

Making India Resilient: Examining the Legal, Policy and Judicial Approaches on Natural Disaster Management

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Introduction

A new report from the Centre for Science and Environment reports of how India has witnessed a natural disaster almost every single day in 2022 in the period spanning 01 January to 30 September.¹ The same report disturbingly highlights that the death and destruction toll is also higher this year – indicating potential socio-economic concerns for an agrarian country like ours.² At the same time, at the onset of 2023, news media outlets in India and across the world have been focusing on the concerns surrounding the Joshimath land subsidence and its consequent sinking. Joshimath, a town situated in Uttarakhand, has been declared a ‘sinking zone’ in the wake of continuous land subsidence, with several homes and roads developing cracks, thus making them uninhabitable and dangerous.³ Likewise, the Indian State of Assam was wrecked during the annihilating floods in July 2022 which affected over 4.5 million people, of which an estimated one million

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¹ Ankush Banerjee, India has witnessed a climate change-induced natural disaster almost every day so far in 2022: New CSE Report, The Weather Channel, Times of India, Nov. 02, 2022, <https://weather.com/en-IN/india/climate-change/news/2022-11-02-india-saw-a-climate-change-natural-disaster-every-day-in-2022>.

² *Id.*

³ Padmakshi Sharma, PIL on Joshimath Sinking Mentioned in the Supreme Court, Live Law, Jan.09, 2023, <https://www.livelaw.in/top-stories/pil-on-joshimath-sinking-mentioned-in-supreme-court-218411>.

were children.⁴ The Disaster Management Authority of Assam noted that 95% of its districts were flooded with every seventh Assamese affected by them.⁵ Similarly, the coastal State of Maharashtra also witnessed enormous rains in the initial days of July 2022 reportedly killing 84 people and injuring 66 others.⁶ Each of these events is both – (i) a grim reminder of India’s inherent vulnerability to natural disasters;⁷ and (ii) a forewarning of the dread and mayhem likely to unearth in times to come.

Fig.1: Land subsidence at Joshimath, Uttarakhand, India



Source: The Indian Express (Jan. 11, 2023)

⁴ UNICEF, India Assam Floods Humanitarian Situation Report, Jul.8, 2022, <https://help.unicef.org/in/assam-floods-2022-homepage>.

⁵ DTE Staff, 94% of the state’s districts in the grip of floods, DownToEarth, Jun. 20, 2022, <https://www.downtoearth.org.in/news/natural-disasters/assam-94-of-the-state-s-districts-in-the-grip-of-floods-83364>.

⁶ The New Indian Express, 84 dead in Maharashtra floods, Mumbai on alert, Jul. 13, 2022, <https://www.newindianexpress.com/nation/2022/jul/13/84-dead-in-maharashtra-floods-mumbai-on-alert-2475961.html>.

⁷ UNICEF, Disaster risk reduction (India), <https://www.unicef.org/india/what-we-do/disaster-risk-reduction>.

Globally, India is the 3rd most disaster affected country, after the Peoples' Republic of China and the United States of America.⁸ Owing to the geo-physical features, the country is vulnerable to a host of natural disasters such as cyclones, drought, earthquakes, floods, and tsunamis. Despite this inherent susceptibility and previous trysts with devastating natural disasters such as the Super cyclone of 1991 and the Gujarat earthquake of 2001,⁹ it was not until after the catastrophic Indian Ocean tsunami of 2004 that a paradigm shift was witnessed in India's handling of disasters.¹⁰ After the tsunami, the legislative void was addressed with the enactment of the 'Disaster Management Act, 2005' ("2005 DM Act")¹¹, India's principal law on disaster management along with enhanced roles of the executive and judiciary on the subject as well. This transformation in the handling and managing of disasters reinforces the belief that although natural disasters may never be completely eliminated, their consequences can be considerably mitigated through sound legal provisions.¹² In light of growing concerns over climate change induced severe and extreme weather events and an expected increase in frequency and severity of these events, the role of law, policy and judicial intervention in addressing different stages of disaster management has been critical.¹³ Even internationally, it has been urged that appropriate

⁸ UNDRR, CERD & EM-DAT, Human Costs of Disasters: An overview of the last 20 years, (2000-2019).

⁹ Gujarat State Disaster Management Authority, Government of Gujarat, 2001 Gujarat Earthquake.

¹⁰ BBC, Indian Ocean tsunami: Then and now, Dec. 25, 2014, <https://www.bbc.com/news/world-asia-30034501>.

¹¹ Disaster Management Act, 2005, No. 53 of 2005, Acts of Parliament, 2005 (India).

¹² ANASTASIA TELESITSKY, Conclusion in THE INTERNATIONAL LAW OF DISASTER RELIEF, ed. David C. Caron, Michael J. Kelly and Anastasia Telesitsky 365 (Cambridge University Press 2014).

¹³ UN Office for Disaster Risk Reduction, Global assessment report on disaster risk reduction 2019, <https://digitallibrary.un.org/record/3825375?ln=en>.

steps ought to be taken for effective management of natural disasters. Coherent and integrated national and local plans are the need of the hour as these are the measures through which appropriate steps can be taken to reduce risks and respond better.

