Disaster Management: Towards A Legal Framework

Jacob P Alex
The West Bengal National University of Juridical Sciences

Series Editors:
Aasha Kapur Mehta, Pradeep Sharma
Sujata Singh, R.K. Tiwari
# Table of Contents

1 Introduction 1

2 Role of Law in Disaster Management 6

3 Necessary Changes for the Disaster Management System in India 8

References 25
India suffers huge losses and setbacks in development due to disasters. Our disaster response is often hampered by procedural confusion and by policies that do not facilitate effective management. Efficient policy and effective institutional support are a sine qua non for disaster management. Yet, we do not have an effective administrative or legal framework to manage disasters. In this context, this paper aims to:

1. Briefly study the various disasters and the problems in managing them in India, analyse the findings and suggestions of different bodies/commissions/committees on disasters and broadly identify the various issues that confront the disaster management system in India (sections 1.1 to 1.6).

2. Understand the role of law in disaster management and make a comparative study of the disaster legislations in select countries (sections 2.1 to 2.2); and

3. Suggest a solution to develop an effective disaster management mechanism (section 3.1).

1.1 Overview of Disasters in India and Related Problems

The Indian subcontinent is susceptible to natural catastrophes and is one of the most disaster prone regions in the world. Close to 56 million Indians are hit by disasters (both natural and manmade) each year. Floods, droughts, cyclones, earthquakes, landslides, avalanches etc. are the major natural disasters that are increasingly affecting India. Out of the 35 States/Union Territories in the country, 25 are disaster prone and 139 districts have been identified as multiple-hazard prone. Manmade disasters are another area that need attention. Industrial/chemical disasters, fire and train accidents are common manmade disasters. It is a known fact that a lot of human suffering and misery due to disasters can be mitigated by taking timely action and preventive measures. It is now an accepted fact that natural disasters are acts of God but losses incidental to it are acts of men.

Experience has shown that destruction from disasters can be minimized by a well functioning disaster management
system. In this context, it is necessary to look into the disaster management system in India. Handling of the different disasters in the recent past is a testimony of the inadequate and ill-equipped disaster management system in India. To suggest a solution for the present problems, it is necessary to identify the various issues relating to disasters in India. For this purpose floods, cyclones, droughts, landslides, earthquakes, forest fires, avalanches, pest infestations, mine fires and biological disasters have been briefly studied. An understanding of the nature and issues arising from these disasters will help identify the broad issues that we are confronted with. The study shows that, at present, starting from the pre-disaster stage ranging up to the rehabilitation scenario, the Indian disaster management system is not functioning properly.

1.2 Existing Disaster Management Mechanisms in India

Under the present scheme of disaster administration, natural disaster management is largely the responsibility of the state government. The state government will have to undertake the responsibility of rescue, relief and rehabilitation. The disasters will be managed under the direct supervision of the concerned nodal Ministries or Departments. However, the Central Government, with its resources, physical and financial, does provide the needed help and assistance to augment relief efforts. The role of Central Government is supportive in terms of supplementation of physical and financial resources.

National Level

At the National level there are different bodies for disaster management activities. They are:

1. Natural Disaster Management Division with the Ministry of Home Affairs.
2. The National Institute of Disaster Management (NIDM), an autonomous institute. These are the nodal agencies for natural disaster management in India.
3. Crisis Management Group (CMG), which was set up by the Union Government to advise, guide, supervise and co-ordinate relief measures in affected states.
4. There is also an Inter-Ministerial Co-ordination Group.
5. Depending upon the type of disaster, a nodal Ministry is assigned the task of coordinating all activities of the State and district administration and other support departments.

State Level

The responsibility of disaster preparedness and response at the State level is usually delegated to the Relief and Rehabilitation Wing of the Department of Revenue. The Crisis Management Committee at the state level is headed by the Chief Secretary with the participation of all the related agencies. Most of the states have Relief Commissioners, who are in charge of relief measures. Of late, some states like Maharashtra and Uttaranchal have set up Departments of Disaster Management.

