

CALLING FOR DISASTER MANAGEMENT PERSPECTIVE IN INDIA: A JURISPRUDENTIAL ASPECT

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Abstract-

The disaster events whether natural or man-made occurred in India, highlights the need of protection of environment, rights of the victims and duty of the state to provide safe environment. The Constitution of India under Article 21 provides for 'quality of life', similarly, Article 47 states 'standard of living', thereby provisions relating to disasters involves fundamental rights, human rights as well as under social rights mentioned under directive principles of state policy. No doubt, disaster victims are the most susceptible groups whose fundamental human rights should be fully protected. The government is required to secure citizens' right to live with dignity, right to protection of life and adequate standard of living, for this purpose disaster management is desirable. When in case of crimes, society can be given an upper hand over individual rights then right to public health should also be given due importance. Industrialised countries, newly industrialised countries and the developing world are facing massive amount of ecological problems e.g. climate change, global warming etc. In India deforestation, land degradation and pollution of water and air are the central features of environmental crises. Thus, protection of environment and management of disasters are international concern.

Keywords – Disaster, Management, Health, Sustainable Development.

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Introduction -

Environmental science is a branch of science that teaches us to protect and maintain our natural resources of land, water, air and vegetation. All the progress and steps taken in industries, agriculture and technologies for improving human life quality has been made possible by relying on resources available in land, water and vegetation. All the living beings are dependent on the environment. To standardize the quality of human life, men use the all the available natural resources in different sectors of development. Thus, all this process of growth and development of living organisms are done under the umbrella of environment and man has come a long way in this process of development. It is not an easy task to define 'development'. Development can be defined as the alteration of the biosphere and the application of human, financial, living and non-living resources to satisfy human needs and improve the quality of human life.² In general parlance, it includes growth of human society; essentially in terms of economy. Although development of only one or some of the facets of life is not indicative of development but it is also an established fact that economic stability provides for the development in other fields as well. If we talk in present, industrialization has led to the economic growth. With this economic growth man has disturbed ecology. Thereby components of environment are badly affected and thus, causing various man-made disasters like radiation contamination etc.

The term 'disaster' has been derived from a French word disaster meaning bad star; it implies that when the star is in bad position, a disaster is about to happen. So, it can be defined as "sudden hardship". According to Draft Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill, 2017 –

"Catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes or by accident or negligence which results in substantial loss of life or human suffering or damage to and destruction of property or damage to; or degradation of environment and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area."

As per Disaster Management Act, 2005, "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; evacuation, rescue and relief; (vii) Rehabilitation and reconstruction." Thus, disaster management is a collective term which includes all the facets of planning, both pre disaster and post disaster. So we can say that disaster management is an orderly process and its object is planning and implementing all the measures necessary to mitigation of consequences of disasters and also to give post disaster assistance.

² *World Conservation Strategy*, 1980.

Disasters interrupt growth of the country and destroy the hard-earned fruits of meticulous developmental efforts. It pushes nations especially developing countries, in quest for progress, back by several decades. It is to be noted that India falls in the high risk category of disaster as compared to the United States and Japan which were rated low risk in their assessment of social and economic ability to cope with a disaster. Faster growth and increasing urbanization may result in larger economic losses in case of any disaster in developing countries.³ Thus, efficient management of disasters, rather than mere response to their occurrence, has in recent times, received increased attention both within India and abroad. This is as much a result of the recognition of the increasing frequency and intensity of disasters, as it is an acknowledgement that good governance in a social welfare state, needs to deal effectively with the devastating impacts of disasters.

Reasons and effects of disasters –

These human or anthropogenic activities have often led to deterioration of the natural resources. Besides anthropogenic activities, natural hazards of earth quakes, land-slides, cyclones and floods pose threat to human life and the natural resource system. Therefore, disasters are of two categories – natural disasters & man-made disasters; the third and emerging category is disasters with intention.

Behind natural disasters there are natural forces *e.g.* floods. These disasters generally cannot be predicted like earthquakes, tsunami, cloud busting etc. whereas manmade disasters, as the name suggests, are the result of reckless acts and excessive exploitation of the environment. Floods, cyclones, earthquakes, cloud busting are some of the examples of natural disasters frequently happening in India. Thus, man-made disasters are generally the outcome of failure of system due to human error or negligence. Impact of disasters may be categorized as, direct, secondary and indirect effects. Direct effects include immediate effects of disaster like deaths, injuries and physical damage etc. However, secondary disaster includes releasing fire or hazardous material that is triggered by disasters. Finally, indirect impact includes unemployment etc.