Aims & objectives

In this backdrop, the aim of the present study is to assess and critically examine the level of India's preparation and resilience to manage and handle natural disaster related challenges, particularly those likely to be unearthed in times to come. The present study has been divided into 6 parts. Part II critically analyses the legal architecture on natural disaster management in India with a specific emphasis on the 2005 DM Act. Part III of the present study focusses on the policy framework on the subject while Part IV evaluates the contribution of the Indian judiciary. Although much headway has been made on the subject, certain lacunae have been identified by the researchers in Part V. Recommendations to address the same through legal and policy provisions to attain a more effective management of natural disasters have been postulated in Part VI of the study.

Scope & Limitations

Disasters are catastrophic events having dire consequences. Based on the origin of the hazard which in turn is responsible for the disaster, they can be classified into (i) natural and (ii) man-made disasters.¹⁴ The present research will specifically focus on natural disaster management (e.g.: floods,

¹⁴ IFRC, Types of Disasters: Definition of Hazards, Definition of Hazard, <https://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/definition-of-hazard/>.

earthquakes and tsunamis) while excluding man-made disasters from its scope.

Indian framework on natural disaster management

The compendium on the laws of disaster management in India, prepared by the National Disaster Management Authority (“NDMA”), has listed around 100 legislations (including rules and bills) which directly and/or indirectly relate to disasters and their management.¹⁵ The compendium includes both (i) generic legislations; and (ii) frameworks dealing with specific disasters such as fire, floods, lightning, earthquake and snow.¹⁶ Pertinent to the present study is inter alia the principal legislation on the subject, namely, the 2005 DM Act. The genesis of this law can be traced to the Famine Commission constituted in 1878 which eventually resulted in the enactment of the Famine Code of India (“Code”).¹⁷ Prior to the Code, an adhoc approach was adopted to address disasters through laws which regulated hoarding and crimes. However, post-independence, the Code which primarily contained provisions on relief and rehabilitation with very little on risk reduction was used by many state governments albeit with amendments. The reliance on and application of such a fragmented approach to address varying types of disasters in the country demonstrated significant shortcomings. This paved the way for the establishment of a High-Powered Committee by the Indian Government which recommended enacting a new law on disaster

¹⁵ Government of India, National Disaster Management Authority, Compendium of Laws on Disaster Management.

¹⁶ Id.

¹⁷ Rajendra Kumar Pandey, Legal Framework of Disaster Management in India, *ILI Law Review* 172-190 (Winter Issue 2016).

management.¹⁸ As is the standard procedure for law-making in India, the power to enact laws is derived from the Constitution of India making it worthwhile to assess the constitutional position on law-making for disasters in India.

Disasters and law-making under the Constitution of India

The Constitution of India divides law-making powers between the Union and State legislatures. To achieve this end, the Seventh Schedule to the Constitution consists of three lists, namely (i) Union; (ii) State; and (iii) Concurrent, comprising subjects in the form of entries, upon which law-making powers can be exercised.¹⁹ For entries in the Union List, the Parliament enacts laws while lawmaking for subjects in State List is vested with respective State Legislatures.²⁰ The Concurrent List contains entries over which both the Union Parliament and State Legislatures can make laws subject to provisions in the Constitution. The Constitution does not entail any specific reference to the term ‘disaster’ in any of the three legislative lists. In such absence, the Central Government recommended States to make their own laws on the subject. Bihar, Gujarat, Uttar Pradesh and Uttarakhand were few States which formulated their own laws by invoking Entry 14 of the State List which deals with “agriculture including pest and plant diseases” and Entry 17 on ‘water including water supply, drainage and embankments’.

However, after witnessing the devastating consequences of the Indian Ocean Tsunami of 2004 which wreaked havoc both across and within countries, the

¹⁸ Id.

¹⁹ CONSTI. Schedule VII (1950).

²⁰ CONSTI, art. 246.

Government changed its stance²¹ and subsequently enacted the 2005 DM Act by invoking Entry 23 of the Concurrent List which deals with *social security and social insurance, employment and unemployment*. Given the inconsistencies in this approach, the High-Powered Committee on Disaster Management and 2nd Administrative Reform Committee recommended a specific entry on disaster under the Seventh Schedule but the same, till date, does not reflect any such entry.²²

The Principal Law: The Disaster Management Act, 2005

The legislative intent of the 2005 DM Act is to “provide for the effective management of disasters and for matters connected therewith or incidental thereto.”²³ For translating this intent into a reality, the 2005 DM Act establishes various authorities and committees and has suitably delegated powers and created obligations for them. It has created the NDMA, headed by the Prime Minister, to spearhead an integrated and holistic approach towards disaster management.²⁴ The NDMA is also statutorily obligated to recommend funds for managing disaster and laying guidelines for prevention and mitigation of disasters and ensuring drinking water, medical cover, shelter, food and sanitation are available to affected persons. In its functioning, the NDMA is assisted by the National Executive Committee.²⁵ Likewise, the law also established the State Disaster Management Authorities for States with their respective Chief Ministers as heads and the

²¹ Supra note 17.

