

Disaster Management: Statute and Statutory Bodies

Dr. Mamta Goyal

Associate Professor in Commerce, Govt. PG College Sector-1 Panchkula

ABSTRACT

The term disaster is “a serious disruption of the functioning of a society, causing widespread human, material or environmental loss, which exceed the ability of the affected society to cope using its own resources.” Our disaster response is often affected by procedural confusion and by policies that do not facilitate effective management. Efficient policy and effective institutional support are a must for disaster management. “Prevention is better than cure” is an old saying which is very relevant in the context of disaster management. Every year Heavy amount of resources are used by our Government as well as aid agencies in relief and rehabilitation measures. It is now becoming increasingly evident and mitigation and investment in disaster preparedness can save thousands of lives, vital economic assets, livelihoods and reduce the cost of overall disaster relief.

There needs to be an integrated approach that addresses all sectors – and this includes the legal framework under which disaster risk reduction operates. There is a clear need for common rules, well-defined legal mandates and plans. This paper aims to :-

- Understand the role of Statute and Statutory Authorities in Disaster Management.
- Solutions to develop an effective disaster management system.

Key Words: National Disaster Management Authority (NDMA), National Disaster Response Force (NDRF), State Disaster Management Authority (SDMA), District Disaster Management Authority (DDMA), National Institute of Disaster Management (NIDM),

INTRODUCTION

Disasters and disaster Management in India is not new. The country has ‘Himalaya’ in the north, which is comparatively young mountain, having very high seismicity. The north-east region of the country, Uttarakhand, H.P. part of J&K and Gujarat are in seismic zone 5. We have very long coastal region which is prone to cyclones. Floods and Droughts are occurring in almost every State and causing enormous economic loss.

Experience has shown that destruction from disasters can be minimized by a well functioning disaster management system. In this context, it is necessary to look into the disaster management system in India. Handling of the different disasters in the recent past is a testimony of the inadequate and ill-equipped disaster management system in India. To suggest a solution for the present problems, it is necessary to identify the various issues relating to disasters in India and to formulate an comprehensive law on Disaster Management, which includes not only the events emanating from natural and man-made causes, but even those events which are caused by accident or negligence.

Until the enactment of the Disaster Management Act- 2005, India did not have a comprehensive law on Disaster management at the federal level, although there was legislation on specific safety aspects, e.g. fire, hazardous chemicals and environment, both at federal and state levels. The State of Gujarat has a separate Disaster Management law of its own. In fact, Gujarat was the first state in the country – even before the enactment of the federal law – to have a comprehensive disaster management law when it enacted the Gujarat State Disaster Management Act of 2003.

On 23rd of December, 2005, the Disaster Management Act (DMA) became a piece of law after a long collective effort by the government and civil society activists to create a legislative tool under which disaster and emergency

management will be undertaken. It has placed mandatory obligations and responsibilities on ministries and executives to ensure transparency and accountability in the overall disaster management system.

The perception about disaster and its management has undergone a change following the enactment of the Disaster Management Act, 2005. The definition of disaster is now all encompassing, which includes not only the events emanating from natural and man-made causes, but even those events which are caused by accident or negligence.

Institutional Framework Under The Disaster Management Act

Under the present scheme of disaster administration, natural disaster management is largely the responsibility of the State Government. The State Government will have to undertake the responsibility of rescue, relief and rehabilitation. The disasters will be managed under the direct supervision of the concerned nodal Ministries or Departments. However, the Central Government, with its resources, physical and financial, does provide the needed help and assistance to augment relief efforts. The role of Central Government is supportive in terms of supplementation of physical and financial resources.

National Disaster Management Authority (NDMA)

The NDMA, has been constituted as per mandate given in Section 3 of The Disaster Management Act-2005 as the apex body for disaster management. It is headed by the Prime Minister and has the responsibility for laying down policies, plans and guidelines for Disaster Management (and coordinating their enforcement and implementation for ensuring timely and effective response to disasters). It will approve the National Disaster Management and Disaster Management plans of the Central Ministries/Departments. NDMA has the power to authorize the Departments or authorities concerned, to make emergency procurement of provisions or materials for rescue and relief in a threatening disaster situation or disaster.

