

Disaster Management In India: A Legal Perspective

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Abstract-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 that on the basis of a written Constitution. The issues and activities that could not find place in the scheme of a written Constitution, for obvious reasons, have been provided a sound legal basis by enacting a framework law on the subject. 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. In fact, for a fairly long period of time, disasters, both natural and manmade, had been found to be managed in the classical colonial mode of trial and error resulting into untold miseries for the people and massive loss of lives and properties. The lurking dangers of climate change and its colossal impact on the occurrence of natural disasters prompted the international community to go for a recasting of the disaster management system in all parts of the world. 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 are organised and operationalised in order to make the country disaster free. The paper, therefore, seeks to critically analyse the legal framework of disaster management in the country.

I Introduction-INDIA HAPPENS to be one of those most disaster prone countries in the world that are fairly deficient on having a

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comprehensive constitutional-legal framework of disaster management. Interestingly, for obvious reasons, management of successive devastating disasters, till recently, has predominantly been based on discretionary trial and error approach of disaster managers in the absence of any specific constitutional stipulation or dedicated statutory enactment on the subject. In other words, owing to lack of categorical constitutional-legal stipulations, the issue of disaster management was conjecturally decided on the basis of its operational dynamics. Thus, for a long time, disaster management was supposed to fall within the exclusive legislative competence of the states with the central government having no or very limited say in the matter. Clearly, this resulted in a situation where different states evolved differing, and sometimes contradictory, policies and followed haphazard approaches on managing disasters despite commonality of causes and impacts of such disasters on the lives and assets of the people. Moreover, quite a large number of states thought it fit to continue with the relief-centric colonial policy without any innovation or improvisation in the policy of disaster management. In these circumstances, a subject of national importance with far reaching implications for the life and livelihood of the people, on the one hand, and sustainable economic development of the country, on the other, apparently fell to extreme apathy of the central government, and the states relegated the subject to utter insignificance presumably due to lack of any political mileage being drawn from it. The only avenue where states could not do without involvement of the central government has been financing of disaster management operations for which centre has been providing both plan as well as non-plan grants to states from time to time. But on other aspects of management of disasters, role of the central government had been bare minimum despite the colossal magnitude of a disaster or the inability of a state government to manage such disasters efficiently and effectively.

II Toward a legal framework-Over the years, with the greater realisation of the significance of efficient and effective disaster management, the critical role of a comprehensive framework of policy, along with legal and institutional arrangements in the management of disasters have been emphasized by scholars in various parts of the world. As Neil R. Britton points out, "Policy, legal and institutional arrangements form the foundation for any society's approach to disaster management. Policies are based on information reviews that are drawn on to establish

appropriate courses of action; legislation identifies explicit decisions about how a particular policy will be conducted and legitimizes those actions; and institutional arrangements identify specific agencies and their relationships for carrying out the missions and duties associated with the policy. Within this triumvirate, the laws that codify legislation are extremely important because they furnish an immutable 'bottom line' on subsequent courses of action."¹ Moreover, laws have also been understood as an expression of a society's power framework and its system of domination.² Therefore, it became of utmost significance in different countries, particularly the federal countries, to evolve a fine legal framework for management of disasters.

Conceptually, legal arrangements refers to the "framework of laws, executive orders, and other legal instruments that set the ground rules for governmental and non-governmental activities related to disaster mitigation and management. Legal arrangements define authorities, responsibilities, and role of officials and organizations as they relate to disaster management. The legal framework is comprised of statutes, and executive acts/orders and implementing regulations that establish legal authority for programmes and organisations that relate to hazards, risk, and risk management. 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."³ However, not all countries in the world have been prompt enough to evolve efficient and effective legal arrangements for management of disasters on their own and in normal course of their activities. In most, if not all, of the countries, the evolution of legal arrangements for disaster management has been triggered by one or another of the following factors acting individually or in tandem with each other: major disasters, political shifts, the engagement of particularly dynamic individuals, and a well-educated and participative population.⁴ Thus, the pursuits towards a legal framework for disaster management in different countries have followed varying trajectory as a result of which quite remarkable asymmetry is visible in the status of legal framework for disaster management in different parts of the world.

Insofar as India is concerned, the issue of disaster management remained at the backburner of the priority sectors of the central as well as different state governments. Successive incidents of severe disasters

failed to persuade these governments to review the existing legal framework of disaster management rooted in the colonial relief centric policy. Archaic famine code remained the benchmark legislation around which the entire policy framework and administrative set up of disaster management in the country revolved. As a result, year after year, the common vulnerable people kept on suffering the vagaries of nature while the government appeared quite oblivious of the miseries of the victims of disasters.