²² BINOD KUMAR, Interrogating disaster law in India, in *DISASTER LAW: EMERGING THRESHOLDS*, ed. Amita Singh 112-121 (Routledge 2018).

²³ Supra note 17.

²⁴ National Disaster Management Authority, Government of India, NDMA Vision, <https://www.ndma.gov.in/en/about-ndma/vision.html>.

²⁵ Disaster Management Act, 2005, § 8 and 9, No.53, Acts of Parliament (India).

District Management Authorities.²⁶ The law also establishes the National Institute of Disaster Management²⁷ to work in the field of research and development, for training personnel who can be deployed in situations of disasters, for promoting awareness and other ancillary functions.²⁸ Provisions on extending loans are available²⁹ along with emergency procurement and accounting with establishment of National Disaster Response Fund and Mitigation Fund.³⁰ Likewise, a National Disaster Response Force has been set up with trained personnel to provide services in the event of a threatening, looming disaster situation or an actual occurrence of a disaster.³¹

Coastal Regulation Zone Notifications and Disasters

India has an extensive coastline at 7,516.5 km and stretching from Gujarat to West Bengal including the Lakshadweep and Andaman and Nicobar Islands.³² The Indian coastline supports a wide variety of coastal activities comprising distinct types of coastal habitats which include inter alia beaches, sand dunes, mudflats, coral reefs and lagoons.³³ The Coastal Regulation Zone Notification of 1991³⁴ (1991 CRZ Notification), for the first time recognised and classified the Indian coastal regions and prohibited and carefully

²⁶ Disaster Management Act, 2005, §14 to 24, No.53, Acts of Parliament (India).

²⁷ Disaster Management Act, 2005, § 42, No.53, Acts of Parliament (India).

²⁸ Disaster Management Act, 2005, § 43, No.53, Acts of Parliament (India).

²⁹ Disaster Management Act, 2005, §13, No.53, Acts of Parliament (India).

³⁰ Disaster Management Act, 2005, § 46 to 50, No.53, Acts of Parliament (India).

³¹ Disaster Management Act, 2005, § 44, No.53, Acts of Parliament (India).

³² Government of India, Profile, Know India, <https://knowindia.gov.in/profile/>.

³³ Dr. Prasanna Yennawar, Freshwater Biological Regional Centre, Zoological Survey of India, Hyderabad 500048 AP, http://www.iczmpwb.org/main/pdf/lecture_presentations/7%20Prasanna.pdf.

³⁴ Ministry of Environment and Forests, S.O. 114(E), Feb. 19, 1991.

regulated certain activities. The notification was praised by local fisherfolk activists and environmentalists as a much-needed legal regime to protect Indian coasts.³⁵ However, the post-1991 period was synonymous with India's tryst with industrialisation and coincided with growing demands for economic progress through trade and development.³⁶ With the intent of the 1991 CRZ Notification gradually disintegrating, the worst was yet to come. The Indian Ocean Tsunami of 2004³⁷ wrecked the coasts of Tamil Nadu, Andhra Pradesh and the Union Territory of Puducherry along with the Andaman and Nicobar Islands. Catastrophic effects of the tsunami led to the constitution of a committee under the chairmanship of Prof. M.S. Swaminathan to evaluate the 1991 CRZ Notification. The Committee's report became the foundational basis for the 2011 Coastal Regulation Zones Notification (2011 CRZ Notification)³⁸. Various innovative changes were introduced by the 2011 CRZ Notification such as the inception of a 'hazard line' along with 'areas requiring special consideration'. While the 2011 CRZ Notification focused on ensuring livelihood security to coastal communities and preserving the environment, a need was felt to allow more development activities to take place. This resulted in the enactment of the 2019 Coastal Regulation Zone Notification (2019 CRZ Notification)³⁹. In comparison to its predecessors, the 2019 CRZ Notification promotes and allows more development activities to take place in these zones which has resulted in

³⁵ Manju Menon, Sudarshan Rodriguez and Aarthi Sridhar, Coastal Zone Management: Better or Bitter Fare, EPW, (Sep.22, 2007) 383.

³⁶ Id.

³⁷ UNICEF USA, 2004 Indian Ocean Earthquake and Tsunami, <https://www.unicefusa.org/mission/emergencies/tsunamis/2004-south-asia>.

³⁸ Ministry of Environment and Forests, S.O. 19(E), Jan. 6, 2011.

³⁹ Ministry of Environment, Forest and Climate Change, GSR 37(E), (Jan. 18, 2019).

several environmentalists and fisherfolk activists criticising its legislative intent.