District Level

The District level Co-ordination and Review Committee is headed by the District Collector. The District Collector is responsible for the relief and rescue operations at the district level. The actual day-to-day work of administering relief or implementing contingency plans for disaster mitigation at the field level is the responsibility of the District Collector.

The existing mechanisms are not adequate to provide an effective and specialized leadership to disaster management activities in the country. The governmental approach on disaster policy\(^1\), strengthening of administration and basic framework for management itself is faulty. The absence of an integrated national policy has led to overlooking some of the vital aspects of disaster management. For this, we need a systems approach involving all concerned agencies. There is a need to develop a uniform and specialized scheme of administration, which is competent enough to give leadership for disaster management activities in the country.

1.3 Recommendations of High Powered Committee

Due to the increasing frequency of natural disasters and their severe impact on individuals, society, economy and

\(^1\) The existing ‘post-disaster reaction’ needs to be changed. Attention should be given to the ‘pre-disaster pro-action’
environment, the Government of India appointed a High Powered Committee on Disaster Management (HPC) in 1999. The HPC was constituted for suggesting institutional reforms and a system of disaster management through the preparation of disaster management plans at the National, State and District levels. It covers both natural and manmade disasters. The findings of HPC Report will help to develop a comprehensive idea about the disasters and disaster management related issues.

This is the first-ever exercise in India, wherein an attempt has been made to examine all kinds of disasters in a holistic manner. The HPC Report was submitted in September 2001. The essence of the work suggests, building up a new culture of prevention, preparedness and mitigation. This is based on the shifting of focus to the pre-disaster preparations and planning.

There is an urgent need to concentrate on pre-disaster preparation. Similarly, the recommendation for the passing of disaster management legislation needs immediate follow-up. This will place the system on a firm foundation. All the recommendations of the HPC will help to strengthen the counter-disaster actions.

However, there are reservations regarding the following three aspects of the HPC Report:

i. Creating a separate Ministry for Disaster Management.

ii. Concentration of powers and responsibilities with Relief Commissioners at the National, State and District levels.

iii. Rehabilitation issues.

1.4 Financial Arrangements for Disaster Management as Recommended by Various Finance Commissions

The policy and arrangements for meeting relief expenditure are, by and large, based on the recommendations of successive Finance Commissions. Necessary financial resources are needed for the successful management of disaster. In this context, it is necessary to look into the findings and recommendations of successive Finance Commissions. The earlier “margin money” approach to the creation of the Calamity Relief Fund or National Calamity Contingency Fund is based on the recommendations of the various Finance Commissions.

1.5 Study of the Recommendations/ Suggestions of the UN Made in the International Decade for Natural Disaster Reduction

The recognition of the increased general vulnerability of people and property to natural disasters led the General Assembly of the United Nations to adopt a resolution in the late 1980s, designating the last decade of the twentieth century as the International Decade for Natural Disaster Reduction (IDNDR). The resolution stated: “The objective of the IDNDR is to reduce through concerted international action, especially in developing countries, the loss of life, property damage and social and economic disruption caused by natural disasters such as earthquakes, windstorms, tsunamis, floods, landslides, volcanic eruptions, wildfires, grasshopper and locust infestation, drought and desertification and other calamities of natural origin”.

During the first part of the decade, attention was given to the scientific and technical component of prevention strategies, reflected till the 1990s in the overall disaster management approaches. In 1994, social commitments and developmental considerations were added as priority in the Yokohama Strategy. Since then disaster reduction and IDNDR issues are placed within the overall context of sustainable development. Yokohama strategy asks the member states to incorporate disaster management activities into development plans. The idea of infusing disaster management plans into development planning gained momentum in Yokohama.

The major contribution of IDNDR and Yokohama Strategy is the development of a ‘pro-active’ approach towards disasters by shifting the focus to planning and preparation. The necessity of international and regional cooperation is also highlighted. Being a part of the IDNDR and Yokohama Strategy, it is necessary for India to look into
these aspects. This will help India develop a model/system of disaster management with global standards.