It can be said that effects of both, natural and man-made disasters are almost the same like causing the loss of lives, disrupting the normal day to day life, loss of property as well; it negates the process of development which is not even causing any harm to the environment. According to the World Bank Report⁴, direct losses from natural disasters have been estimated to amount to up to 2 per cent of India's GDP and up to 12 per cent of central government revenues. Besides, normal needs and processes like flood, shelter, health etc are affected in general and especially when epidemics are broke out as an after effect of disaster. Moreover, any disaster event creates further vulnerabilities for certain sections of society. These include the old, women and children. In addition, disasters can cause disabilities as well and when a person is already

³ Government of India Planning Commission, 'Report of the working group on Disaster Management', twelfth five year plan (2012 - 2017).

⁴ Natural Hazards, Unnatural Disasters.

having any disability, such person is prone to fatalities and injuries. Whereas the third category, disaster with intention denotes that the culprit was not worried about the consequences of their act e.g. bioterrorism, nuclear bomb attack on Hiroshima and Nagasaki during World War II.

Jurisprudential Aspect

Right to healthy environment is itself an essential condition for the very existence of all the species. This instant right acts like a *grundnorm*. Thereby making it crucial for the government to take all the steps to protect it. The traditional view in criminal law is that offenses are primarily violations of the state's public order, despite being directed at specific individual victims.⁵ By contrast, many (though not all) environmental offenses may be crimes that are primarily committed against society, or a part of society, without identifiable victims. The absence of direct victims of environmental harm and the fact that few are likely to lodge complaints diminishes the prospect that the perpetrator will be found and held accountable. Environmental protection therefore militates in favor of greater state intervention through criminal law to protect uncoordinated and disaggregated individual interests. The time has come that the state should take all the necessary steps to enforce environmental laws so that the present environment heritage can be protected and thus, can be passed down to the next generation. The state is expected to attach some penalty when grave damages are being caused to the environment by whomsoever. Moreover, from the sociological perspective as well, the state is supposed to define the balance among various interests. In a facet like environment, individual right can never supersede public interest. If the industries are causing pollution or some group of people causing public nuisance resulting into diminishing the quality of nature and environment, their right to carry on the business of their choice cannot be held superior over the people's right to live in a healthy environment. Right to live is a fundamental right under Article 21 of the Constitution of India and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.⁶ In a scenario where a group of people are running an occupation of such nature which is causing nuisance and damage to the environment, priority must be given to the cleanliness and sanctity of environment, in spite of the fact that running a business or occupation is a fundamental right of an individual. The Supreme Court has also stated, "Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy."⁷

Sustainable development - It is a well known fact that the main reason of out breaking of disasters is due to the degradation of environment.

⁵ *R v. Bateman*, [(1925) 19 Crim. App. 8 (Lord Hewart C.J.) (Eng.)], establishing the level of culpability for criminal negligence as such that the State would intervene to punish even if the victim decided not to pursue the matter before civil courts.

⁶ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

⁷ *M. C. Mehta v. Union of India*, AIR 1987 SC 1086

When it comes to infrastructure planning, developmental policies preside over the issues like cleanliness of water stream, quality of air etc. Environmental issues have not been included as an integral part of urban development programs but progress can never be compared with life. Converting human existence into animal existence no doubt amounts to take away human life, because a man lives not by his physical existence or by bread alone but by his human existence.

Sociological School of Jurisprudence considers law as a social phenomenon and observes consequences of law on human beings in a civilized society. A healthy body is the very foundation for all human activities. In a welfare state it is the obligation of the state to ensure the creation and sustaining of conditions congenial to good health.⁸ The goal of economic and social development must be defined in terms of sustainability. The term sustainable development was coined for the first time by the International Union for the Conservation of Nature (IUCN) in the year 1980 in its 'World Conservation Strategy'. Sustainable development is development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.⁹ Thereby, the term sustainable development connotes two things, first being the 'need'; one the essential needs of the world of poor, to which overriding priority should be given and secondly limited use of technology and in such a way so as to maintain the ability of environment to meet the needs of present and future. That is to say sustainable development includes intergenerational equity, use and conservation of energy, protection of environment, obligation to co-operate and also, financial assistance to developing countries. Thus, the available resources should be used in such a way by the present generation that the upcoming generations don't have to face any crisis. Science and Technology has improved the quality of life for billions of people, but these changes have weakened nature's capability to deliver key services. Thus, such quality of environment and abundance of resources should be passed on to the next generation as we received it from our ancestors.