Amid such an undesirable state of affairs, two significant developments induced the move to reshuffle the matrix of disaster management, and help in evolving a sound legal framework on the subject. One, the declaration by the United Nations General Assembly to observe the decade of 1990s as the International Decade for Natural Disaster Reduction (IDNDR) initiated a mammoth global campaign towards mainstreaming natural disasters in the broad socio-economic development strategy of the countries. Being an ardent adherent to the United Nations (UN) policies and programmes, India could not resist joining the global move for prioritizing disaster administrative framework for foolproof management of disasters. Two, the dawn of the new millennium in India was marked by a series of catastrophic natural disasters such as the Gujarat earthquake, 2001 and the Indian Ocean Tsunami, 2004. Leaving behind them a sorry trail of massive death and destruction, these disasters also exposed the inherent chinks and inadequacies of the concerned state governments to effectively manage the disasters of such a magnitude. Subsequently, the focus of attention was turned towards the Central Government with a call for its active involvement in evolving a comprehensive national legal framework for disaster management, along with creation of a dedicated federal agency to guide and coordinate the disaster management operations undertaken by states in times of calamitous events.

Under these pressing circumstances, the central government, which had already set up a High Powered Committee (HPC)⁵ on disaster management in 1999 to commemorate the conclusion of the IDNDR, started the process of drafting a federal law on the subject. 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 constitutes the core of legal framework of disaster management in the country. In the following paragraphs, an

attempt has been made to read between the lines of the constitutional provisions, along with a critical scrutiny of the provisions of the Disaster Management Act, 2005 to figure out the constitutional-legal framework of disaster management in India.

III Constitutional perspectives-Constitution of India does not have any explicit provision on the subject of disaster management. Despite being one of the world's lengthiest constitutions, the non-inclusion of 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. So, in such a scheme of things, the operative subjects like disaster management is not supposed to figure in the constitutional provision as they are left to the prudence and wisdom of the government of the day to evolve appropriate policy and administrative framework to deal with the issue in hand. 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 a number of colonial 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 for the national leaders 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.

In the absence of any constitutional stipulation, for a long time, disaster management had conventionally been considered as falling within the competence of the states as per the colonial practice.⁶ Given the location of disaster prone areas in the geographical jurisdictions of the states, no doubt, make the state the first responders to the crisis situations created by the vagaries of nature. At the same time, most of the activities involved in the course of management of a disaster are of local nature to be carried out by the district and sub-district level officials working under the administrative control of the state government. However, in the course of time with the subject gaining significance in the governance

paradigm of the country, questions began to be raised on the appropriate legislative locale of the subject in order to not only bestow the responsibility for evolving suitable policy and creating an effective administrative apparatus for carrying out the disaster management activities but also to ensure accountability for proper management of disasters. It was in this context that the colonial practice of vesting the responsibility for management of disasters in the states has begun to be questioned.

VI Conclusion-Forceful emergence of the idea of disaster management as a vital function of government during mid- 1980s presented a piquant situation for both legal luminaries as well as the government functionaries to figure out the constitutional locale for enacting appropriate legislation and dovetailing corresponding executive responsibility for the same. In the absence of any specific reference to the subject in the constitutional distribution of powers between centre and the state, it has traditionally been derived from the colonial practice that disaster management, presumably given its insignificance in the governmental reckoning during the colonial period, is a state subject insofar as the specification of its constitutional domain is concerned. But soon the state governments realized that disaster management is as complex and expensive a task as simple and inexpensive it appears on the surface. As a result, there began a rethinking in resituating the constitutional locale of the subject in such a way that the central government also gets an important role to play in the whole exercise of making India disaster resilient. Almost all the committees and commission set up to review the working of the constitution as well as the governmental machinery arrived at the conclusion that at best disaster management can be a concurrent subject rather than considering it under exclusive jurisdiction of the states.

Owing to the vigorous pursuits at international level to make the world disaster resilient on the one hand, and the different parts of the country getting ravaged by a series of natural disasters, on the other, it became somewhat indispensable for the governments, both central as well as states, to enact dedicated legislations providing for a comprehensive plan and machinery to implement the same for efficient and effective management of disasters in the country. Clearly, the states emerged as the pioneers in this field as they got their laws enacted even when the central government was in the midst of consultation and drafting

its own legislation. Eventually, the central legislation on the subject was enacted in 2005 raising a number of federal issues in the management of disasters in India. For instance, the point was raised that how the central government could get the power of issuing directions to the states for compulsory compliance in an area which has till now been understood to be the exclusive domain of the states. Similarly, the creation of a mammoth machinery for disaster management at the central level has also been questioned on the ground that the appropriate powers and functions of the central government in management of disasters remains confined to evolving policy guidelines and sanctioning sufficient quantum of resources to the states in carrying out their primary responsibilities of disaster management. More than this on the part of the central government might be construed to be undue interference in the domain of the states. Thankfully, due the developmental and humanitarian nature of activities involved in the management of disasters, the subject has not become a point of one-upmanship between centre and states. But the issue remains a potential flashpoint in the centre-state relations in future.

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- 6 Such a view has been taken by the mainstream scholarship as well as the numerous governmental committees and commissions on disaster management in the country. An indicative reference, for instance, on such a view could be found in, Government of India, *Report of the Task Force: A Review of the Disaster Management Act, 2005*, 39 (New Delhi: Ministry of Home Affairs, 2013).