1.6 Disaster-related Concerns and Necessary Changes in Disaster Management System in India

The disaster management system should be able to minimize, control and limit the effects of disaster. The administration should be equipped to lead the disaster management activities without being left handicapped. In this context, it is necessary to understand the different issues, which confront the Indian disaster management system. Understanding the different problems in the Indian context is essential to evolve a solution. A study about disasters and its management in India will prove the need for a new or a thorough overhauling of the existing system.

The following are the issues concerning necessary changes in the present Disaster Management system:

Pre-disaster Stage

1. Proper Preparedness: The prevailing post-disaster reaction should be changed into a pre-disaster pro-action.
2. Developing a ‘Disaster and Area Specific approach’: India is a multi-disaster prone country. Causes and effects of various disasters are different. Each disaster needs to be addressed separately. The role of district administration needs to be increased and it should spearhead disaster management activities.
3. Mapping of the whole country, especially the preparation of micro zone maps.
4. To evolve construction codes and safety guidelines: The periodic review and updating of such codes and guidelines is essential. Building laws or rules should be formulated.
5. Assessment of existing buildings/structures and their strengthening should be carried out within a timeframe.
6. While constructing public structures like schools, halls, dhammastalas, hospitals etc. evacuation of people and their eventual accommodation in such buildings should be anticipated. For this purpose a contingency plan should be prepared.
7. The integration of safety norms with all development and construction activities needs to be ensured.
8. Creating specialized disaster management system for certain special type of disasters like nuclear disaster, mine burst etc.
9. There is a need for maximum utilization of science and information technology in disaster management. Besides, traditional wisdom/knowledge should enrich the Codes and Disaster Management Plans.
10. Preparation of Disaster Plans needs to be carried out immediately. The disaster management plans should serve as a ‘blue print’ for all disaster management activities.
11. Establishment of disaster management research and training institutes.
12. Sufficient stock of relief material, equipment etc. needs to be ensured.
13. Ensuring the presence of trained manpower to give leadership for disaster management activities. In crisis situations, Army, Police, Fire-fighters, Civil Defence Personnel etc. need to play an increased role. The involvement of professionals and Panchayati Raj institutions should also be increased.
14. Proper utilisation of the services of philanthropic organizations: The role of NGOs is very important in disaster situations. Their potential needs to be tapped.
15. Various agencies involved in disaster management exercises need to be well coordinated.
16. International and regional co-operation needs to be increased.
17. Role of insurance agencies in disaster management needs to be given more importance. Compulsory insurance of people and buildings in highly vulnerable areas is an important option.
18. Timely, early warning of disasters.
19. Evolving a new culture of disaster management, that relates to preparedness, quick response, strategic thinking and prevention.
During and After the Disaster
20. Primary steps: collecting accurate information about the disaster and opening control rooms and initiation of effective search and rescue operations.
22. Medical attention to the injured people.
23. Emergency hospitals, communication and transportation.
24. The authorities should ensure availability of:
   a. Water and food
   b. Sanitation and nutrition
   c. Shelter and survival
   d. Maintenance of law and order
   e. Smooth administration
   f. Re-establishment of normalcy
25. Relief distribution should be need based and discrimination free.
27. Relief centres with basic necessities need to be established in case of an emergency.
28. There should be proper coordination of relief activities.
29. Reduction of all immediate threats to life.
30. Role-players and people should be alerted.
31. Removal of corpses: Disposal of corpses without the formality of post-mortem should be considered.
32. Removal of debris.
33. Transparency and accountability in all transactions.
34. Financial aid and assistance should be given only according to well defined parameters.
35. Legal assistance and dispute redressal.
36. Victims should be assisted in finding livelihoods.
37. Rehabilitation should be treated as an integral part of disaster management.
38. Protection of human rights.

*Inter alia*, the State will have to facilitate the aforementioned 38 concerns to ensure effective management of disaster. The existing system is not effective for delivering good results. Revamping of the system is an urgent concern. The disaster management authorities should be free from political considerations and administrative bottlenecks. At the same time, they should be empowered to give necessary orders/direction and guidelines and act as a link between the Union Government, State Government and District Administration. Creation of impartial authorities, similar to Human Rights Commission or Minority Commission will be a good option. Such authorities should be given necessary power and resources to manage disasters.

