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“Dharma is to protect the Needy”

Article on
CRITICAL ANALYSIS OF THE
DISASTER MANAGEMENT LEGISLATION IN INDIA

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Abstract

Despite the fact that India is vulnerable to disasters, disaster management has not been in depth addressed in the Indian Constitution. Surprisingly, in the absence of any particular constitutional stipulation or dedicated legislative enactment on the issue, management of successive catastrophic disasters has largely relied on the discretionary trial and error method of disaster managers until recently. However, in response to the growing pressures over the years, the Indian Parliament for the first time passed a legislation for effective management of disasters in the country known as the Disaster Management Act in 2005. The Act is essentially the fulcrum around which the country's disaster management legal system revolves. It essentially establishes the legal framework under which disaster management systems, functionaries, and activities are organised and operationalized in order to make the country disaster-free and more efficient in tackling the problems. Without a question, this Act sets a standard structured pattern for state disaster management laws. The aim of this paper is to critically analyse this legal structure for disaster management that is currently present in India along with the constitutional provisions with respect to the disaster management legislation. Recently, in order to contain the spread of the COVID-19 pandemic, the Disaster Management Act, 2005 along with the Epidemic Disease Act, 1897 was used by the federal and state governments to alert COVID-19 management orders. This paper essentially examines the relevance and effectiveness of the Disaster Management Act of 2005 and the Epidemic Act of 1897 in the wake of COVID-19.

Key Words: **Disaster management, Constitution of India, COVID-19, lockdown, Epidemic Act.**

Introduction

Until 2005, India lacked the categorical constitutional-legal stipulations, and the question of disaster management was conjecturally determined on the basis of its organisational dynamics. For a long time, disaster relief was thought to be solely under the constitutional purview of the states, with the central government having little or no influence in the matter. As a result, despite the commonality of the causes and impacts of disasters on people's lives and livelihoods, various states adopted differing, and often contradictory, policies and ended using haphazard approaches to disaster management. In this matter, the Central government had little involvement. The central government's only involvement was in the funding of disaster relief operations, for which it provided both plan and non-plan grants to states on a regular basis. Despite the monumental severity of a catastrophe or a state government's inability to handle such disasters efficiently and effectively, the central government's involvement had been bare minimum.

However, two major events prompted a reorganisation of the disaster management matrix and helped in the creation of a sound legal structure on the issue. The first and the most major event was the International Decade for Natural Disaster Reduction (IDNDR) as declared by the United Nations General Assembly of the 1990s. It kicked off a massive global movement to mainstream natural disasters in the global agenda. India too joined the global move for prioritizing disaster administrative framework. The second major incident that shook India was the series of catastrophic natural disasters such as the Gujarat earthquake, 2001 and the Indian Ocean Tsunami, 2004. Following that, the spotlight was turned at the central level, with a call for its active participation in developing a robust national legislative structure for disaster management, as well as the establishment of a dedicated federal agency to advise and coordinate state disaster management operations in times of disaster. Eventually, in 2005, Parliament passed the Disaster Management Act, which now serves as the country's core legislative structure for disaster management.

The Indian Constitution and the disaster management legislations

The subject of disaster management was not included in the Indian Constitution, indicating that it was not considered a significant enough topic to warrant the attention of the constitution makers and inclusion in the constitution's provisions. For a long time, in the absence of any constitutional stipulation, disaster management was traditionally regarded as coming under the jurisdiction of the states, as was the colonial norm.

The application of the doctrine of residuary powers to the Indian constitution can be used as a prerequisite for deciding the required legislative locale for disaster management. By applying this doctrine, it can be decided that any subjects of legislative competence that have not been allocated to any levels of government through the constitutional scheme of power divisions would immediately come under the control of the Central Government, which has been appointed as the repository of residuary powers in the Indian Constitution. Thus, since disaster management is not mentioned among the enumerated subjects in any of the three lists of the Constitution's seventh schedule, the Central Government has the legal authority to enact legislation on the topic. As a result, disaster management can be construed to be a part of the provisions of **Article 248** dealing with legislative residuary control.

