

Constitutional and legal Framework for effective Disaster Management in India

Manoj kumar jain
 Research scholar, Depart. Of Public Administration
 Govt.Arts College, Kota
 Kota University, Kota

Abstract

Institutional arrangements for disaster management and legal frameworks are interlinked. Laws and regulations provide an enabling framework to the organizational structure and its participants. An Organizational structure without a legal foundation would be less effective. In the larger context, however, the overall system of governance, which includes policies, institutions, laws and values, influence the relative strengths and achievements of the agencies and individuals undertaking the activities of disaster management. Consequently, a review of law relating to disaster management would invariably involve an analysis of the organizational structures at different levels, their roles, functions and appropriateness for the tasks assigned or to be assigned. Laws and institutions evolve over time and are influenced by the thoughts, ideas and events as the time changes. The DM Act, 2005, in India exemplifies this to a great extent, it is both interesting and useful to delve into some of the important developments and trends at the international and national level, which prepared the ground for and accelerated the process of the enactment of the Act. All the initiatives were characterized by a considerable focus on legislation, policy and institutional arrangements as important ingredients of a holistic and integrated approach to the disaster management. Disaster Management includes an integrated and inter-disciplinary approach to mitigate the effects of disasters affecting the living and non-living animals. In India, we had no such plans as part of our existing legal regime till, the 2005 Tsunami struck the Indian continent. The Government of India has come up with legislation with the objective to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans to ensure measures by various wings of Government for undertaking a holistic, co-ordinate and prompt response any disaster situation.

Keywords: disaster, mitigation, preparedness, risk, Disaster management,

Role of Disaster Management legislations-

Laws can be used to provide penalties and incentives by enforcing standards, to empower existing agencies or establish new bodies with new responsibilities, and to assign budget lines. The role of legal framework in disaster management has been well recognized in the last two decades by policy makers, practitioners and analysts at the national and international level. The following statement from the Global Assessment Report on Disaster Risk Reduction, 2011, citing from various sources:

- ¹To implement such emergency actions effectively, legislation is necessary. A legal framework establishes “legal authority for programs and organizations that relate to hazards, risk and risk management. (**Mattingly, 2002**)
- These laws may dictate or encourage – policies, practices, processes, the assignment of authorities and responsibilities to individuals and/or institutions, and the creation of institutions or mechanisms for coordination or collaborative action among institutions”. **Britton (2006)**
 Disaster risk reduction legislation

This chapter is sub- divided into two sections-

1. Constitutional Provisions for Disaster Management in India

1- Disaster risk reduction legislation as a basis for effective adaptation Silvia Llosa & Irina Zodrow 2011

Constitution of India does not have any explicit provision on the subject of disaster management. Despite being one of the world's lengthiest constitutions, disaster management in the constitution may probably be explained by three interrelated reasons. **Firstly**, being the supreme law of the land, a constitution is usually a body of basic laws to outline the fundamental contours of a polity with elaborate provisions on fundamental rights and indicative division of legislative, administrative and financial competencies of different strata of governments. **Secondly**, and more importantly, at the time of framing the constitution, disaster management was not considered such a significant subject as to merit the attention of the constitution makers, and find a place in the provisions of the constitution. **Finally**, the prevalence of tools of disaster management such as Famine Code along with the existence of steel framed administrative machinery to conduct the rescue and relief operations in the times of disasters probably appeared sufficient, to manage the disasters even in future as well. As a result, the subject of disaster management failed to secure a place in the elaborate scheme of division of vital subjects between the centre and states. The HPC and the Second ARC have examined the necessity of a specific entry relating to disaster management in the Constitution of India. In the **Seventh Schedule** of the Constitution, subjects that come under the legislative competence of the Union and state governments are enumerated in the Union List and the State List, respectively. Subjects on whom both the Union and state governments have concurrent legislative jurisdictions are included in the Concurrent List. Disaster management was not mentioned specifically as a subject in any of the lists. According to the HPC, the only two entries in the State List that are somewhat related to the subject of disaster management are **entry 14** – which deals with agriculture, including protection against pests and plant diseases – and **entry 17**, which deals with water, including water supply, drainage and embankments. The HPC strongly felt that this was grossly inadequate, and that disaster management needed a specific entry in the Seventh Schedule of the Constitution of India.