Land Acquisition for Managing Disasters and the Law

The Land Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013⁴⁰ which replaces the decade old Land Acquisition Act, 1894 aims to attain humane participative and translucent process for acquisition of lands by the government for various public purposes. This includes acquisition of land by the appropriate Government for projects for residential purposes for persons affected by natural calamities and in case of emergencies arising out of natural disasters.⁴¹

Policies and guidelines

Under the scheme of disaster law, although the legislature makes laws regarding mitigation, preparedness and recovery, it is the executive branch which assumes the greatest degree of discretionary authority during disaster response. They often emerge as the first responders.⁴² The NDMA has played a vital role in contributing to the development and growth of the disaster management framework by notifying plans, policies, minimum standards of relief and guidelines. Although over 30 guidelines are available on NDMA's official website⁴³, the principal ones are the National Disaster Management

⁴⁰ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2005, No. 30 of 2003, Acts of Parliament, 2003 (India).

⁴¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2005, § 40, No. 30, Acts of Parliament (India).

⁴² Michael Hoffman, Towards an International Disaster Response Law in World Disasters Report 2000 ed., Walker and J. Walker, IFRC (2000).

⁴³ NDMA, Government of India, NDMA Guidelines, <https://www.ndma.gov.in/Governance/Guidelines>.

Policy and the National Disaster Management Plan. An analysis of these have been provided hereinafter.

National Disaster Management Plans: 2016 and 2019

Despite Section 34 of the 2005 DM Act requiring a national disaster management plan to be created, it was not until the Supreme Court of India's direction that the country saw such a plan. In 2016, shortly after the apex court's decision in *Gaurav Kumar Bansal v. Union of India*, 2016⁴⁴, the Indian Government released the '2016 National Disaster Management Plan'.⁴⁵ Subsequently, it was revised and the 2019 National Disaster Management Plan (2019 Plan)⁴⁶ was notified for the whole of India. Under the 2019 Plan, nodal ministries and governmental departments for specific hazards have been entrusted to prepare disaster management plans for specific disasters. The 2019 Plan incorporates 'disaster risk reduction' which is an important component in the disaster management cycle, while also integrating the Prime Minister's Ten Point Agenda and post-2015 a global framework such as the Sendai Framework for Disaster Risk Reduction.⁴⁷ The main aims of the 2019 Plan inter alia are: -

- (i) Enhancing disaster risk governance at all levels from local to centre and empowering local authorities and communities as partners in the process;

⁴⁴ WP (C) 444/2013.

⁴⁵ Jigyasa Watwani, India releases first ever national disaster management plan, *DownToEarth*, (Jun. 02, 2016), <https://www.downtoearth.org.in/news/natural-disasters/india-releases-first-ever-national-disaster-management-plan-54176>.

⁴⁶ National Disaster Management Plan, 2019, A publication of the National Disaster Management Authority, Government of India, November 2019.

⁴⁷ *Id.*

- (ii) Augmenting disaster preparedness for effective response and promoting ‘build back better’ in the process of recovery, rehabilitation and reconstruction; and
- (iii) Preventing hazards and disasters and reducing their exposures and vulnerabilities.

The 2019 Plan entails timelines within which the aims ought to be attained and are classified as (i) short-term (by 2022); (ii) medium-term (by 2027); and (iii) long-term (by 2030). The 2019 Plan also notes that while action has already been initiated, in some aspects, the same is yet to be done. Nevertheless, the 2019 Plan is an important, highly relevant instrument in situations of disasters, focusing on social inclusion, capacity development, financial arrangements and international cooperation.⁴⁸

National Disaster Management Policy 2009 (“2009 Policy”)⁴⁹

The 2009 Policy has the following as its main goals: -

- (i) Promotion of prevention and timely interception of disasters and raising preparedness and resilience to better manage them;
- (ii) Encourage mitigation based on sustainable norms and through relevant knowledge; and
- (iii) Establishing mechanisms for identification and better management of disasters with a focus on creating techno-legal and institutional frameworks for the same.

⁴⁸ Supra note 46.

⁴⁹ National Disaster Management Policy, 2009, NDMA, Government of India.

The 2009 Policy prescribed guidelines for all stakeholders for complying with the institutional frameworks and the frameworks specifically carved under the 2005 DM Act. It also contains provisions on rehabilitation and relief of victims affected by disasters and has elaborate provisions on intercepting disasters and responding to them along with measures for financial arrangements. However, much of the enforcement of the legal framework was and has been possible only because of the intervention of the judiciary which has played a commendable role in the field. Presented below is an analysis of the same.

Indian judicial response to natural disaster management

The Indian judiciary has played a significant role in developing jurisprudence on a wide range of issues over time. The same is no different for disasters. In fact, it is pertinent to reiterate that the statutory provision on a National Disaster Management Plan was possible only after judicial interference as was seen in ‘Gaurav Kumar Bansal v. Union of India’.⁵⁰ Apart from this case, the Indian judiciary has played a crucial role which can be appreciated through the following cases.

Victims of the Indian Ocean Tsunami, 2004, their rehabilitation and livelihood

In the case of *Kranti v. Union of India*, 2007,⁵¹ the Supreme Court of India’s active participation could be witnessed in the issue relating to rehabilitation and livelihood of tsunami affected victims which wrecked the Andaman and Nicobar Islands and other parts of the Indian Ocean.⁵² Being a Union

⁵⁰ Supra note 46.