Therefore, it is necessary to create the following specialized agencies with adequate powers to manage disasters.

1. National Commission for Disaster Management
2. State Commission for Disaster Management
3. District Council for Disaster Management
4. Sub-District Forum for Disaster Management

The necessary changes in financial arrangements based on the recommendations of the Eleventh Finance Commission and the method of disaster related dispute settlement through creating the office of Ombudsman need to be taken up.

The study suggests changes in the management scheme of disasters. From preparedness to rehabilitation, the existing mechanism is not functioning efficiently. To incorporate the aforementioned suggestions, the existing disaster management system needs to undergo major changes. One major step, which is needed, is the passing of disaster legislation. This will spell out legal standards, procedures, rights and duties; and establish authorities for disaster management, so as to institutionalize the disaster management system.

---

*This report was submitted in September 2002. Hence the changes in the field of Disaster Management Law after 2002 does not form part of this report.*
Role of Law in Disaster Management

The role of law in disaster management is concerned with the enforceable right of a disaster victim to rescue, relief and rehabilitation. The existing government schemes/policies are not known to anyone, particularly the victims, till disaster actually strikes. Even in its enforcement the attitude is one of charity by the state and not entitlement for the victim.

2.1 Fundamental Right to Rescue, Relief and Rehabilitation under the Constitution

The Constitutional concern for social justice is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities from which the poor are suffering and to secure dignity of their person. The Indian Constitution declares that India is a welfare state, i.e., a state that promotes the general welfare of the people. Especially after the Maneka Gandhi Case (1978), courts have expanded the scope of ‘life’ and ‘personal liberty’ under Article 21. The Supreme Court has also interpreted the words ‘procedure established by law’ to include both the procedural and substantive legal requirements of fairness, justness and reasonableness. Article 21, which guarantees the protection of life and personal liberty, is the repository of all important human rights. From this, the Supreme Court has deduced an affirmative obligation on the part of the state to preserve and protect human life. A collective reading of judgments will lead to the logical conclusion that the right to rescue, relief and rehabilitation is a right guaranteed under Article 21. Recently, the Gujarat High Court has taken such a view in B.J. Diwan vs. State of Gujarat (2001).

Obligation of the State under the Doctrine of Parens Patriae

The concept of parens patriae is explained as “the right of the sovereign and imposes a duty on the sovereign, in public interest, to protect persons under disability who have no rightful protector.” The doctrine of parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons and property non sui juris, such as minor, insane and incompetent persons. The doctrine of parens patriae meaning ‘father of the country’ was applied originally to the king and is used to designate the state referring to the sovereign power of guardianship over persons under disability. The courts in India have applied this doctrine in several cases. Therefore it is submitted that, under the doctrine of parens patriae also, the state is obliged to render adequate relief and rehabilitation to the victims of disaster.

Courts and the Rights of Disaster Victims

In the B.J. Diwan case, the Gujarat High Court rejected the government’s argument that the court doesn’t have jurisdiction to adjudicate upon a case, which claims the enforcement of relief and rehabilitation. The court went on to hold that the right to relief and rehabilitation is a guaranteed right under Article 21 of the Constitution and the state is duty bound to ensure the same. Earlier the Su-
preme Court had intervened in a matter related to the alle-
gregation of death due to drought, famine and starvation in
Orissa. The intervention of Bombay High Court in the
aftermath of the Latur earthquake provided minimal re-
lief. The Bombay High Court passed directions about tem-
porary shelter, drinking water, sanitation facilities, health
services, public distribution systems and compensation for
the handicapped and the dependents of the deceased in
the Latur earthquake. The Delhi High Court also inter-
vened and gave directions to the government in the wake
of the dengue epidemic.

Need for a Legislation
The state is responsible for rendering adequate support
and assistance to the victims of a disaster. This includes the
obligation of the state to make necessary preparation and
planning to face a disaster situation. Cumulatively, this war-
rants the need for legislation. Legislation will ensure the
visibility of governmental institutions - their objectives,
powers and functions and will place the disaster manage-
ment exercise on a more firm foundation. Visibility of the
institution will create a climate of confidence in the minds
of people and will streamline the management of disas-
ters. In addition, legislation allocates responsibilities in legal
form, ensures uniformity of approach and provides for
the protection of the peoples’ rights.