Indian Constitution and Natural Disaster -²Indian Constitution, the magna-cart of Fundamental Rights for Indians which guarantees to protection of life and security with the purpose of ensuring a welfare State. Laws and regulations framed by the Central and State Governments have to be in conformity with the Constitutional provisions, Also the authorities have a duty under the Constitution to safeguard and protect the Fundamental Rights. The scope and applicability of these Fundamental Rights and the validity of the laws passed by the legislatures and the executive actions of the government are regulated by 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 “Disaster Management” means all the aspects of planning, coordinating and implementing all measures which are necessary nor desirable to prevent , minimize, overcome or to stop the spread of a disaster upon the people or any property and includes all stages of rescue and immediate relief.

As mentioned in the **Third report of the Second ARC (page 34)**, a subject not specifically mentioned in any of the three lists of the Seventh Schedule of the Constitution comes under the Residuary Power of the Union under **entry 97** of the Union List: “According to one view, Parliament therefore has the competence to legislate on the subject. However, by practice and convention the primary responsibility for managing disasters rests with the State Governments.” State governments are provided financial assistance by the Union Government for meeting expenditure on specified natural calamities on the basis of the recommendations of the Finance Commissions. The Parliament enacted the DM Act, 2005, by invoking entry 23, namely, “Social Security and Social Insurance; Employment and Unemployment” in the Concurrent List of the Constitution of India. This also has the advantage that that States can have their own legislation on disaster management as well.

According to the Second ARC, all aspects of disaster management, including preparedness, early warning systems, rescue, relief and rehabilitation, are not covered by entry 23, of the Concurrent List. The term ‘Disaster’ includes natural calamities and industrial disasters, health related disasters (epidemics) and disasters caused by acts of terrorism. There are various entries in the three lists which deal with some or the other aspect of disaster management. For example, Public Order and Public Health are included in the State List. Entries 14 and 17 of the State List deal with agriculture and water, respectively. Environment and social security are included in the Concurrent List. Atomic energy and the railways are part of the Union List. All these are relevant to disaster management.

2.2 Disaster Management Legal Framework in India

³ Legal framework constitutes the foundational pivot around which different aspects of an activity are interwoven. It is probably for this reason that in constituting modern democratic political systems, it has been found essential to ordain

² <http://14.139.60.114:8080/jspui/bitstream/123456789/700/8/Legal%20aspects%20of%20Disaster%20Management.pdf>

³ International Journal of Humanities and Social Science Vol. 5, No. 12; December 2015 108 Constitutionalism and Democracy: A Critical Perspective

that on the basis of a written Constitution. This enclosed the issues and activities that could not find place in the scheme of a written Constitution. In India, one such issue has been the management of disasters. 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 for reasons explained later in the paper. Disasters should be managed in the classical colonial mode of trial and error resulting into untold miseries for the people and massive loss of lives and Property. In such an overhaul of the disaster management systems, central place was afforded to the provision of a sound legal framework. 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, functionaries and activities related to management of disasters should organize and operational in order to make the country disaster free.

- In the 1970s, a comprehensive drought management programs focusing on mitigation was taken up through the Drought Prone Areas Program (DPAP). After Independence, a Scarcity Relief Division was set up in the Ministry of Agriculture, Government of India, to deal with the problem of food scarcity. Thus the Ministry of Agriculture became the nodal Ministry for disaster management at the national level. In 1995, the National Centre for Disaster Management (NCDM) was established within the Indian Institute of Public Administration (IIPA). The NDM Division and the NCDM were expected to control the Disaster situations.
- The Government of India constituted a High Powered Committee (HPC) on disaster management under the chairmanship of Sh. J.C. Pant in August, 1999. The HPC's mandate was to review existing arrangements for preparedness and mitigation of natural disasters and recommend measures for strengthening the organizational structure. The HPC formulate a comprehensive model plan for natural disaster management at the national, state and district levels. Subsequently manmade disasters were also brought within its scope. The final report of the HPC in October, 2001 leads a vision to work towards a Disaster-free India by adhering to a culture of preparedness, quick response, strategic thinking and prevention. The HPC's recommendations spanned the Constitutional and legal framework, organizational structures and institutional mechanisms keeping in view the overall disaster management system of the country.

