inclined states set a side project impact for other in like manner states to follow the suit.

Accordingly, the conditions of Uttaranchal and Uttar Pradesh likewise passed their particular disaster management Acts in 2005, alongside the section of the focal enactment regarding the matter. Regardless of the presence of a central enactment as the preeminent law on disaster management in India, it is worthwhile to have a critical scrutiny of the state legislations to get the novelties and nuances of states understanding of disaster management machinery and processes.

⁹ Sushant Kulkarni on The Role of NDF (September 22, 2020 7pm) <https://indianexpress.com/article/explained/the-role-national-disaster-response-force-ndrf-plays-in-india-6545726/>.

Without envisaging for creation of any state level apex body dedicated for managing disasters, the Bihar Act vests the state government with the general obligation of the disaster management in the state. The main explicit body which is responsible for the disaster management is named as Standing Technical Committee (STC) which was given the general obligation of responding to the event of calamities in the state. Be that as it may, the STC couldn't make up for itself from the regulatory shackles normal to Indian policy implementation and ended up being a catastrophe in itself. The state government, accordingly, right away, therefore, in no time, adopted the national law as passed in 2005 and subjected the state legislation to the provisions enshrined in the Disaster Management Act 2005.

Another significant state inclined to various normal perils is Uttarakhand. Consequently, so as to give a sound legitimate establishment of the disaster management the executives in the express, the administration instituted the Uttarakhand Disaster Mitigation, Management and Prevention Act, 2005. As is apparent from the classification of the Act, this landmark legislation in the state sought to constitute a framework of disaster management whose overlaying aspects have further been clarified as mitigation and prevention of disasters. Fundamentally, in the plan of structures plot in the Act, an unpredictable arrangement, at any rate in state enactments, has been made for the production of a Disaster Mitigation and Management Centre which shall act as the nodal organization for information assortment, examination, augmentation and public mindfulness exercises identified with the Disaster Management board in the state. Among the other explicit bodies identified with debacle the board, the formation of Uttarakhand State Disaster Management Agency is remarkable as it is being vested with the duty and responsibility to formulate policies in order to curb down the disasters.. In any case, a significant weakness of Uttarakhand Act is its absolute disregard of the part of network and the overall population in providing for effective and powerful mechanisms to reduce the disasters in the state.

The other state whose states disaster management enactment precedes the central enactment is that of Uttar Pradesh. . Henceforth, it was normal for the state to copy its antecedents in authorizing a complete a disaster management enactment without searching for any central lead on the issue. Notwithstanding, what is generally fascinating about the Uttar Pradesh enactment is that it nearly has replicated the of the disaster management enactment of Gujarat. While there can be nothing incorrectly in obtaining from certain record or enactments gave that suits the interests of the borrower law consummately, this doesn't appear to be the situation with the disaster management profile of Uttar Pradesh. Given the huge topographical stretch of the state into various unmistakable geospatial sub-districts each confronting a particular danger of

regular calamity not quite the same as the other, it would have been exceptional if the state had been more imaginative what's more, received territorial methodology in misfortune the board than its discount appropriation of Gujarat enactment for the state.¹⁰

SWARAJ ABHIYAN Vs UOI¹¹ - In this case a writ petition was filed under article 32, at the Supreme Court of India which led to the declaration of drought in parts of nine states, namely, Uttar Pradesh, Madhya Pradesh, Karnataka, Andhra Pradesh, Telangana, Maharashtra, Odisha, Jharkhand and Chhattisgarh. Besides, it is also important to note that drought or 'semi-scarcity' has been declared by Gujarat during the hearing of this petition in the month of April, 2016.

The judgment discussed multiple issues at great length ranging from that of directive principle of a social welfare state i.e. the concept of *parens patriae*, which recognizes the state as protector of its citizens as parent particularly when citizens are not in a position to protect themselves. From there the court focused on the role of public interest litigation as something not known to the traditional judicial system and such litigation is intended to vindicate and effectuate the public interest by preventing of violation of their rights.

The judgment also discussed various provisions of The Disaster Management Act, 2005. The National Disaster Management Authority (NDMA) was discussed at great length which is constituted under the above Act. The Court also referred section 6 of the Act which lays down the power and function of the NDMA. Also section 8 of the Act provides for the formation of National Executive Committee (NEC) and under section 10, the NEC is required to assist the NDMA in the discharge of its function and has the responsibility of implementing the policies and plans of the NDMA.

GAURAV KUMAR BANSAL Vs UNION OF INDIA AND OTHERS¹² - In this case two writ petition were filed under Article 32, at the Supreme Court of India for the unprecedented flood and damage caused due to the Uttarakhand flood which caused havoc and damage to the lives and property of the people at Uttarakhand. The petitioners had contended that the adverse impact could have been mitigated had there been an effective implementation of The Disaster Management Act, 2005.

The court had taken up the petitions in public interest and required response is to be filed by the state governments.. Through the NDMA required the chief secretaries of all the state to frame the minimum standards of relief for victims of the disasters. The court also had stated

¹⁰ Rajendra Kumar Pandey on LEGAL FRAMEWORK OF DISASTER MANAGEMENT IN INDIA (September 19, 2020, 7pm) http://ili.ac.in/pdf/p13_rajendra.pdf.

¹¹ Swaraj Abhiyan vs Union Of India And Ors on 13 May, 2016

¹² Gaurav Kumar Bansal vs Union Of India on 3 January, 2019

that it was necessary under section 23 of the act that each state was required to form latest state plan for disaster management. Finally, hearing both the contentions of the Petitioner and the respondent it was held that there was sufficient compliance of the provisions of the Disaster Management Act and that it was not necessary for the court to issue any particular directions. It was thus necessary for NDMA to constitute at the national level and that the State disaster management authority at the state level to be over vigilant and ensure that if any unfortunate disasters arise there should be total preparedness and then minimum standards of relief are provided to all the nationals of the country, however it was also stated that NDMA should regularly publish its annual report to review and update all plans on the basis of experiences and make its website multilingual so that it is comprehensible by all.

VII. CONCLUSION

The mechanisms for disaster management in India is far from perfect, rather it is quite blemished, but through the Disaster Management Act, we have given ourselves the tools to sustainably carry out the function necessary to control and mitigate the damages caused by large scale and small scale disasters This is not to say that the act should remain rigid and functions should be carried out strictly according to the provisions of the act, deviations are necessary and unavoidable when dealing with such variables, And thus such deviations should made carefully to ensure that the objective of the act is achieved, that is to save lives, minimize financial damage and provide aid.

Attributable to the fiery interests at worldwide level to make the world disaster resilient on the one hand, and the various pieces of the nation getting desolated by a progression of catastrophic events, on the other, it turned out to be to some degree fundamental for the legislatures, to authorize committed enactments accommodating a complete arrangement and apparatus to execute the equivalent for productive and powerful administration of calamities in the nation. Plainly, the states developed as the pioneers in this field as they got their laws sanctioned in any event, when the central government was amidst discussion and drafting its own enactment. In the end, the central enactment regarding the matter was instituted in 2005 raising various government issues in the administration of debacles in India.

Fortunately, due the formative and philanthropic nature of exercises associated with the administration of disasters, the subject has not become a state of need to feel superior among centre and states.