2.2 Comparative Study of Legislations in Select Countries
Various countries have framed their respective disaster laws
according to the constitutional, political, economic, socio-
logical, and geological needs and nature of the disasters
they suffer. A comparative study of legislations in differ-
ent countries will provide an in-depth understanding of
the issue, especially in respect to those situations that are
similar to India. Their experiences will enrich the framing
process of an Indian law on a similar pattern. For this
purpose, the following legislations were studied.

2. *Emergency Powers (Disasters) Ordinance* [British Virgin Islands].

After studying these legislations, the following conclusions
have been arrived at:

1. All the major disaster management legislations establish specialised bodies to manage disasters.
2. A special focus on pre-disaster preparations is necessary.
3. Almost all legislations mandate for evolving ‘Disaster Management Plans’.
4. Disaster Management is treated as a collective effort. As such the involvement and participation of various
bodies is ensured. At the same time, the military, police, fire fighters and civil defence departments are given
a major role in the management of disasters.
5. Most statutes in disaster management ensure the active participation of NGOs, civil society, community,
people etc. by including certain provisions.
6. Expressly or implicitly all legislations connected the management of disasters with development activities.
They envisioned a disaster management oriented development culture.
7. There were provisions in all legislations for making the necessary financial assistance to disaster manage-
ment activities.
9. Provisions are provided for the periodic review of the disaster management mechanisms, plans etc.
10. Rehabilitation and insurance are other aspects which find prominent place in many legislations.
Necessary Changes for the Disaster Management System in India

It is suggested that India needs to incorporate the following major changes in the disaster management system.

1. After a disaster, the enforceable right of the people to get the relief and rehabilitation needs to be recognised.
2. Specialist commissions and councils need to be established for disaster management in India.
3. The focus of the disaster management exercise should be shifted from 'post-disaster reaction' to 'pre-disaster preparation'. The chalking out of disaster plans need to be ensured at the national, state and district levels.
4. Powers and responsibilities of role players need to be expressly mentioned.
5. The role of the military, NGOs, para-military, police, civil defence, philanthropic agencies, people, etc. should be well defined and regularised. Other groups, which could play a vital role in disaster management, are the Panchayati Raj institutions and professionals like doctors, teachers, engineers, lawyers, etc.
6. There should be proper allocation and management of finances and it should be need-based.
7. There should be appropriate punishment for violating the provisions of law/orders/directions.
8. Insurance, disaster loans and compensation need to be given increased importance.
9. Dispute redressal and protection of Human Rights need to be treated as an integral part of the disaster management exercise.
10. Rehabilitation should be treated as a part of the disaster management exercise.

It is envisaged that the enactment of Disaster Management Legislation by the Parliament will achieve the aforementioned goals/changes.

Finding the Legislative Power

‘Disaster Management’ does not figure in any of the Entries in Schedule VII of the Constitution. Therefore proposed legislation should be under Entry 97 of List I of Schedule VII. Further, right to relief and rehabilitation is a guaranteed right under Article 21. The state is also responsible under the doctrine of parens patriae to provide adequate protection to the people from disasters. Entries 2A, 4, 10, 13, 26, 31, 37, 45, 47, 53, 54, 64, 65(a), 65(b), 68, 80, 86 and 94 of List I, Entries 20, 23, 25, 28, 29, 34, 36, 42 and 45 of List III of the Seventh Schedule of the Constitution, read together with Articles 38, 39, 39A, 46, 48A and 51 will provide the basic framework for the proposed legislation.
A statute to provide for the establishment of authorities for effective management of disasters and to ensure proper preparedness, prompt rescue, relief and rehabilitation for matters incidental thereto.

Be it enacted by the Parliament in the 53rd year of the Republic of India as follows:

Chapter I

PRELIMINARY

1. Short title, extent and commencement:
   (1) This Act may be called the Disaster Management Act.
   (2) It extends to the whole of India.
   (3) It shall come into force on such date as the Government of India may, by notification in the official gazette, appoint in this behalf.

