

CRITICAL EVALUATION OF DISASTER MANAGEMENT ACT, 2005

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ABSTRACT

Disaster hinders progress of community and thereby Society, Nation & World via destroying the developmental efforts which ultimately leads the Nations, back by several decades. Thus efficient and cooperative management of disasters in the field of prevention, mitigation, recovery, relief, rescue, rehabilitation and reconstruction has received both nation and worldwide attention. The Indian subcontinent is among the world's most disaster-prone areas. With its territory, large population and based upon geo-climatic conditions, unplanned urbanization and such other factors makes India more vulnerable to disasters. India passed The Disaster Management Act in the year 2005 which provides a detailed action plan right from the Central Government, District and Local level to formulate, implement and execute disaster management plans. However, the certain important aspects like inclusion of community participation in decision making process, classification of disasters, declaration of disaster prone areas and such other matters incidental thereto has been left behind by the act.

The aim of this paper is to critically analyze the existing structure of Disaster Management Act, 2005 for the better implementation by Nation to address the vulnerabilities and to provide humanitarian assistance.

KEY WORDS: Disaster Management, Disaster, Mitigation, Prevention, Reconstruction, Recovery, Rehabilitation, Relief

INTRODUCTION

India is the 7th largest country by area, the 2nd most populous country by population and the most populous democracy in the world. Bounded by the Indian Ocean on the south, the Arabian Sea on the south-west and the Bay of Bengal on the south-east, it shares land borders with six countries and maritime border with four countries in the Asian region. With deep diversity of hills, plains and terrains coupled with varying agro-climatic and hydro-meteorological biosphere, India is naturally vulnerable to a large variety of disasters. According to World Disaster Report, 2018 67.7 % of people affected by natural disasters over the last 10 years were from China, India & Philippines. EM-DAT data shows that China, the US, the Philippines, India and Indonesia to be the five countries most frequently hit by natural hazards over the last ten years. China and India alone account for 62.4% (1.2 billion) of the 2 billion people estimated to have been affected by disasters since 2008. Seven of the worst affected countries, in numbers of people affected, are in Asia. For the purpose of effective management and to reduce or minimize the effect of disasters, Central Government has enacted Disaster Management Act, 2005. It lays down the institutional mechanism for monitoring the implementation of the disaster management plans, policies and ensuring measures to be carried out by various department of Government for prevention, mitigation, relief, recovery, rehabilitation and inclusive of such phases of disaster management.

CRITICAL ANYLYSIS OF THE ACT

The objective of the act is to provide effective management of disasters and for the matters connected relating to it. The act contains XI parts with 79 sections which provide detailed structure containing provisions about establishment of authorities from national to local authority for taking into consideration of specified measures to provide effective management of disasters in order to minimize the reduction in death toll and degradation of environment. The act defines "disaster" as catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community

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of the affected area. This definition silent upon situation if arises like health emergency or outbreak of disease and section 13 of the act specifies “disasters of severe magnitude” now how and who will decide the severity or magnitude of the disaster. Again the definition of disaster doesn’t clearly specify about situation like war arises, then whether it would be considered as disaster or not? Act is silent on this matter.

In order to timely and effective management of disaster Part II of the act deals with the establishment & Powers of National Disaster Management Authority (NDMA). National Authority shall be presided by Prime Minister of India who acts as chairperson and other members not exceeding nine, to be nominated by chairperson. Here the act has not specified the qualification for appointment of such officers, as to deal with the disaster is itself needed expert’s guidance otherwise one wrong decision might leads to suffering of human being or society at large.

The responsibility for laying down the policies, plans and guidelines for disaster management has been imposed upon NDMA and shall ensure timely and effective response to disaster for which it has been authorized to approve plans and guidelines to be prepared in development plans & projects and followed by Ministries or department of government for integrated approach to prevent and mitigate the effects of disasters, lays down guidelines to be followed by state disaster management authorities, to coordinate & implement the policies and plans, provide the recommendations for funding in order to mitigate the effects of disaster, provide support to affected countries upon Central Government’s determination, and take all such measures for prevention, mitigation, preparedness and capacity building to deals with existing disaster situation or for future aspects also. Chairperson of this National Authority has been empowered to take all or any of these measures if in case of emergency but subject to ex post ratification by National Authority. However as discussed earlier the appointment of members carried out through nomination by chairperson, so it could strongly influenced by political authority.