⁴There are a number of laws and codes at the state level on subjects relating to fire prevention. Acts and rules addressing disaster risk reduction issues in India are-

- The Indian Forest Act, 1927
 - The Factories Act, 1948
 - Civil Defense Act, 1968
 - Water Act (Prevention and Control of Pollution), 1974
 - Guidelines for diversion of Forest lands for non-forest Purpose under the Forest (Conservation), Act, 1980
 - Air (Prevention and Control of Pollution) Act, 1981
 - Environment (Protection) Act, 1986
 - Factories Amendment Act, 1987
 - The Hazardous Wastes (Management and Handling) Rules, 1989
 - Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
 - Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms, Genetically Engineered Organisms or Cells, 1989.
 - The Public Liability Insurance Act, 1991
 - The Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules, 1996
 - Bio-medical Waste (Management and Handling) Rules, 1998
 - Dumping and disposal of fly ash discharged from coal or lignite based thermal power plants on land Rules, 1999
 - The Municipal Solid Waste (Management and Handling) Rules, 2000
 - The Biological Diversity Act, 2002
 - Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
 - Hazardous Waste (Management, Handling and Tran's boundary Movement) Rules, 2008
 - The Cultural Heritage Conservation Bill, 2010 (Draft)
 - Mines and Minerals (Development and Regulation) Act, 2010
 - The National Green Tribunal Act, 2010
 - Wetlands (Conservation and Management) Rules, 2010
- Besides this the States and UTs have their own laws.

⁴ EXISTING SETUP FOR DISASTER MANAGEMENT IN INDIA-NDMA 2010 pp21

National Calamity Management Act 2003 -The HPC prepared a draft of which was circulated to all States and the relevant Ministries of the Government of India for their comments. The proposed Act aimed at ensuring efficient and effective management of natural and other calamities by achieving greater co-ordination and responsiveness for the purpose of prevention and mitigation of disasters. The proposed National Calamity Management Act envisaged the formation of a National Centre for Calamity Management (NCCM) and also dwelt on the duties and functions of the Central Relief Commissioner, State Relief Commissioners and District Relief Commissioners. It also provided for a National Calamity Contingency Fund. There were provisions related to offences and penalties, too. Though not incorporated in the proposed Act, the HPC recommended the creation of a separate Ministry of Disaster Management. It also recommended a Cabinet Committee on Disaster Management and a National Council on Disaster Management with all parties being represented in it.

State Disaster Management Act -The HPC also prepared a Model which could be adopted by the States to prepare their legislation on disaster management. The Model Act identified the principal authorities for disaster management – the state government, Standing Technical Committee, State Relief Commissioner and District Magistrate – and outlined their powers and responsibilities, duties and functions. It also enumerated the duties of local bodies and other agencies such as State Police, Home Guard, Civil Defense, and Public Enterprises. It specifically mentioned the role of insurance as a mitigation measure. The Model Act also contained provisions regarding liabilities, offences and penalties. In both the draft Acts – the National Calamity Management Act and the State Disaster Management Act – there was an emphasis on capacity building and training of various stakeholders. Among others the HPC recommended the setting up of the NIDM for capacity building, and the creation of a separate department to deal with disaster management in the Government of India.

National Committee on Disaster Management -As mentioned earlier, after the 2001 Gujarat earthquake, an All-Party under the chairpersonship of the Prime Minister of India was constituted in **February 2001**. The HPC was converted into a Working Group under the overall supervision of the Vice-Chairperson of the National Committee on Disaster Management. The National Committee endorsed HPC's recommendations for the enactment of a central legislation on disaster management. In a communication dated July 29, 2003 which was sent by the then Deputy Prime Minister to the Chief Ministers on the various measures to be taken, it was, inter alia, suggested that the state governments could enact their own State Disaster Management Act. However, in the aftermath of the 2004 Asian tsunami, it was decided that a central law on disaster management be enacted and a National Disaster Management Authority be constituted. Thus, the national level legislation was the culmination of a process which started almost a decade earlier. Global initiatives, international interactions and national experience served as catalysts for moving towards creating a legal framework for disaster management. The 2001 Gujarat earthquake generated a sense of urgency, resulting in the Gujarat State Disaster Management Act, 2003 which was the first such Act in the country. The process at the national level was influenced by major disasters such as the 1999 Odisha super cyclone and the 2001 Gujarat earthquake. The 2004 Asian tsunami provided the final impetus for the enactment of the DM Act, 2005 on December 23, 2005.