The National Executive Committee

Section-8 of the Disaster Management Act-2005 provides that immediately after the formation of NDMA, the Central Government shall form a National Executive Committee. The National Executive Committee (NEC) comprises the Union Home Secretary as the Chairperson, and the Secretaries to the Govt. of India in the Ministries/Departments of Agriculture, Atomic Energy, Defense, Drinking Water Supply, Environment and Forests, Finance (Expenditure), Health, Power, Rural Development, Science and Technology, Space, Telecommunications, Urban Development, Water Resources and the Chief of the Integrated Defense Staff of the Chiefs of Staff Committee as members. Secretaries in the Ministry of External Affairs, Earth Sciences, Human Resource Development, Mines, Shipping, Road Transport & Highways and Secretary, NDMA will be special invitees to the meetings of the NEC.

State Disaster Management Authority (SDMA)

Section 14 of the Disaster Management Act-2005, provides that at the State level, the SDMA, headed by the Chief Minister, will lay down policies and plans for Disaster Management in the State. It will, inter alia approve the State Plan in accordance with the guidelines laid down by the NDMA, coordinate the implementation of the State Plan.

District Disaster Management Authority (DDMA)

Section 25 of the Disaster Management Act-2005, provides that District Disaster Management Authority (DDMA) will be headed by the District Collector/ Deputy Commissioner, with the elected representative of the local authority as the Co-Chairperson. DDMA will act as the planning, coordinating and implementing body for Disaster Management at District level and take all necessary measures for the purposes of Disaster Management in accordance with the guidelines laid down by the NDMA and SDMA.

National Institute Of Disaster Management (NIDM)

The National Institute of Disaster Management constituted under Section 42 of the Disaster Management Act 2005 and has been entrusted with the nodal national responsibility for human resource development, capacity building, training, research, documentation and policy advocacy in the field of disaster management. Upgraded from the National Centre for Disaster Management of the Indian Institute of Public Administration on 16th October, 2003, NIDM is steadily marching forward to fulfill its mission to make a disaster resilient India by developing and promoting a culture of prevention and preparedness at all levels.

The NIDM, in partnership with other research institutions has capacity development as one of its major responsibilities, along with training, research, documentation and development of a national level information base. It will network with other knowledge-based institutions, and function within the broad policies and guidelines laid down by the NDMA.

National Disaster Response Force (NDRF)

The Disaster Management Act, 2005 has made the statutory provisions i.e. Section-44, for the constitution of the National Disaster Response Force (NDRF) for the purpose of specialized response to natural and man-made disasters. According to Section 45 of the Act, the Force has to function under the general superintendence, direction and control of the National Disaster Management Authority (NDMA) and under command and supervision of Director General, NDRF. Though the units of this Force were nominated in 2003, it is only after the establishment of NDMA, that their training and equipping were vigorously pursued. In lieu with the Section 44 (i) of the Act that states NDRF a specialist force, the force is gradually emerging as the most visible and vibrant multidisciplinary, multi-skilled, high-tech force of the NDMA capable of dealing with all types of natural and man-made disasters. For the purpose of specialized response to a threatening disaster situation or disasters/emergencies both natural and man-made such as those of Chemical, Biological, Radiological and Nuclear origin, the Act has mandated the constitution of a National Disaster Response Force (NDRF). The general superintendence, direction and control of this force shall be vested in and exercised by the NDMA and the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director General of Civil Defense and National Disaster Response Force. Presently, the NDRF comprises Ten battalions with a scope of further expansion in due course. These battalions are positioned at different strategic locations as required.