For having practical experience of disaster management, National Authority empowered to constitute Advisory Committee consisting experts from district level to national in the field of disaster management. However the act is silent upon qualification for appointment of advisory body. The act provides establishment of various committee such as National Disaster Management Authority, State Disaster Management Authority, District Disaster Management Authorities, Advisory Committee, Executive Committees which doesn’t looks to have strong base as so many overlapping duties or obligation imposed which definitely bound to confuse and coordination amongst these committees appears to be hefty.

When it deems necessary or expedient in regards with the disaster management Central Government has been empowered under chapter V of the act to coordinate actions & ensuring integration of measures for prevention & mitigation of disasters taken by Ministries of Department of Government of India, State Government, National Authority, State Authority, Governmental and Non Governmental organization, ensure appropriate allocation of funds for the prevention, mitigation, capacity building, preparedness measures taken by Ministries or Department of Government, for the effective and timely responding to any threatening disaster situation Central Government ensure the measures to be taken by ministries or Department of Government, to provide cooperation and assistance as & when requested by State Government, to establish research, training and development programme for the disaster management, to provide support to the affected countries by major disaster if deem appropriate and other such measures to be carried out by Central Government for effective disaster management. The main issues are that act is having no provision about declaration of disaster, classification of disaster and disaster prone areas or zones. However Gujarat State Disaster Management Act contains the detailed provision in this field. Without having any specified provision about this, how the measures to be taken into consideration for effective disaster management by authorities.

To take the measures which necessary for prevention, mitigation, preparedness & capacity building in order to disaster management the responsibility has been imposed upon Ministry or Department of India in accordance with the guidelines laid down by National Authority, Ministry has look out also towards integrated approach for disaster management into development plans & projects, responding effectively and promptly to any threatening disaster situation or disaster, to review the enactments in policies, plans, rules, regulations with a view to incorporate them for mitigation and prevention of disasters, to allocate the funds for disaster management, provide assistance to National Authority and State Government in the field of drawing up mitigation, preparedness, response plan and capacity building programme for disaster management, carry out

rescue and relief operation, to assess the damage due to disaster, carry out rehabilitation & reconstruction, for the immediate response for disaster situation, provide emergency communication, transport facility for goods and personnel so affected, provide evacuation, rescue, temporary shelter & other immediate relief, setting up temporary bridges, jetties & landing places, provide drinking water, essential services, healthcare services & such other services to be provided in affected area. No disaster effect can be mitigated without the inclusion of role of community, private sector and individual to assist the authorities in disasters. However act doesn't provide the inclusion of this community participation while formulating response plans for effective disaster management.

With regards to better and effective management during disaster Ministry or Department shall be authorized to prepare a disaster management plan including measures to be taken for prevention & mitigation in accordance with the National Plan for disaster management, integration of mitigation measures in development plans in accordance with the guidelines of National Authority & National Executive Committee, roles & responsibilities in relation with preparedness & capacity building, role & responsibilities for promptly and effectively responding to disaster, current status of preparedness level to perform such roles & responsibilities. Ministry or Department of Government shall also review and update the plan as and when needed for disaster management, and then forward the same to the Central Government, then Central Government shall forward the copy to National Authority for the approval. It is also an obligatory act upon Ministry of Department to provide financing mechanism while preparing disaster management plan.