⁵¹ Civil Appeal No. 2681 of 2007.

⁵² Supra note 11.

Territory, the Islands were completely devastated in the aftermath. In this case, the Supreme Court directed the local administration, under the supervision of the Lt. General, to undertake rehabilitation work by providing boats to coastal communities who had lost the same owing to the tsunami. Moreover, the tsunami had also created scarcity of water and medical facilities which negatively affected everyday lives of the victims. The Court further directed local authorities to provide water and medical facilities to affected persons. Going further, families whose livelihoods were destroyed owing to inundation of their lands were to be provided employment opportunities.⁵³

Question of evidence: Recurring Bihar floods

In *Shruti Singh v. National Disaster Management Authority and Others*, 2008,⁵⁴ the High Court at Patna addressed a matter dealing with the problem of recurring floods in Bihar. Interestingly, in this case, the High Court abstained from intervening in the matter owing to lack of evidence which could establish failure on part of the governments in undertaking proper measures for management of floods. The High Court emphasized that although the flood victims must be undoubtedly rehabilitated, citing absence of evidence proving any lapse on part of the governments, the High Court did not attribute failure to the governments.

Judicial guidelines on relief work in aftermath of 2014 Jammu and Kashmir floods

⁵³ UNEP, *Kranti v. Union of India*, (16 May 2007), <https://leap.unep.org/countries/in/national-case-law/kranti-v-union-india-uo-i-and-ors>.

⁵⁴ MANU/BH/0882/2008.

After the devastating experience with the Jammu and Kashmir floods of 2014, the Supreme Court of India directed the Indian Government to explain measures undertaken to alleviate the suffering witnessed by the flood affected people.⁵⁵ The week-long floods which occurred in September 2014 had submerged significant portions of Anantnag, Kulgam, Baramulla, Bandipora and Srinagar districts which had killed over 284 people.⁵⁶ The Supreme Court also went on to observe that lives of people affected by floods had to be saved and also went on to elucidate upon guidelines for carrying out relief work.⁵⁷

Inter-State drought and ineffective implementation of 2005 DM Act and social welfare legislations

In *Swaraj Abhiyan v. Union of India & Ors.*, 2015⁵⁸ a writ petition was filed by Swaraj Abhiyan, a non-governmental organisation against the Union of India and several State governments, requiring that drought be declared in some districts of Andhra Pradesh, Chhattisgarh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Telangana, and Uttar Pradesh. The petition revolved around the alleged inefficiencies demonstrated by the governments (parties to the petition) in implementing pertinent social welfare legislations while dealing with drought. Few of these legislations included the National Food Security Act, 2013⁵⁹ and the National Rural Employment Guarantee Act, 2005.⁶⁰ Given the same and basis several submissions made,

⁵⁵ *Vasundhara Pathak Masoodi v. Union of India*, Writ Petition (Civil) No. 826/2014.

⁵⁶ ActionAid Association (India), *Jammu and Kashmir Floods 2014*, <https://www.actionaidindia.org/emergency/jammu-and-kashmir-floods-2014/>.

⁵⁷ *Supra* note 39.

⁵⁸ Writ Petition (Civil) No.857 of 2015.

⁵⁹ National Food Security Act, 2013, No. 20 of 2013, Acts of Parliament, 2013 (India).

⁶⁰ National Rural Employment Guarantee Act, 2005, No. of 2005, Acts of Parliament, 2005 (India).

Swaraj Abhiyan inter alia sought reliefs from the Supreme Court seeking effective enforcement of the 2005 DM Act and other applicable social welfare legislations. The Supreme Court treated the writ petition as a Public Interest Litigation and issued a continuing “mandamus” making the respondents liable for ensuring that provisions of the law are discharged and the onus of protection of the most marginalised and vulnerable are not left to the whims and fancies of governments.

COVID-19 and the question of funds to respond to it

More recently, considering the challenges posed by the COVID-19 pandemic, the Supreme Court had an opportunity to address contemporaneous issues. The pandemic, notified by the Ministry of Home Affairs, as a “disaster”,⁶¹ had caused significant hardships not only in India but across the world. A writ petition filed by the Centre for Public Interest Litigation against the Union of India sought directions for the Union to: -

- (a) prepare, notify and implement a national disaster management plan⁶² to specifically deal with the COVID-19 pandemic and lay down minimum standards of relief as provided under Section 12 of the 2005 DM Act; and
- (b) utilise funds from the National Disaster Response Fund created under the 2005 DM Act and to ensure all contributions made for pandemic related relief work are made to the National Disaster Response Fund and not to the PM Cares Fund. Moreover, the petitioner also sought that the contributions already made to the PM Cares Fund should be transferred to the National Disaster Response Fund. This was sought

⁶¹ Government of India, Ministry of Home Affairs, Order No.40-3/2020-DM-I(A), (Mar.24, 2020).

