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Legal Framework of Disaster Management in India

– Dr. Sujata N. Chavan*

Abstract

India has been traditionally vulnerable to various natural disasters due to its quite unique geo climatic conditions. India has suffered from many disasters in recent history, both natural and climate related and this continue to cause devastation. About 60% of the landmass is prone to earthquake of various intensities, about 8% of the total area is prone to cyclones, over 40 million hectares is prone to floods and 68% of the area is susceptible to drought. In November 2015, floods in the southern city of Chennai, Tamil Nadu killed over 370 people and damaged crops worth US \$190 million. And in May 2016, record temperatures of 51°C hit phalodi, Rajasthan, during a heat wave that affected much of northern India. Despite being one of the most disaster prone countries in the world, the subject of disaster management could not find a place in the constitution of India. The dangers of climate change and its impact on the occurrence of natural disasters prompted the international community to recast the disaster management system in all parts of the world. In the wake of these persuasions Indian Parliament enacted the Disaster Management Act in 2005 to provide for the legal framework in which the structures function and activities related to management of Disasters are organized and implemented in effort to make the country disaster free. The paper therefore is an attempt to analyze the legal framework of disaster management in the country.

Keywords: Disaster Management, Risk, Environment, Legal Framework, Regulations, Mitigation. JEL Codes: K32, K4, Q540

Introduction

India is considered to be the most disaster prone countries in the world on account of its unique geo climatic conditions. Be it the super cyclone in Orissa in October 1999 and the Bhuj earthquake in Gujarat in January 2001. In the decade 2000-2019, an average of about 10,400 people lost their lives and about 1 billion people were affected by disaster. The estimated damage sustained by India in the last 17 years due to these disasters amounts to USD 63.6 billion (Rs 4,06,035 crore) according to the database.

Disaster management occupies an important place in this country's policy framework as it is the poor and the under privileged who are worst affected on account of calamities/ disasters. Disasters retard socio- economic development, further impoverish the impoverished and lead to diversion of scarce resources from development to rehabilitation and reconstruction. The steps being taken by the

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oldest disaster relief code which started in 1880. Eventually on a subject that has been argued to be within the exclusive legislative jurisdiction of the states. Parliament enacted the Disaster Management Act in 2005 that presently constitute the core of legal framework of disaster management in the country. The Disaster Management Act 2005 lays down strong institutional mechanism at the national, state and district level that will work together in close harmony.

Indian Constitutional Perspectives

The Indian Constitution guarantees protection of life, security and is considered as the magna-carta of fundamental rights. It's not only the government but also the authorities have to be in conformity with the constitution to safeguard and protect the fundamental rights. However disaster management was not considered a significant subject as to merit the attention of the constitution maker and to be a part of our existing legal regime till series of disaster struck the Indian continent. The GOI has come up with legislation. The object was to provide requisite institutional mechanism to draw and monitor the implementation of the disaster management plans. It's the duty on the part of the central and state government to prepare proper disaster management polices and programmes as a part of their efforts to attain sustainable development.

1. **The Environment Protection Act, 1986:** After the Bhopal Gas leak Tragedy, the Indian Parliament enacted the Environment Protection act 1986 for the purpose of safeguarding and protecting the environment from unregulated industrial or other activities.
2. **Environment Impact Assessment Statement:** In 1994, a notification was issued by the central government under section 3 of EPA making it compulsory for all industries to submit an Environment Impact Assessment statement to obtain clearance from central government to setup new projects.
3. **The 'Manufacture, Storage and Impact of Hazardous Chemical Rules' 1989:** In 1989, the central government framed this rule under the EPA. The objective is to prevent the major accidents arising from industrial activity, to inspect industrial establishments to ensure that they do not pollute the environment.
4. **The Coastal Regulation Zone (CRZ) Notification 1991:** In 1991, the GOI issued Coastal Regulation Zone (CRZ) Notification under the EPA to control the developmental activities within 500 meters of high tide line (HTL) in order to protect the fragile ecosystem of the coastal areas in India. Coastal Zones are classified into four categories.

CRZ - 1 (Sensitive and Inter tidal)

CRZ - 2 (Urban or Developed)

CRZ - 3 (Rural or under developed)

CRZ - 4 (Andaman Nicobar and Lakshadweep Islands)

5. **The Public Liability Insurance Act 1991:** The parliament enacted the 'Public Liability Insurance Act, 1991' for the purpose of providing immediate relief to the persons affected by accidents occurring while handling hazardous substances./ The act also provides for a mechanism to invite claims from the affected people in the event of an industrial disaster. The district collector receives claim settlements and processes the same.
6. **The National Environment Appellate Authority Act 1997:** This act provides for the establishment of an appellate authority to hear appeals with respect to restriction of areas in which any industries, operation shall not be carried out subject to certain safeguards under the EPA.