This chapter V also imposes responsibilities upon State Government to take measures as specified in guidelines by National Authority which includes coordination of actions of different departments of State Government, State Authority, District Authority, & non- governmental organization, to cooperate and assist in disaster management to the National Authority, National Executive Committee, State Authority, State Executive Committee & District Authority, to cooperate and with assistance to Ministries or Department either upon the request made by them or voluntarily, to allocate the funds for measures in regards with prevention, mitigation, capacity building and preparedness in accordance with State and District Plans, to integrate measures to reduce vulnerability in state management plans, to establish adequate warning systems for vulnerable communities, to ensure the availability of resources to such various committees for the purpose of effective response, rescue & relief work, to provide rehabilitation and reconstruction assistance to the affected people or community by disaster, & to carry out such other measures for effective implementation of the provisions under this act. Disaster Risk in India has been compounded by increasing vulnerabilities which varies from place to place and person to person based upon socio-economic conditions and such other situation. However the act doesn't specify the definition about vulnerability and to whom it has been authorized to decide, to declare the existing conditions regarding vulnerability and vulnerable communities.

The obligation for the effective disaster management has not only imposed particular upon the disaster management division or National Authority but every department of Central as well as State Government in regards with the measures to be taken into consideration in accordance with the guidelines laid down by National Authority and State Authority respectively.

Chapter VI of the act lays down the function of Local authority with the subject to directions of District Authority to ensure that proper training should be provided to its officers and employees, to make sure about the availability of the resources in usable condition so that it can directly be used during disaster situation, to ensure the construction project carried out by it should be in accordance with the standards laid down for the prevention & mitigation of disasters as laid down by National, State and District Authority, to carry out relief, rehabilitation and reconstruction measures in affected area accordingly stated in State and District Plan and such other measures to be taken which stands necessary for the disaster management. When at the time of disasters its Local Authority who has to play ground level role, however the act doesn't provide detailed role and responsibilities for Local Authority instead it provides substantive provisions regarding functions of different authorities, ministries and even department of Government. Under Gujarat Disaster Management, detailed provision about responsibility has been laid down for Local Authority. The Importance should be given to Local Authority in decision making however act, 2005 which provides the function of Local Authority under direction and supervision of District Authority; hence if decision making power handed over Local Authority may leads to proper and effective management of disaster in all phases.

Chapter VII of the act deals with the establishment, roles & responsibility of National Institute of Disaster Management (NIDM) which is mainly responsible for planning and promoting training and research for disaster management and for the development of training modules, organize training programme, formulate and implement a comprehensive human resources development plan, provide assistance in National Policy formulation, provide required assistance to the training and research institute, provide assistance to State Government and State training institute for formulation of strategies, disaster management framework and other assistance may be required by State Government, preparation of educational material for disaster management for the academic and professional courses, increase the level of awareness amongst stakeholders including school & college going students, teachers and technical personnel with mitigation, preparedness and response plan, organize and facilitate the study courses, holding seminar, conferences, lecture series within and outside India for disaster management, publication of research papers, books and establish library and perform all such other function for effective disaster management. The Central Government has been empowered to provide officers, consultants and other employees to NIDM, as no procedure and qualification has been laid down for appointment such officers.

For the immediate or prompt response to the disaster or threatening disaster situation National Disaster Response Force has been constituted as given under chapter VIII of the act where the direction and control of the force exercised by National Authority and the command and supervision of the Force shall be vested in the hands of the officer appointed by Central Government.

Chapter IX provides the mechanism for constitution of National Disaster Response Fund by Central Government for meeting the expenses for during disaster and post disasters measures to be carried out such as rescue, relief, and rehabilitation & reconstruction. For the purpose of mitigation measures Central Government has been empowered to constitute National Disaster Mitigation Fund. For the implementation of the scheme 'Strengthening of State Disaster Management Authorities (SDMAs) and District Disaster Management Authorities (DDMAs)' NDMA has released Fund to states where as per Annual Report of NDMA 2018, 28 out of 29 States and 6 out of 7 Union National Disaster Management Authority 18 Territories signed Memorandum of Understanding (MoU) for implementation of the scheme in their respective States/ UTs. State Governments of Tamilnadu and UT of Delhi did not sign MoU for implementation of the scheme. Tamil Nadu covers an area of 13, 00,582 kms and has a coastline of about 1,076 kms which is about 15% of the coastline of India. More than 40% of the fisher population lives within 1km of coast and 50% of them live within 2km of the coast. The geographical setting of Tamil Nadu makes the state vulnerable to natural disasters such as cyclones floods and earthquake-induced tsunami. About 8% of the state is affected by five to six cyclones every year, of which two to three are severe. Union Territory Delhi is also vulnerable to Earthquake and such other disasters & most at disaster risk among Union territories (UTs) falls in the 5th Rank out of scale of 10 in the category of Composite Hazard Index of States as per Disaster Score Card for States and Union Territories of India. Hence being one the Vulnerable State, Why State Government of Tamilnadu and Union Territory Delhi has not signed MOU for implementation of the said scheme is not clear or not understandable in nature.

