

# LEGAL MECHANISM FOR DISASTER MANAGEMENT IN INDIA

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## ABSTRACT

India is a country which is not lacking behind so far as witnessing the devastating effects of disaster is concerned. In the past India has witnessed thousands of deaths, destruction, agony of its people during different times due to the outbreak of different disasters. It is a responsibility of the central government as well as of state governments to respond to these outbreaks and to come up with a framework that can take measures to minimize the damages. A comprehensive legal mechanism is an important part of the framework. In the year 2005, India has introduced the Disaster Management Act, 2005 which presently represents India's comprehensive legal mechanism for disaster management in this country apart from certain state legislations in this regard. This paper is an attempt to make a detailed analysis of this Act, its efficacy for disaster management and competence of the mechanism developed under this Act for disaster management in India as well as to make suitable recommendations for better disaster management in this country.

**Keywords:** Disaster Management, Legal Mechanism, Framework,

## **INTRODUCTION**

The world during different times has experienced the devastating effects of various disasters resulting in the loss of lives, property, breakdown in development, economy and so on. India is also not new to this and has gone through the pain of disaster in its recent past; some on these are the Tsunami of 2004, the Gujrat Earthquake etc. This has led the government to think about a comprehensive legal mechanism for effective disaster management. Being a great admirer of the United Nations principles and policies; India could not prevent itself from joining the global movement for prioritizing disaster administrative framework for efficient management of disaster so that damages or losses can be minimized. The devastating effects of disasters in the recent past have exposed the incapacity of different state governments in effective management of disaster of a great magnitude and this has raised questions about the competence and effectiveness of the existing framework which was prevalent in this country. This has turned back the focus on the central government which has involved itself in developing a comprehensive legal framework for disaster management together with the establishment of a federal agency which would guide and coordinate the state governments in effective disaster management. And as a result of this the federal government has exercised its legislative power on a matter which many believes that it comes under the legislative power of the states. Ultimately, the government of India has enacted the Disaster management Act, 2005 which presently constitutes the spine of disaster management in this country<sup>i</sup>.

## **AIMS AND OBJECTIVES OF THE DISASTER MANAGEMENT ACT, 2005**

An analysis of the Act would reveal that the Act has set out certain goals to be achieved for an effective disaster management in India which can be categorized as under:

- i. The Act has paved the way for establishment of agencies and functionaries both at the centre as well as at the state; district and local level and also defined the powers and duties of such agencies or functionaries.
- ii. The Act constituted the National Disaster Management Authority in order to formulate policies and approve the planning for disaster management. The authority

- under Section 7 of the Act may constitute a National Advisory Committee for giving recommendations on matters relating to disaster management.
- iii. The National Disaster Management Authority has been entrusted with the responsibility of coordinating the enforcement and implementation of the planning and policies for disaster management in India.
  - iv. The National Executive Committee, the executive arm of the authority has been constituted in order to assist the National Disaster Management Authority in performance of its functions connected with disaster management.
  - v. The National Executive Committee has the pivotal duty on implementing the policies and plans of the National Authority and to ensure compliance with the directions issued by the Central Government for effective disaster management in India.
  - vi. The Act ensured that states are no more the final authority in formulating policies and plans for disaster management and execution at its own discretion. They are not only bound by the broad guidelines and policies put forward by the National Disaster Management Authority but also bound to comply with the directions given by the national Executive Committee in case they are found flouting the national mechanism for disaster management.
  - vii. The National Disaster Management Authority and the National Executive Committee together will be laid down the guidelines for the state authorities so far as disaster management is concerned.
  - viii. At the state level the Act also provides for constituting State Disaster Management Authority and the State Executive Committee.
  - ix. The State Disaster Management Authority has been empowered by this Act to review the development plans of different departments of the State. The State Executive Committee has also been empowered by this Act with certain powers to deal with threatening disastrous situations.
  - x. Part IV of the Disaster Management Act made significant contribution by providing for establishment of District Disaster management Authority as it rests on this authority in case of a disaster to execute the plan of action in coordination with the other authorities established under this Act.

- xi. Under Chapter VIII; The Act provides for the establishment of National Disaster Response Force which is considered to be a significant contribution so far as saving the lives of people is concerned in case of outbreak of a disaster.
- xii. The Act aims at establishing Disaster Response Fund to be created at national, state and district level as funding is considered to be one of the most crucial aspects of the framework of disaster management in this country since its inception. The national Executive Committee is the administering authority of this fund.
- xiii. The Act further provides for constitution of national Disaster Mitigation Fund for financing the projects and programs to be initiated for disaster management. The National Disaster Management Authority is the administrator of this fund<sup>ii</sup>.