The Natural Disaster Management Act 2005

After discussions and recommendations of the High Power Committee on Disaster Management, the parliament enacted the Disaster Management Act in 2005 to act as the foundational legislation in the country. The National Authority which is to be chaired by the Prime Minister of India is entrusted with the responsibilities for laying down the policies and guidelines on disaster management and also for the state authorities at the state level. The act also ensures measures by the various wings of the Government for prevention and mitigation of disaster and prompt response to any disaster situation.

The act provides for setting up of a National Disaster Management Authority (NDMA) under the chairmanship of the Prime Minister, nine other members and one person as Vice-chairperson. The NDMA lay down policies on disaster management and guidelines to be followed by different ministers, department of GOI and state government to take measures for the management of disasters. As the executive arm of the NDMA the National Executive Committee (NEC) has been provided for coordinating the response in the event of any threatening disaster situation. The NEC will prepare the national plan for disaster management and will monitor the implementation of guidelines issued by NDMA.

At the state level and on the lines of the national framework (SDMA) state Disaster Management authority will lay down plans and policies for DM in the state. It will also approve the state plan in accordance with the guidelines laid down by the NDMA. The state government shall constitute a State Executive Committee (SEC) to assist the SDMA in the performance of its functions.

The most commendable part of the Act is in regard to District Disaster Management Authority (DDMA). The DDMA will act as the planning, coordinating and implementing body for DM at the District level and takes all necessary measures in accordance with the guidelines laid down by NDMA and SDMA. The DDMA seems to be placed in such a unique position that it can take a proactive approach for long term prevention and short term mitigation of disasters in the district.

National Institute of Disaster Management (NIDM) has emerged as a 'Centre of Excellence' in the field of Disaster management. In network with other knowledge based institutions it will function within the broad policies and guidelines laid down by the NDMA.

Creation of National Disaster Response force (NDRF) is a step forward in response to a threatening

disaster situation or emergencies both natural and man-made. Presently the NDRF comprises eight battalions strategically positioned in different parts of the country in such a way that they could be available for quick and effective response.

Financing has been considered as the most controversial aspects of the framework of disaster management. Thus, the act makes provisions on creations of two distinct funds. First one is the Disaster Response Fund at the National, State and District Levels. It comprises of any grant or donation made by individuals or institutions. The other fund called National Disaster Mitigation fund is to be constituted for financing the projects and programmes for disaster management.

Disaster Management Acts of Various States

In the light of Disaster Management Act, the states are ahead in comparison to the central legislation in India. The state of Gujarat initiated to get the Gujarat State Disaster Management Act, 2003 enacted in the same year to provide for the machinery, resources and the processes for well organized and effective management of disasters in the state. This remarkable start was followed by Bihar to enact the Bihar Disaster Management Act, 2004. Subsequently the state of Uttaranchal and Uttar Pradesh also passed their relative disaster management act in 2005 along with the passage of the central legislation on the subject. Credit must be given to these states for implementing a district disaster management.

Conclusion

Disaster management has to be a multi-disciplinary and pro-active approach. Various measures has to be taken for putting in place institutional and policy framework, disaster prevention enunciated in this paper and initiatives being taken by the central and the state government, the community , civil society organizations and media also have a key role to play in achieving our goal of moving together, towards a safer India. The message being put across is that development projects should be sensitive towards disaster mitigation in order to move towards safer and sustainable national development.

Our mission is vulnerability reduction to all types of hazards, be it natural or manmade. This is not an easy task to achieve keeping in view the vast population and the multiple natural hazards to which this country is exposed. However, if we are firm in our conviction and resolution, the task though difficult, is achievable and we shall achieve it through a techno legal and financial framework.

Almost all the committees and commission set up to review the working arrived at the conclusion that at best disaster management can be a existing /concurrent subject rather than considering it under exclusive jurisdiction of the states.

The states emerged as the pioneers in enacting and implementation of the legislations as they got their laws enacted even when the central government was in the midst of consultation and drafting its own legislation.

Lastly due to the developmental and humanitarian nature of activities involved in the management of disasters, the subject has not become a point of formal discussion between centre and states. But the issue remains a potential flashpoint in the centre-state relations in future.

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