2. Definitions
   (1) In this Act, unless the context otherwise requires,
      a. “Basic Plan” means the Basic Disaster Management Plan prepared by the National Commission under Section 5(3) of this Act.
      b. “Disaster” means a catastrophe or calamity, resulting from natural or manmade causes or by accident or negligence, which results in substantial loss of life or property, or human suffering or degradation of environment and shall include the calamities referred to in the First Schedule and does not include incidents like riots, wars, terrorist activities, etc.
      c. “Disaster Management” means all aspects of planning, organising, coordination or implementation of measures, which are necessary or desirable to prevent, minimise, overcome, or to stop the spread of a disaster on the people or any property in, the country, and includes all stages of rescue, relief and rehabilitation.
      d. “District Council” means the District Council for Disaster Management constituted under Section 9(1) of this Act.
      e. “District Disaster” means the disaster mentioned in Section 9(2)(b) of this Act.
      f. “District Plan” means the “District Disaster Management Plan” prepared by the District Council under Section 9(2)(a) of this Act.
      g. “National Commission” means National Commission for Disaster Management constituted under Section 3(2) of this Act.
      h. “National Disaster” means the disaster mentioned in Section 5(5) of this Act.
      j. “Prescribed” means prescribed by the Rules made under the Act.
      k. “State Commission” means State Commission for Disaster Management constituted under Section 4(2) of this Act.
      l. “State Disaster” means disaster mentioned in Section 8(3) of this Act.
      m. “State Government” means Government of a State or Union Territory.
      n. “State Plan” means the State Disaster Management Plan prepared by the State Commission under Section 8(2) of this Act.
      o. “Sub-district Forum” means Sub-district Forum for Disaster Management constituted under Section 9(2)(1) of this Act.
   (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area, in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in that area.

Chapter II

POWERS AND FUNCTIONS OF THE GOVERNMENT OF INDIA AND STATE GOVERNMENT

3. Powers and functions of the Government of India
   (1) Government of India, subject to the provisions of this Act, shall have the power to take all such measures
as it deems fit and expedient for the purpose of disaster management.

(2) a. The Government of India shall constitute a ‘National Commission for Disaster Management.’
b. The Government of India shall appoint a full-time Chairman and four other full-time members for the National Commission for a period of five years.
c. The Chairman and the members shall be persons of integrity and who have knowledge and practical experience in disaster management and related fields.

(3) a. The Government of India shall establish a National Centre for Disaster Management for the purpose of rendering advice to and for carrying out the directions of the National Commission.
b. The Government of India shall appoint a Director for the National Centre for Disaster Management for a period of five years.

(4) a. The Government of India shall constitute a National Scientific Advisory Division for Disaster Management for the purpose of rendering scientific, technical and other advice and to carry out the directions of the National Commission.
b. The Government of India shall appoint a Chief Advisor and two other Advisors of the National Scientific Advisory Division for Disaster Management, who has special scientific, technical and other knowledge regarding disaster management.

(5) a. The Government of India shall appoint a Central Relief Commissioner who would be an officer not below the rank of a Secretary to the Government of India.
b. The Central Relief Commissioner will also serve as the Secretary to the National Commission.

(6) a. The Government of India shall make necessary rules and regulations, for the immediate and increased involvement of the defence forces in disaster management.
b. Defence forces or a specially identified group within, thereof, shall be given specialised training for carrying out the requisite activities for disaster management.

Explanation: For the purpose of this sub-section, defence forces and para military forces means Army, Navy, Air Force, Rapid Action Force, Central Reserve Police Force, Border Security Force, Territorial Army and any other forces under the direct control of Government of India.

4. Powers and Functions of the State Government

(1) Subject to the provisions of this Act, and subject to the general control and supervision by the Government of India, the state government shall have the power to take all such measures, as it deems fit and expedient for the purpose of disaster management.

(2) a. The state government shall constitute the State Commission for Disaster Management.
b. The state government shall appoint a full-time Chairman and two other full-time members of the State Commission, for a period of five years.
c. The Chairman and members shall be persons of integrity and who have extensive knowledge and experience in disaster management and related fields.