Disaster Management Act, 2005

⁵The Act lays down institutional, legal, financial and coordination mechanisms at the National, State, District and Local levels. These institutions are not parallel structures and will work in close harmony. The new institutional framework is expected to usher in a paradigm shift in DM from relief-centric approach to a proactive regime that lays greater emphasis on preparedness, prevention and mitigation. Institutional Framework under the Act **National Disaster Management Authority (NDMA)** - The NDMA, as the apex body for disaster management, is headed by the Prime Minister and has the responsibility for laying down policies, plans and guidelines for DM and coordinating their enforcement and implementation for ensuring timely and effective response to disasters. The guidelines will assist the Central Ministries, Departments and States to formulate their respective DM plans. It will approve the National Disaster Management Plans and DM plans of the Central Ministries/Departments. It will take such other measures, as it may consider necessary, for the prevention of disasters, or mitigation, or preparedness and capacity building, for dealing with a threatening disaster situation or disaster. Central Ministries/Departments and State Governments will extend necessary cooperation and assistance to NDMA for carrying out its mandate. It will oversee the provision and application of funds for mitigation and preparedness measures. 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 general superintendence, direction and control of the National Disaster Response Force (NDRF) are vested in and will be exercised by the NDMA. The National Institute of Disaster Management (NIDM) works within the framework of broad policies and guidelines laid down by the NDMA.

⁵ Thesis on "A SOCIO- LEGAL STUDY OF PRISON SYSTEM AND ITS REFORMS IN INDIA MOHANLAL SUKHADIA UNIVERSITY In the Faculty of Law By PRIYADARSHI NAGDA,2016

CONCLUSION AND SUGGESTIONS

There are huge efforts made by the Indian Government in regards of providing free constitutional and legal to ensure the true prevalence of actual welfare state in India. There are many problems in implementing it in true sense in the Indian society. The major obstacles to the legal aid movement in India are the lack of legal awareness and illiteracy. People are still not proper aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness, which leads to exploitation, and deprivation of rights and benefits of the poor. Thus it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. If they were aware about their rights then they may claim for it in courts. Otherwise, they may try to settle their disputes on the streets or roads to protect their rights through muscle power and in such condition there will be anarchy and complete death of the rule of law. This means that its work is clearly addressing the constitution and legal rights for the majority of the peoples, who are not aware about them. The constitution also gives the power at the local levels so that the Disaster can easily coordinated, Mitigated at the grass-root level efficiently.

References:

1. International Federation of Red Cross, 2011.
2. Subhradipta Sarkar & Archana sarma, "The disaster Management Act, 2005 – A disaster in waiting?" From the Lawyers Collective, Aug-Sep, 2006.
3. "Disaster Management" means all the aspects of planning, coordinating and implementing all measures which are necessary nor desirable to prevent , minimize, overcome or to stop the spread of a disaster upon the people or any property and includes all stages of rescue and immediate relief.
4. Disaster Management Act, 2005 5 Supreme Court has held in Vellore Citizens welfare Forum V. Union of India reported in (1996) Vol. 5 Supreme Court Case p. 647 as follows; "The Constitutional and statutory provisions protect a person's right to live, fresh air, clean water and pollution free environment. Our legal system having been founded on the British common law the right of a person to a pollution free environment is a part of the basic jurisprudence of the land.
5. The right to sustainable development as part of clean environment has been recognized by the Supreme Court of India in several decisions. See Vellore Citizens Welfare Forum; Also see., M.C.Mehta V. Union of India (1997)SCC715. 7 The Supreme Court stated as follows:"Disaster Management" means all aspects of planning coordinating and implementing all measures which are necessary or desirable to prevent, minimize, overcome or to stop the spread of a disaster upon the people or any property and includes all stages of rescue and immediate relief
6. Ghosh S.K. : Women in a changing world : Ashish Publishing house 8/81, Punjabi Bagh, New Delhi –110026 : Tele : 500581.
7. Indian Law Institute: Release on Bail Law & Practice, 1986,
8. S.P. Dhavan at the Central Electric Press, 80-D, Kamla Nagar, Delhi-7.
9. Jayapalan N. : Women & Human Rights, 2001, Atlantic Publishers, B-2, Vishal Enclave, Opp. Rajouri Garden, New Delhi-27 Ph. 5413460