## **MEANING OF DISASTER MANAGEMENT**

Disaster Management means a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for-

Prevention of danger or threat of any disaster;

- a. Mitigation or reduction of risk of any disaster or its severity or consequences;
- b. Capacity building;
- c. Readiness to deal with any disaster;
- d. Immediate response to any threatening disastrous situation or disaster;
- e. Measuring the severity or magnitude of the effects of any disaster;
- f. Evacuation, rescue and relief;
- g. Rehabilitation and reconstruction<sup>iii</sup>.

### ***Powers and Duties of the National Authority:***

1. The National Authority shall in confirmation with the provisions of this Act have the responsibility of laying down policies, plans and guidelines for disaster management for securing effective response to disaster.
2. Apart from the above the national Authority may-

- a. Approve the National Plan;
- b. Approve plans prepared by ministries or departments of Government of India in accordance with the national Plan;
- c. Lay down guidelines to be followed by the State Authorities in drawing up the State Plan;
- d. Lay down guidelines to be followed by different ministries or departments of Government of India for the purpose of integrating measures for prevention of disasters or mitigating its effects in their development plans and projects;
- e. Coordinate the enforcement and implementation of the policy and plan for disaster management;
- f. Recommend provisions of fund for mitigation;
- g. Provide such support to other countries effected by major disasters as may be recommended by the Central Government;
- h. Take such other measures for prevention of disaster, or mitigation or preparedness and capacity building for dealing with threatening disaster situation or disasters;
- i. Lay down broad policies and guidelines for the functioning of National Institute of Disaster Management.

The Chairman of National Disaster management Authority shall, in case of emergency, have all or any of the powers of the National Authority but exercise of such powers shall be subject to the ex post facto ratification by the National Authority<sup>iv</sup>.

***Disaster Management Act, 2005 and Its Constitutional Relevancy:***

The Constitution of India does not contain any express provisions dealing with Disaster Management Act but its reference may be drawn from Entry 23 of the Concurrent List which provides for 'Social Security and Social Insurance', Entry 29 of the Concurrent List dealing with 'Prevention of the Extension from One State to Another of Infectious or Contagious Diseases or Pests Infecting Men, Animal or Plants'. These provisions can also be used for making specific laws<sup>v</sup>.

***Laws Relevant for Disaster Management to State Governments apart from Disaster Management Act, 2005:***

Government of different states has invoked some other laws in addition to Disaster Management Act while dealing with disasters. Various states have used the Epidemic Disease Act, 1897 while various others have used specific Public Health Acts, for instance, Tamil Nadu Public Health Act, 1939. Most recently, the Government of Kerala has invoked its legislative power under Entry 6 of the State List and issued Kerala Epidemic Disease Ordinance, 2020. Moreover, for dealing with biological disasters States have enough powers under Sections 188 and 270 of the Indian Penal Code respectively<sup>vi</sup>.

***Shortcomings of the Disaster Management Act, 2005:***

There is no doubt that the Act has developed a comprehensive legal framework for disaster management in this country and it is operating since 2005 in the field of disaster management but it has its own shortcomings or drawbacks which can be discussed as under<sup>vii</sup>:

- a. In the absence of any express Constitutional provisions for disaster management this subject has been considered as under the domain of State Governments as disasters took place in different regions of the country but the Act has given vast discretionary powers to the Central Government and to the Central Authorities relating to disaster management and has limited the powers of states. Disaster which strikes specific states or regions need immediate response from the State Governments and their Authorities. But sitting at Delhi, the Central Government and its Authorities Would be finding it very difficult to exercise supervision and control over disastrous situations.
- b. The definition of 'disaster' as provided by this Act has not included a variety of crisis situation that may or may not culminate in a disaster.
- c. The idea of disaster management has been conceptualized in a very narrow sense under this Act as it does not include the component of mainstreaming development in the realm of disaster management. It is an admitted fact that disasters are not only a by-product of nature but also a result of certain unsound development activities carried out by human being and hence in

order to develop a disaster supply society, it is very important that disaster management is factored in a significant way in the developmental activities taken by the people.