The details of amount released to States/ UTs under the Scheme is as given below but on which ground or basis this much of amount has been released to states is not clear:

Financial Year	No. of States/UTs to Whom Fund Released	Total Amount Released (In Lakh)
2015-16	29 (25 States and 4 UTs)	Rs. 1044.40
2016-17	10 (6 States and 4 UTs)	Rs. 475.66321
2017-18	17 (15 States and 2 UTs)	Rs. 714.51474

(Source: NDMA Annual Report 2018)

Another aspects of the act as specified under section 71 of part XI in regards with the jurisdiction of Supreme Court and High Court only have the powers to entertain any suit or proceeding against the action taken or any guidelines issued by Central Government, National Authority, State Government, State Authority or District Authority, which ultimately grant the immunity to such officers may leads to encourage themselves to pursue any activities against the objectives of act. Hence it affects the basic right to access justice from ground level. According to Equality in aid: Addressing Caste Discrimination in Humanitarian

Response Report, caste based discrimination has been taken place during responding disasters, these people even more exposed to disasters than other groups, and less likely to receive humanitarian aid. Laws that are meant to protect them are not properly implemented. As jurisdiction has been vested to higher courts, it would create difficulties for such people to get justice and to get their right during rescue, relief and rehabilitation phase.

CONCLUSION & SUGGESTIONS

In recent years, India has faced many disasters induced either through climate change, natural or manmade. Manmade disasters can be controlled thorough human efforts but occurrence of natural disasters cannot be controlled but its impacts can be reduced by common but differentiated approach based on vulnerabilities. Government of India has taken various measures in order to mitigate the impacts of disasters by the enforcement of Disaster Management Act, 2005, however certain limitations in the provisions of the act has limited the enforcement of the act in true sense. As according to EM-DAT, in 2018, there were 315 natural disaster events recorded with 11,804 deaths, over 68 million people affected, and US\$131.7 billion in economic losses across the world. The burden was not shared equally as Asia suffered the highest impact and accounted for 45% of disaster events, 80% of deaths, 76% of people affected. Globally, India recorded the highest number of people affected (35%). These seems that instead of having the nationwide legislation still human death, suffering and adverse impacts upon the society continues which ultimately shows an urgent need for the implementation and enforcement of the act in order to secure humanitarian assistance and effective management of disasters as any development cannot be gained and sustained without inclusion of the provision regarding effective disaster management. Some of the suggestions are as: Widening the definition of disaster is must by inclusion of public health emergency, situation like war or armed conflict should be specified clearly, Creation of comprehensive plan including public health emergency is needed, Defining vulnerability and making provision about imposing responsibility upon authority or officer for deciding vulnerability criteria is must, Incorporation of provision about qualification for the members to be appointed in the National Authority, Inclusion of Local Authority while policy formulation in regards with the disaster & including in the decision making alongwith empowering Local Authority to take decision at the time of disasters so that no formality is needed about asking permission and then to perform when disaster already hits hard, the duties and powers of various authority need to specified for particular aspects only so that no confusion would arise about which and who will follow or perform the function, Declaration of disaster prone area and classification of disaster is required, Provisions for challenging the action of any authority or officer in lower courts should be included. At the end, it may be concluded that if minor lack in the role and responsibilities at the time of disaster would result into heavy death toll with not only human suffering but degradation of environment, hence looking towards the existing structure it is better if the certain amendment would taken place in the act.

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