⁶² Disaster Management Act, 2005, § 10 and § 11, No.53, Acts of Parliament (India).

basis the contention that while the National Disaster Response Fund is under the purview of the Comptroller and Auditor General of India, the same was not the case with the PM Cares Fund.⁶³

The Supreme Court of India refused to direct the Centre to prepare a national plan to specifically deal with the pandemic since they observed that the 2019 Plan was already in place with specific provisions on management of pandemics. The Hon'ble Court also refused to direct the transfer of contributions from the PM Cares Fund to the National Disaster Response Force, highlighting that both were entirely different funds with separate objects and purposes.⁶⁴

In yet another case on the COVID-19 pandemic,⁶⁵ the Supreme Court instructed the NDMA to recommend guidelines for ex gratia assistance to family members of persons who succumbed to the COVID-19 pandemic as was mandated under Section 12(iii) of the 2005 DM Act for minimum standards of relief to be provided to persons affected by the pandemic. This was in addition to the guidelines already recommended for minimum standards of relief to persons affected by COVID-19. In its follow-up order on compliance,⁶⁶ the Supreme Court noted that the guidelines entailing for ex gratia assistance had been prepared by the NDMA and held that the assistance would be provided by the respective State Disaster Management Authorities from State Disaster Response Funds and would be disbursed by

⁶³ WP (C) No. 546 of 2020.

⁶⁴ Id.

⁶⁵ Gaurav Kumar Bansal v. Union of India & Ors., 2021, Writ Petition (Civil) No. 1120 of 2021.

⁶⁶ Order of the Supreme Court of India on compliance of the Judgement in Writ Petition (Civil) No. 1120 of 2021, (04 Oct., 2021).

the District Disaster Management Authority to next of kin of person who died on account of the pandemic.

Sinking Joshimath and response

A PIL⁶⁷ was filed before the Supreme Court of India by religious leader Swami Avimuktेश्वaran Saraswati directing the Court to issue a writ of mandamus to the Union of India and the NDMA to – (i) immediately assist in the reparation work in Joshimath land subsidence and sinking; (ii) declare the present situation a natural disaster and instruct the Respondents to aid the residents; (iii) direct Uttarakhand Government to provide immediate financial assistance to the residents; and (iv) direct the Respondents to undertake measures to inter alia stop construction relating to the Tapoban project.⁶⁸

However, the Supreme Court refused to address the matter, directing the petitioner to plead before the Uttarakhand High Court. In the Intervention Application,⁶⁹ the Uttarakhand High Court was addressing constructions in Joshimath and directed the State to engage independent experts from fields of Hydrology, Geology, Disaster Management and Glaciology to prepare an independent report on the issue. The High Court also directed the Uttarakhand Government to enforce a ban on construction and blasting activities in the area. Thus, the Supreme Court and other High Courts have gradually come to play a prominent role in adding to the discourse on disasters and their management in India, including in addressing problems

⁶⁷ PTI, Declare Joshimath Crisis a National Disaster: Seer files plea in SC, IndiaToday, (Jan. 7, 2023), <https://www.indiatoday.in/india/story/declare-joshimath-crisis-a-national-disaster-seer-files-plea-sc-2318701-2023-01-07>.

⁶⁸ Supra note 67.

⁶⁹ P.C. Tewari v. State of Uttarakhand & Ors., WPIL No. 67 of 2021.

caused by the recent Joshimath crisis and the Covid-19 pandemic. Where applicable, the Courts have heavily appreciated evidence or its absence, in ascertaining whether any possible lapses or government inaction can be identified in the disaster management sphere. This can help in ensuring that the provisions of the law are not abused or unnecessarily complicated.

Limitations

Despite the evolution of the legal framework on disaster management including the role of the executive and judiciary, certain challenges remain as can be seen from experiences with more recent disasters which have ravaged different parts of India.

Constitutional silence on disasters and their management

Although the Constitution now includes a provision on “disasters” from a Goods and Service Tax perspective, a glaring void is existence of justiciable provisions on rights of disaster affected persons.⁷⁰ While one could contend that the larger scope of provisions on fundamental rights are available, the same may not be sufficient in addressing situations of natural disasters since they are often viewed as emergencies which may allow freedoms and rights to be restricted. Hence, it is important to at least have some clarity on the position and protection of rights of disaster-affected victims. In light of this, it is worthwhile to note the provisions of the Constitutions of the Republic of Korea which carve obligations for States to undertake measures to prevent disasters and rehabilitate victims.⁷¹ The Constitution of the Republic of

⁷⁰ Supra note 20.

⁷¹ The Constitution of the Republic of Korea, Amended by Constitution No. 10, Oct. 29, 1987.

South Africa also imposes the State to take measures for protecting victims of disasters.⁷² The absence of such provisions may prove to be challenging particularly for the disaster-affected including vulnerable and marginalised communities.

Definition of disaster: What is substantial loss?