(3) a. The state government shall appoint a State Relief Commissioner who would be an officer not below the rank of Secretary to the State Government.
b. The State Relief Commissioner will also serve as the Secretary to the State Commission for disaster management.

(4) a. The state government shall appoint a District Relief Commissioner in each district.
b. The District Collector will be the District Relief Commissioner.
Chapter III

POWERS, FUNCTIONS AND DUTIES OF DIFFERENT AUTHORITIES

5. Powers, Functions and Duties of the National Commission for Disaster Management:

(1) The National Commission shall have the overall responsibility of carrying out disaster management activities in the country.

(2) Subject to the provisions of this Act, the National Commission can take any measure, or issue any order, direction, instruction or guideline, as may be deemed necessary or expedient for the purpose of carrying out such responsibility and function as provided under this Section.

(3) a. The National Commission shall prepare a basic Disaster Management Plan, which will provide a basis for disaster management in the country.

b. The National Commission shall be responsible for ensuring the implementation of the basic plan and for this purpose, it shall be lawful for the National Commission to issue any order, direction, instruction or guideline.

c. The basic plan, among others, shall include measures to be undertaken for disaster preparedness, meet emergency and other situations and develop the capability to deal with disaster and rehabilitation after the disaster.

d. (i) The National Commission shall prepare a basic plan in consultation with the National Centre for Disaster Management, National Scientific Advisory Division for Disaster Management, the Nodal Ministries referred to in the Second Schedule and with the State Commissions for Disaster Management.

(ii) The National Commission may also consult any other department, organisation, body or individual, which it thinks necessary.

c. The National Commission shall review the basic plan from time to time.

(4) a. The National Commission shall issue necessary guidelines regarding the safety measures, which are to be undertaken in relation to various developmental and construction activities.

b. The National Commission shall advise, assist and coordinate the activities of the governmental departments, state instrumentalities, statutory organisations, voluntary agencies and other governmental or non-governmental bodies on matters with respect to the compliance of the basic plan and other disaster management activities under this Act.

c. The National Commission shall report to the Government of India, the failure of any governmental departments, state instrumentalities, statutory organisations, voluntary agencies and other governmental or non-governmental bodies to fulfil its responsibilities for disaster management activities under this Act.

(5) a. Upon the occurrence of a disaster, the concerned State Commission may request the National Commission to send a fact finding team to assess the extent of damages, so as to declare such disaster as a National Disaster or for additional assistance and such request shall accompany a report regarding such a disaster.

b. On receipt of a request referred to in clause (a) of this sub-section, the National Commission shall send a fact finding team, which shall include two members of the National Commission and the Central Relief Commissioner to the site of the disaster.

c. On receipt of the report provided by the fact finding team, if the National Commission finds that the disaster had exceeded the coping capacity of the state, then it shall declare such disaster as a National Disaster.

d. On receipt of the report provided by the fact finding team, if the National Commission finds that the disaster is within the coping capacity of the state, then if the situation warrants, it may request the Government of India to provide necessary additional assistance.
c. Upon the declaration of a National Disaster, the National Commission shall ensure the carrying out of disaster management activities under its immediate supervision and it shall depute the Central Relief Commissioner to the disaster site for administering disaster management activities.

(6) The National Commission shall supervise the state for disaster management in the country and can issue appropriate order, direction, instruction or guideline, for the enhancement or improvement of such capabilities.

(7) a. The National Commission shall be responsible for creating public awareness through the various authorities under this Act or through other governmental or non-governmental organisations, related to the disaster and disaster related management system.

b. The National Commission shall be responsible for providing specialised training to officials, rescue workers and others, at various levels, regarding disaster management activities.

(8) The National Commission shall be responsible for ensuring the proper issuance of early warning to the concerned authorities.

(9) a. The National Commission shall issue necessary orders, directions, instructions or guidelines to the State Commissions, District Councils, Sub-district Forums, National Institute for Disaster Management and to National Scientific Advisory Division for carrying out the provisions of this Act, and supervise its functions.

b. The National Commission shall render all necessary assistance to the authorities for carrying out their respective functions.

c. The National Commission shall approve the State Plan with or without modification.