Health- The term disaster management implies preparedness, mitigation, response, recovery and responsibility. Management of health of the victims during disasters and after disasters falls under the domain of right to public health. Since there are possibilities that epidemics may broke out as an after result of disaster, so, right to public is also covered under the disaster management. Moreover, for the treatment of casualties' also preparedness and recovery factor is important. The definition of health given by W.H.O. has helped to move health thinking beyond a limited, biomedical and pathology based perspective to the more positive domain of "well being".¹⁰

W.H.O. further goes on to establish a relationship between disasters and health and defines disaster as any sudden occurrence of the events that causes ecological disruption and loss of human life, deterioration of health and health services, on a scale sufficient to warrant an extraordinary response from outside the affected community or area.¹¹ Health and well being of the society goes hand in hand. Here 'well being' can be defined as the quality and standard of living. When one argues that everyone should have a right to live in healthy environment, then the standard of living provides for safe environment as well. Again, the term 'quality' describes life far from bare existence and a life full of comfort and happiness. Everyone must have the right to health of himself and of his family, including food, clothing, housing and medical care and necessary social services.

From the Indian perspective, constitution makers impose this duty on state to ensure public Health¹². The constitution mandates that the state is supposed to make measures to improve health care of the people and asks to ensure a social order for the promotion of welfare of the people. Part IV of the Constitution further lays down that it is the primary duty of the state to improve public health and the court can enforce this duty against a defaulting authority on pain of penalty prescribed by law.¹³ Article 47¹⁴ of the Constitution of India spells out the duty of the state to raise the level of nutrition & the standard of living of its people as primary responsibility.¹⁵ The concept of democratic socialism aims to improve the condition of health care of the people. Apart from Directive Principles of State Policy, right to public health forms a segment of Article 21¹⁶ as 'quality of life'. Thus, Article 21 should be read with Articles 47 to understand the nature of the obligation of the state in order to ensure the effective realization of right to public health. Since the process of industrialization cannot be stopped, therefore, restoration of healthy environment is becoming an unfeasible task.

Conclusion

India has always been a victim of disasters due to its special geo – climatic conditions and because excessive exploitation of nature by humans. Exploitation of nature and global warming are increasing the occurrence and intensity of various natural disasters like floods, drought, cyclones

etc. Disaster management adds a new and important dimension to the existing studies relating to preparedness, response including relief and rehabilitation, and mitigation. We should give equal importance to preparedness and to relief and rehabilitation. This approach is also known as Disaster Risk Reduction. This approach can help in identify victims, loss of employment and economic, social and cultural loss. Victims' rights-based approach can ensure that government is constantly making an effort in this regard. As India progresses towards its objective of achieving environmental protection, sustainable development, inter & intra generational equity, it would be significant to look into the persistent vulnerability of many regions in the country to disasters, displacement and loss of lives.

No doubt, disaster victims are the most vulnerable groups whose fundamental human rights should be fully protected. The government is required to secure citizens' right to live in safe environment and right to health in order to provide them adequate standard of living. A holistic approach is needed to deal with the issue of disaster management. Damage caused by disaster can be, sometimes, immeasurable and varies with the geographical location and degree of vulnerability. This also influences mental, socio-economic, political and cultural state of the affected area. Furthermore, awareness should be raised about the disasters. Present need is to build a nation-wide culture of deterrence by introducing disaster management in the school level and also by including relevant aspects of disaster management in professional level and creating a massive awareness at all levels.

Considering that unregulated industrial development, certain kind of mischief, public nuisance etc. may give rise to a degree of pollution which poses risks to the environment, it is the high time to invoke present provisions to protect the health of human beings and lives of other creatures by solving environmental problems as they strike directly at our most intimate links to the biosphere, which is a thin shell of life. At present, disaster management is not something to be side lined. Since the life and health of human beings is precious, the environmental media and fauna & flora must be protected by all possible means to maintain ecological balance, uncontrolled use of technology and the excessive exploitation of natural resources which entail serious environmental hazards must be overcome by appropriate and concerted measures. To be developed in real sense, development should be sustainable and it must take account of social and ecological factors, as well as economic ones & also that of the living and non-living resources.

In *M.C. Mehta v. Union of India* the Court held that when an enterprise is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory or residing in the surroundings, owes an absolute and non delegable duty to the community to ensure that no harm results to anyone carrying out this activity or otherwise and also said that an enterprise must take an highest standard of safety and it should be no answer that it has taken all reasonable care for no fault or negligence.

⁸ *Ramkrishnan v. State of Kerala*, AIR 1999 Ker. 398.

⁹ *Brundtand Report*, "Our Common Future", 1987

¹⁰ "Health is a state of complete physical, mental and social well being and not merely the absence of disease."

¹¹ Preamble to the Constitution of the WHO as adopted by the International Health Conference (Official records of the WHO, no 2, P. 100.

¹² Article 47 of the *Constitution of India*.

¹³ *Ratlam Municipality v. Vardichand* AIR 1980 SC 1622.

¹⁴ Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

¹⁵ *Javed v. State of Haryana*, AIR 2003 SC 3057.

¹⁶ No person shall be deprived of his life or personal liberty except according to procedure established by law.