The 2005 DM Act defines disaster as:

‘Catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made 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.’⁷³

Since the law addresses disaster management, it is vital that ‘disaster’ is defined with clarity. A bare perusal of this definition, however, presents a peculiar challenge since in order to meet the statutory threshold of ‘disaster’, the event in question would have to either result in ‘substantial loss of life or human suffering or damage to the property or the environment’. However, neither the definition nor elsewhere are we provided an explanation on what constitutes “substantial” loss.⁷⁴ In such absence, the definition allows scope for ambiguity and confusion. Not specifically indicating what is “substantial” could lead to multiple interpretations of the word.⁷⁵ Moreover, while the

⁷² The Constitution of the Republic of South Africa, 1996.

⁷³ Section 2(d) of Disaster Management Act, 2005

⁷⁴ Subhradipta Sarkar and Archana Sarma, Disaster Management Act, 2005: A Disaster in Waiting?, 41 EPW 35 3760-3763 (2006).

⁷⁵ Id.

definition includes natural and man-made causes within a disaster, it does not expressly provide for rapid on-set and slow on-set events as disasters. In this context, the Republic of South Africa's Disaster Management Act of 2005⁷⁶ is noteworthy since its definition of disaster is a wider one, including rapid and slow onset and one not requiring *substantial* loss to qualify an event as a disaster.

Protection of human rights of disaster victims and State obligations

Increasing attention has been brought on human rights protection in natural disasters since these rights do not disappear during disasters. Under the 2005 DM Act, barring provisions on non-discrimination while providing relief to victims⁷⁷ and empowering the State to undertake measures for rehabilitation assistance to victims,⁷⁸ not much is offered in terms of a rights-based approach.⁷⁹ The law makes no mention of nor does it offer clarity on specific obligations of authorities to be duty bound towards protection of victims and/or their rights, especially of vulnerable communities such as - children, persons with disabilities, women, the scheduled castes and the scheduled tribes.⁸⁰ Dearth of such an approach may cause human right issues in situations of natural disasters as was previously observed during the Latur earthquake, the Indian Ocean tsunami and the Uttarakhand floods to cite a few examples.⁸¹ Crime prevention provisions are also not available in the

⁷⁶ Republic of South Africa's Disaster Management Act, 2002, No. 57, (Republic of South Africa).

⁷⁷ Disaster Management Act, 2005, § 61, No.53, Acts of Parliament (India).

⁷⁸ Disaster Management Act, 2005, § 38, No.53, Acts of Parliament (India).

⁷⁹ Supra note 42.

⁸⁰ RAM RATAN DHUMAL, Interrogating the Trajectory of Disaster Laws in India, in DISASTER LAW: EMERGING THRESHOLDS, ed. Amita Singh 122-131 (Routledge 2018).

⁸¹ Supra note 59.

law. This is debilitating since disasters create perfect opportunities for crime commission and human rights abuses. Trafficking and domestic violence often witness an increasing trend post occurrence of natural disasters. In this context, Japan’s Disaster Countermeasures Basic Act, 1961⁸² has a specific provision on crime prevention and protection of rights of disaster affected victims.

Status quo: No amendment since enactment

Laws are often amended to meet contemporary needs. Interestingly, the same is not the case with the 2005 DM Act which has been in existence for over a decade and a half in its original form. The discourse and approach on disaster management has evolved since what it was in 2005. In recent times, resilience and risk reduction are gradually emerging as important tools to deal with disasters both in India and abroad. Resilience refers to the ability of community to “bounce back” after the event in question, while risk reduction requires the governments to undertake measures that are needed to reduce the very risk of occurrence of hazards and consequent disasters. Not having provisions on the same is likely to prove to be fatal since these aspects occupy an indispensable role within the disaster management cycle. Countries such as Nepal⁸³ and the Philippines⁸⁴ are examples of national legislations which have realised the importance of integrated risk reduction and resilience within their legal frameworks.

Unsustainable development and land-use

⁸² Japan’s Disaster Countermeasures Basic Act, 1961, Act No.223 of 15 (Japan).

⁸³ Nepal’s Disaster Risk Reduction and Management Act, 2018, 2074, (Nepal).

⁸⁴ Republic of the Philippines Disaster Risk Reduction and Management Act, 2010, RA10121, Senate and Representatives of the Philippines, (The Philippines).

As mentioned above, the ethos of the original CRZ Notification of 1991 was to regulate activities in coastal zones. However, the way the 2019 CRZ Notification stands, emphasis on development in these areas raises red flags. Reduction in the No-Development Zones as compared to the earlier provisions allows more space for development activities. Apprehending the dire consequences that the reduction such zones could have, a PIL was filed by an environmental non-governmental organisation before Hon'ble Bombay High Court at Panaji challenging the constitutional validity of the 2019 CRZ Notification alleging that the same violates the Environment Protection Act, 1986.⁸⁵ While the matter is currently pending, it is noteworthy that reduction in such zones enables more construction activities to be undertaken. The greater interaction between man and nature in these highly vulnerable areas, the higher probability that coastal zones are likely to be pressurised with increasing threats of climate change and natural hazards. Moreover, increased land reclamation and floor space index are allowed under the 2019 CRZ Notification. This process leads to decline in biological diversity, reduces natural wetlands and also leads to extinction of habitats for marine animals and other species. This may also cause large displacement of marine sediments and development of mud waves. A case to point in this regard is the amended clearance which was granted to the Mumbai Coastal Road Project which had received sharp criticism.⁸⁶ A case to point in this regard is the amended clearance which was granted to the Mumbai Coastal Road Project which had received sharp criticism. The amended clearance gave legal

⁸⁵ Indian Express, NGO filed PIL in Bombay High Court against 2019 Coastal Regulation Zone notification (Apr. 2, 2021).