Role Of Law In Disaster Management

The role of law in disaster management is concerned with the enforceable right of a disaster victim to rescue, relief and rehabilitation. The existing Government schemes/policies are not known to anyone, particularly the victims, till disaster actually strikes. Even in its enforcement the attitude is one of charity by the state and not entitlement for the victim.

Constitutional Mandate - For Right To Rehabilitation

The Constitutional concern for social justice is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities from which the poor are suffering and to secure dignity of their person. The Indian Constitution declares that India is a welfare state, i.e., a state that promotes the general welfare of the people. Especially after the case of Maneka Gandhi vs Union of India reported as AIR 1978 (S.C.) 597 Courts have expanded the scope of 'life' and 'personal liberty' under Article 21. The Supreme Court has also interpreted the words 'procedure established by law' to include both the procedural and substantive legal requirements of fairness, justness and reasonableness. Article 21, which guarantees the protection of life and personal liberty, is the repository of all important human rights. From this, the Supreme Court has deduced an affirmative obligation on the part of the state to preserve and protect human life. A collective reading of judgments will lead to the logical conclusion that the right to rescue, relief and rehabilitation is a right guaranteed under Article 21 of the Constitution of India.

The Supreme Court of India has also interpreted the words 'procedure established by law' to include both the procedural and substantive legal requirements of fairness, justness and reasonableness. Article 21(2), which guarantees the protection of life and personal liberty, is the repository of all important human rights. From this, the Supreme Court has deduced an affirmative obligation on the part of the state to preserve and protect human life. Right to life being the most important of all human rights implies the right to live without the deleterious invasion of pollution, environmental degradation and ecological imbalances

Obligation Of The State Under The Doctrine Of "*Parens Patriae*"

"PARENS PATRIAE" is a Latin term meaning "Father of the Country" The concept is explained as "the right of the sovereign and imposes a duty on the sovereign, in public interest, to protect persons under disability who have no rightful protector." The doctrine of "*parens patriae*" is the inherent power and authority of a legislature to provide protection to the person and property of persons and property non "*sui juris*", such as minor, insane and incompetent persons. The doctrine of *parens patriae* meaning 'father of the country' was applied originally to the king and is used to designate the State referring to the sovereign power of guardianship over persons under disability. The Courts in India have applied this doctrine in several cases. Therefore under the doctrine of *parens patriae* also, the State is obliged to render adequate relief and rehabilitation to the victims of disaster.

Responsibility As An Welfare State

The State is responsible for rendering adequate support and assistance to the victims of a disaster. This includes the obligation of the State to make necessary preparation and planning to face a disaster situation. Cumulatively, this warrants the need for legislation. Legislation will ensure the visibility of governmental institutions - their objectives, powers and functions and will place the disaster management exercise on a more firm foundation. Visibility of the institution will create a climate of confidence in the minds of people and will streamline the management of disasters. In

addition, legislation allocates responsibilities in legal form, ensures uniformity of approach and provides for the protection of the peoples' rights.

Disaster Management – A Human Rights Perspective

The critical issues that arise in disaster management and reduction inter alia include the following key areas of concern viz: non-discrimination of disaster affected victims based on gender, age, ethnicity etc., right to equality in matters of legal protection, shelter and housing, right to security, access to health services, clean water, education, compensation etc. which are considered as integral facet of fundamental rights as enshrined under the Constitution of India. In a landmark case of Vincent Parikurlangara v. Union of India, AIR 1987 (2) SCC 165 the Hon'ble Supreme Court held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Article 21. A healthy body is the very foundation of all human activities. In a welfare State it is an obligation of the State to ensure the creation and sustaining of conditions congenial to good health. The liberal interpretation of this judgment on lines of human rights based approach would explicitly mean that during the times of disaster it is the prime duty and responsibility of the State to provide medical care and access to health services to the victims of disaster.