In addition, entry 56 of List I (Union List) envisions the Central Government exercising legislative authority over the regulation and development of interstate rivers and river valleys to the degree that such regulation and development under the jurisdiction of the union is deemed by Parliament by law to be expedient in the public interest. The constitutional scheme of things clearly favours the central government in the case of water-related natural disasters, as the provisions of entry 17 of list II are rendered subject to the provisions under entry 56 of list I. To put it another way, a state's ability to make laws on water and related issues is limited to their territorial authority, within which another state or the federal government may act.

Legislations like the DM Act 2005 are based on **Entry 23, Concurrent List** of the Constitution, which states, Social security and social insurance and **Entry 29, Concurrent List**, Prevention of the transmission of infectious or contagious diseases or pests affecting men, livestock, or plants from one State to another.

The Disaster Management Act, 2005

The Disaster Management Act was passed by the parliament in 2005 as the country's foundational legislation. The DM Act's specified object and intent is to handle disasters, which includes planning mitigation plans, capacity-building, and other activities. The Act not only creates national agencies and functionaries, as well as their powers and duties, but it also establishes a comprehensive structure through which federal, district, and local level bodies are formed and officials appointed to carry out their assigned disaster management tasks and responsibilities.

The Act necessitates the development of a top-down disaster management model in India, with the establishment of a central agency to prepare and execute disaster management policies and plans. For

this purpose, the **National Disaster Management Authority (NDMA)** is tasked with formulating policies an

d approving the national disaster management plan, as well as overseeing the enforcement and execution of the policy and plan for disaster management at the highest level. Under the DM Act, the National Disaster Management Authority (NDMA) is the nodal central body for disaster management coordination, with the Prime Minister as its Chairperson and consisting of no more than nine members, including a Vice-Chairperson. All members are elected for a five-year term. As empowered under **Section 6** of the Act, the NDMA establishes procedures, plans, and guidelines for disaster management.

The Act further empowers the central government to establish a **National Executive Committee (NEC)**, as the NDMA's executive arm, responsible for assisting the National Authority in the discharge of its duties, having responsibility for enforcing the National Authority's policies and plans, and ensuring compliance with directions provided by the Central Government. The NEC is composed of government secretaries from the ministries of the home, health, power, finance, and agriculture. The National Emergency Committee oversees preparation of the country's National Disaster Management Plan and ensures that it is reviewed and revised regularly.

With the passing of the Act, states no longer have the final say in establishing disaster recovery strategies and plans and implementing them at their own discretion. They must not only adhere to the NDMA's general guidelines and policy schema, but also to the NEC's directives.

The Act also provides for the creation of corresponding bodies at the state level, such as the **State Disaster Management Authority (SDMA)** and the **State Executive Committee (SEC)**. The State Disaster Management Authority (SDMA) oversees developing the state's disaster plan. The Chief Minister is the chairperson and consists of eight members appointed by him. The SDMA is obligated by section 28 to ensure that all state departments prepare disaster recovery plans in compliance with the National and State Authorities' requirements.

Another entity under this Act is the **District Disaster Management Authority (DDMA)**. The Collector, District Magistrate, or Deputy Commissioner of the district will act as the Chairperson of the District Disaster Management Authority (DDMA). Lastly, the **National Disaster Response Force (NDRF)** is responsible for responding to a disaster or a situation that is close to one. The Director-General of the NDRF is appointed by the Central Government. In the past, the NDRF has played a

critical role in saving people from disasters such as the Kashmir floods of 2014 and the Kerala floods of 2018.

Regardless of any law in effect (including overriding powers), the Central Government may issue any instructions to any authority anywhere in India to encourage or assist in disaster management (Sec 35, 62 and 72). Importantly, all such instructions provided by the Central Government and the NDMA must be adhered to by Union Ministries, State Governments, and State Disaster Management Authorities. To accomplish all of this, the prime minister can also use all the NDMA's powers (Sec 6(3)).

To relieve social sufferings, the NDMA or SDMA are expected to offer a basic level of relief to disaster victims (Sec 12 and 19), which includes relief in loan repayment or the issuance of new loans on favourable terms (Sec 13).

The relevance of the Act during COVID-19 lockdown

Just like the whole world was struck with COVID—19, India too was struggling to tackle the spread of the virus. As a result, COVID-19 was declared a notified disaster by the Indian government, putting it under the Disaster Management Act of 2005. Subsequently, a lockdown was announced in the country under the Act.