- d. The Act introduces a top-down model of disaster management in India by enforcing controlling authority of Central Agency both in planning and execution of disaster management policies and planning in India. What is disappointing in such a framework of disaster management in India is the fact that states are now no more the final authority in formulating policies and plans for disaster management and their execution at their own discretion. They are bound to follow not only the guidelines issued by National Disaster Management Authority in this regard but also required to comply with the directions given by National Executive Committee in this regard.
- e. The Act has provided for the establishment of State Disaster Management Authority and State Executive Committee. The most significant development so far as powers and functions of these two authorities of states are concerned is the power to review the development plans of different departments of the state and to ensure the prevention and alleviation measures included therein.
- f. The most significant contribution of the Act is the establishment of District Disaster Management Authority at district levels as this authority is responsible for efficient and effective discharge of responsibilities entrusted to it by this Act. But the competence and efficacy of the district level functionaries to a great extent depend on the willingness and cooperation of the local authorities and communities. On this aspect the Act seems to be deficient as only passing reference has been made with allusion to local authorities and communities in planning, execution and monitoring the disaster management activities in a particular area. Moreover, no emphasis has been given in mainstreaming the role of local communities rather the same has been hyphenated with the other agencies in such a way as if it is the duty of the local community to assist them in disaster management.

***Recommendations to be considered for Amending the Disaster Management Act, 2005:***

The present Act is the major law for dealing with disaster management in India since the Act is having overriding effects and hence, it is very important that certain areas are handled carefully so that it does not collapse the entire legal framework. In this regard certain recommendations may be taken into considerations which are as under<sup>viii</sup>:

1. Affirmation of disasters or disaster-prone zones and categorization of disasters is very important. Maintaining a constant supervision and analysis of the reasons can minimize the possibility of disasters and improve the situation of disaster-prone zones. It assists us to have a better management of progressive disasters as well. Modalities may be worked out to assign those tasks to various bodies as mentioned in the Act.
2. Qualifications of persons to be appointed in the National Authority for Disaster Management must be prescribed. People having experience in this regard working outside the Government shall be considered for appointment.
3. Powers and functions of different authorities and committees established under this Act have to be worked out carefully so that there must not be too many overlapping areas.
4. There is a requirement of limiting the creation of plans and policies. Very often too many plans and policies result in failure so far as execution is concerned.
5. The framework or mechanism developed under this Act must have its own budget along with provisions for accounts and audit of the fund in order to ensure better transparency.
6. Disasters impact on the lives of people is huge and in certain cases it creates a havoc there is no doubt in this regard. Keeping this in mind it can be suggested that the penal provisions of this Act relating to false claim must be removed.
7. Provisions of this Act which allow action against the officials of different authorities established under this Act only to higher Courts are required to be removed.
8. More emphasize should be given in the active involvement of local authorities and voluntary organizations in disaster management related activities.
9. The emphasize of disaster management efforts should focus on rights of the communities and of the people who live in there.



## CONCLUSION

The Disaster Management Act, 2005 has been introduced in India at a time when there was a commitment of the International Community to make the world disaster resilient on one hand on the other different parts of India has been devastated by a series of natural disasters. Therefore, It had become apparent both on the governments both at the centre as well as in states to enact laws providing for effective and efficient planning and mechanism for disaster management in this country. It can be said that in this regard the state governments have led the way as they got their laws enacted when the central government was busy in consultation and drafting for making its own law relating to disaster management. Though criticism has been raised against the law that is Disaster Management Act, 2005 that how could the central government get the power for giving directions to state governments for compulsory compliance in an area which was still understood as an exclusive domain of the states. Again, establishment of enormous machinery at the central level has been put under scanner on the ground that the powers and functions of the Central Government in management of disasters remains confined only in evolving policy guidelines and sanctioning sufficient resources to the states in discharging their primary responsibility of disaster management. Moreover, it was also argued that the Act has opened up the scope for unnecessary interference by the Union Government with the states in matters relating to disaster management. Despite, it can be said that as many developmental and humanitarian activities are involved in the mission of disaster management, this matter between centre and states have not been aggravated so far. But there is no doubt that this issue still remains as a matter on immense significance in defining the relationship between centre and states in future. It is an admitted fact that there is some criticism developed over the years against the Disaster Management Act, 2005 and its effectiveness but still it cannot be denied that it is the supreme legislation in India on the subject of disaster management. Though the Act suffers from certain shortcomings but it cannot be denied that since its introduction it is working effectively in the field of disaster management in this country. If some new provisions can be introduced in the Act through amendment and the scope of certain provisions can be enhanced, it would become a comprehensive, self-sufficient and exemplary legislation of its own kind not only in India but in the world at large<sup>ix</sup>.

## REFERENCES

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