NECESSARY CHANGES REQUIRED IN DISASTER MANAGEMENT LEGISLATION

- The focus of the disaster management exercise should be shifted from 'post-disaster reaction' to 'pre-disaster preparation'. The chalking out of disaster plans need to be ensured at the National, State and District levels in a time bound manner and with periodical review.
- The role of the military, NGOs, para-military, police, civil defence, other agencies, people, etc. should be well defined and regularized. Other groups, which could play a vital role in disaster management, are the Panchayati Raj institutions and professionals like doctors, teachers, engineers, lawyers, etc.
- There should be proper allocation and management of need based finances.
- There should be appropriate/severe punishment for violating the provisions of law/orders/directions. The Punishment as provided in the D.M. Act, is not deterrent enough.
- After a disaster, the enforceable right of the people to get the relief and rehabilitation needs to be recognized.
- Insurance, Compensation and Protection of Human Rights need to be treated as an integral part of the disaster management exercise.
- Rehabilitation should be treated as a part of the disaster management exercise.
- Mechanisms must be designed and adopted for transferring lessons learned for pre- and post-disaster management between communities.
- Given that natural disasters do not always follow national boundaries, cross-boundary issues of disaster management should be addressed through enhanced regional cooperation. Furthermore, an effective regional response system should be developed to pool capacity for mutual benefit.

CONCLUSION / IMPLEMENTATION OF THE DISASTER MANAGEMENT ACT, 2005

Laws alone are not sufficient. There is a need of social awakening and change in the attitude of masses. Our focus should be pre-disaster preparation instead of post disaster management. Lessons on Disaster Management should be taught in School curriculum with its practical awareness. The Act must be given wide media coverage. Efforts must be made to educate the child at an early age so that they could become capable to handle the situation and there is least possibility of any casualty at the time of disaster. While significant achievements have been made in post-disaster response and reconstruction, there are still formidable challenges to make a mechanism which could minimize the severity of disasters. The implementation of the Disaster Management Act, 2005 has been slow, and slack. Disaster management policies must incorporate programs to protect the most vulnerable segments of society—the poor, marginalized, women, children, disabled, and elderly. The Act needs to be amended and provisions should be incorporated in consultation with expert bodies. Therefore it is concluded that the need of the hour is to promote a people-centered human rights based disaster risk reduction strategies.



REFERENCES

- [1]. The Disaster Management Act- 2005.
- [2]. AIR 1978 (SC) 597 Menaka Gandhi vs Union of India & ors.
- [3]. AIR 1987 (2) SCC 165, Vincent Parikurlangara v. Union of India.
- [4]. 2001(2) G.L.R. 1394. *B.J.Diwan vs. State of Gujarat*
- [5]. Disaster Management in India, Ministry of Home Affairs, Govt. of India.
- [6]. IJSER Volume-1, Issue-1, September 2013.
- [7]. Advocates for Environmental Human Rights et al., *The Human Rights Crisis in the Aftermath of Hurricane Katrina 1* (2010)
- [8]. Dr.S.K.Kapoor, *International Law and Human Rights* (Central Law Agency, Allahabad 15thEdn, 2004) p.415-416
- [9]. Technical report on Geotechnical / Geophysical Investigations for Seismic Microzonation Studies of
- [10]. Urban Centers in India by National Disaster Management Authority Government of India August 2011.
- [11]. Disaster management. (2006). In *BUSINESS: The Ultimate Resource – Dictionary of Business and Management*.
- [12]. Basu, D. D. 2001. *Shorter Constitution of India*, 13th Ed., Wadhwa publication, New Delhi.
- [13]. Compendium of Laws on Disaster Management published by National Disaster Management Authority, Government of India.
- [14]. http://www.credoreference.com/entry/ultimatebusiness/disaster_management.
- [15]. <http://ndma.gov.in/ndma/>
- [16]. <http://nidm.gov.in/default.asp>
- [17]. www.cyclonegujarat98.net
- [18]. www.disaster.org
- [19]. www.disasterrecovery.net