Also, the **Epidemic Disease Act, 1897** which was intended to prevent the transmission of a disease, was being used by the federal and state governments to alert Covid-19 management orders (and through sea). The epidemic law was enacted to prevent social gatherings and monitor bubonic plague that arrived in Mumbai via the sea route. The epidemic law had never been used to monitor a pandemic before. The law did not provide allowance for involuntary quarantines or social distancing, fast money releases, or the seizure of government or private property to provide relief. It gives health officials a lot of control, but it gives law enforcement authorities very little, which is why they are enforcing full lockdown right now. That is why DMA was needed for this lockdown.

PM Modi declared Covid-19 a national disaster under Sections 6 and 10 of the law so that the entire country could have uniform lockdown regulations that are easier to enforce, especially on which services and functions are allowed and which are not.

The legislation empowers the Prime Minister, as chairperson of the NDMA, to make decisions about the pandemic, including deciding on relief for victims and special initiatives for the vulnerable. For coping with the pandemic, the state chief minister can also use special powers granted by statute. Some states have used these powers, including Uttar Pradesh, Rajasthan, and Gujarat. Except in Delhi, where the Lieutenant-Governor has these powers, the PM and CMs have the same powers under the constitution.

The legislation also allows for the arrest of someone who disobeys government orders, including government officials and private company executives invoking **Section 188 of the Indian Penal Code, 1860**. A violation of this section will result in a jail sentence of up to six months and/or a fine of Rs 1000. The first offence carries a one-year sentence, while the second carries a two-year sentence. The officials designated as nodal officers, in this case, district magistrates, have the authority to summon anyone to assist with disaster prevention and relief efforts. Any dereliction of duty by staff reporting to him may be kept accountable by the department manager. Only chairpersons of national, state, or district disaster management authorities may file a lawsuit against a public official.

In addition to the DM Act, state governments have used the Epidemic Diseases Act of 1897 and other state-specific Public Health Acts (e.g., the Tamil Nadu Public Health Act of 1939) to address the crisis. States were also able to use funds from the State Disaster Response Fund as a result of it.

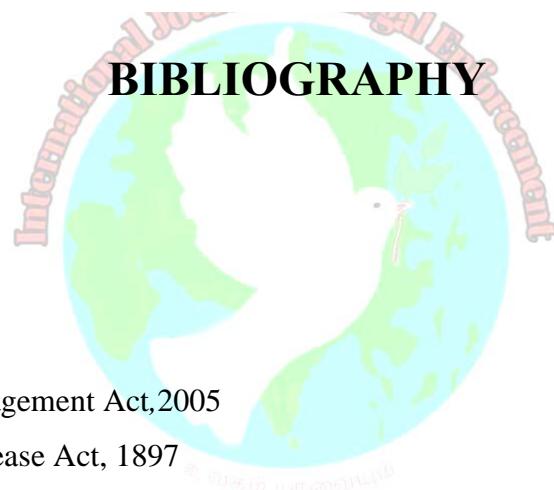
Conclusion

In summary, the Disaster Management Act of 2005 remains the fulcrum around which the country's disaster management legal system revolves. Without a question, this Act sets a structure for state disaster management laws to be patterned after.

While the Disaster Management Act 2005 has helped in efficiently containing the spread of the COVID-19 virus in the country there still remains a huge scope of improvement in proper application of the legislation. A national biological disaster necessitates close administrative and political cooperation, headed by the federal government and followed by state governments, disaster management agencies, and other stakeholders. National and state political and administrative agencies should cooperate and communicate more in the spirit of the DM Act and federal structure. Also, the effectiveness of the DM Act's national and state decisions is contingent on its execution on the ground;

district administration and local self-government institutions remain the best bet. Thus, effort should be put to see that these bodies have administrative, political, and financial authority. Lastly, productivity and efficacy of district level functionaries will be significantly improved if local governments and communities cooperated voluntarily and actively.

In times like COVID-19, constitutional courts must step up to the plate. Discrimination, police excesses, hunger, lack of medical assistance, and other issues have been reported from all over the country. In addition, there is a limit on courts' jurisdiction (Sec 71) and no grievance redressal procedure under the DM Act. To ensure rule of law and protection of human rights as guaranteed by the Indian Constitution, all constitutional courts should suo motu register PILs and closely track the implementation of the DM Act.



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