⁸⁶ Prayag Arora Desai, EAC did not consider our objections on Mumbai coastal road clearance: Green group, Hindustan Times, (Mar. 17, 2021), <https://www.hindustantimes.com/cities/mumbai-news/eac-did-not-consider-our-objections-on-mumbai-coastal-road-clearance-green-group-101616005510880.html>.

sanctity to the Brihanmumbai Municipal Corporation to reclaim an additional 21 hectares of land for a coastal road to be built across the city. A non-governmental organisation, the Conservation Action Trust, had criticised the move and cited how they had not been presented with an opportunity to justify the objections they raised to the proposed infrastructure project.⁸⁷ The amended clearance was questioned and challenged in a set of PILs filed by the fishermen's cooperatives by the name 'Worli Koliwada Nakhwa Matsyavyavasay Sahakari Society Ltd.' and 'Worli Machchimar Sarvoday Sahakari Society' along with Vanashakti, Conservation Action Trust, Society for Improvement, Greenery and Nature, Bombay Environmental Action Group. While the Hon'ble Bombay High Court had previously quashed the amended clearance granted for the proposed contentious infrastructure project, the Hon'ble Supreme Court of India in turn stayed the Bombay High Court verdict.

Conclusion and way forward

Undoubtedly, the Indian framework on disasters has made tremendous advancement - transitioning from its reactive to proactive approach. Indeed, having a law is more beneficial than none, yet the same warrants a periodic re-examination to ascertain whether the objects of the law are being effectively realised or not. Despite years of being in force, the 2005 DM Act is in dire need of changes and amendments, especially considering the contemporary challenges pertaining to climate change, urbanisation coupled with increased frequency and severity of the extreme weather-related events. A starting point could be considering an amendment to the Constitution of

⁸⁷ Supra note 85.

India that includes justiciable rights-based provisions specifically for victims affected by natural disasters. A rights-based mechanism will allow enforcement of these rights in the event of any state inaction.

Considering certain amendments to the 2005 DM Act to incorporate changes as to render it more adept to address contemporary challenges is vital. Given India's geophysical features and silence within the 2005 DM Act on identification of disaster-prone areas, it would be meaningful to have the same incorporated in the law. Since regions are unique and have their own needs, requirements and socio-economic vulnerabilities, identifying them and giving them statutory recognition will allow suitable mitigation strategies to be drawn. While this lacuna was sought to be addressed in the Disaster Management (Amendment) Bill, 2016, the same is yet to see the light of the day. Such a provision enables authorities to focus on causes for such predisposition and draw measures to reduce their probabilities through suitable town-planning, land-use, integrated river and water plans and social vulnerability profiles. Moreover, an amendment that incorporates socio-economic realities from the perspective of 'disaster risk reduction' is also necessary since the role and importance of risk reduction is paramount. Parallely, it is pertinent to reflect upon the 2019 CRZ Notification which makes drastic changes to India's legal architecture on ecologically vulnerable areas such as coastlines. If unregulated and unsustainable land-use are to continue, then very soon, all disasters, including those naturally occurring, will be labelled man-made owing to man's active involvement in creating the hazard.

The laws also lack the adoption of a rights-based approach since no express provision deals with impacts of disasters on human rights. Likewise, no

specific provisions on how protection of victims of disasters is to be carried is provided. Adopting a rights-based approach, especially even in the constitutional absence of the same, holds great significance since it enables authorities to suitably tackle human rights and their violations that occur during disasters and in post-disaster situations. Changes to these lines can be legally incorporated, as is the case with legal frameworks in Japan and South Africa. Provisions on human rights training of first responders as well as skills for countering crimes in disaster affected areas should also be introduced in the law. A rights-based approach will also enable accountability since rights demand obligations. Since disasters affect communities, especially the vulnerable, provisions on greater community participation should also be considered.

While community participation is needed, what is also needed is integrating risk reduction and resilience. The 2005 DM Act demands a re-examination from the legislatures to specifically address the lacunae from these perspectives. Having provisions on reducing risks of disasters and building resilience amongst community members will go a long way in mitigating the adverse effects associated with disasters, even if they cannot eliminate disasters. Delayed implementation of the provisions needs to be changed which requires greater political will to be displayed. This was observed when the Hon'ble Supreme Court lamented on the dismal implementation of the 2005 DM Act. Hence, it is important to undertake measures to ensure that the statute simply does not remain on statutory shelves. With the passing of time and the increasing frequency and severity of disasters, it becomes important to learn lessons from the past and amend the law which addresses future concerns in a practical and sustainable manner. What also bears

significance in doing so is eventually the political will of the State to take measures to protect its citizens from disasters.