(10) The National Commission shall advise the Government of India regarding all financial matters for the purpose of disaster management.

(11) The National Commission, if it thinks fit, may advise the Government of India to seek emergency assistance from the Army or from abroad and shall coordinate such assistance.

(12) The National Commission shall strive earnestly to protect and improve the natural environment, including forest, flora and fauna.

(13) The National Commission may advise the Government of India or state government or local bodies to make necessary changes in law, for effectively carrying out the provisions of this Act.

(14) The National Commission shall maintain international cooperation pertaining to the enhancement of disaster management capabilities and shall advise the Government of India regarding the extending of support to other countries, in the event of a disaster in such other country.

(15) The National Commission can make necessary recommendations to the Government of India or to the state governments regarding any aspect of disaster or disaster management system.

(16) a. The National Commission shall prepare and submit an ‘Annual India Disaster Report’ with necessary suggestions to the Government of India on or before March 31 every year.

b. Such report as mentioned in this sub-section, shall be made available to the public.

6. Functions of the National Centre for Disaster Management

(1) a. The ‘National Institute for Disaster Management’ shall be the research, training and consultancy wing of the National Commission.

b. The National Institute for Disaster Management established by the Ministry of Home Affairs, Government of India, shall be recognised as the National Centre for Disaster Management for the purpose of this Section.

(2) All functions of the National Institute for Disaster Management shall be under the supervision and direction of the National Commission.

(3) The functions of National Institute for Disaster Management shall be:

a. To prepare and submit advisory reports to the National Commission from time to time
regarding the various aspects of disaster and disaster management system.

b. To prepare an exhaustive database on the damage caused and resources spent on mitigation practices and relief work for various types of disasters.

c. To document each disaster and to identify the lessons learnt.

d. To prepare a post-disaster critique and evaluation and to carry out research and investigation into matters relating to disaster management and to carry out, or cause to be carried out, the dissemination of information.

e. To prepare information materials and guidelines for creating public awareness for disaster management.

f. To provide assistance for carrying out training programmes and exercises, for officials, rescue workers and others at various levels of the disaster management system.

g. To provide consultancy in the area of disaster management.

h. To maintain a close link with the State Commission for disaster management and to render all necessary advice and assistance for disaster preparedness.

i. To undertake research, study, investigation etc. regarding disaster management and to bring it to the notice of the National Commission.

j. To help in developing the capacity of non-governmental or other philanthropic organisations, associated with disaster or disaster management.

k. To carry out all other functions, which the National Commission assigns it from time to time.

(4) If the National Institute for Disaster Management needs any additional assistance or support for carrying out its functions, it may request the National Commission for providing such assistance or support.

7. Functions of the National Scientific Advisory Division for Disaster Management

(1) The National Scientific Advisory Division for Disaster Management will be the scientific and technical advisory wing of the National Commission.

(2) All functions of the National Scientific Advisory Division for Disaster Management will be under the immediate supervision of the National Commission.

(3) The functions of the National Scientific Advisory Division for Disaster Management shall be:

a. To provide scientific and technical advisory reports, regarding the various aspects of disaster and disaster management, to the National Commission.

b. To provide scientific and technical assistance to all authorities under this Act.

c. To earnestly strive for incorporating modern scientific and technical inventions in disaster management.

d. To review and update the existing practices, applications of traditional wisdom and other related matters in disaster management.

e. To coordinate with various scientific and technical departments of the government, scientific and technical organisations and other similar bodies.

f. To undertake scientific and technical researches, study, investigations and other similar activities regarding disaster and disaster management and to bring it to the notice of National Commission.

g. To issue early warnings, of risks or hazards, to the various authorities under this Act, and for the purpose of issuing such warning, it can coordinate with any department, authorities or bodies, whether governmental or non-governmental.

h. To carry out all other such functions, which the National Commission assigns it from time to time.

(4) If the National Scientific Advisory Division for Disaster Management needs any additional assistance, it may request the National Commission for providing such additional assistance or support.

8. Powers, Functions and Duties of the State Commission for Disaster Management

(1) a. The State Commission shall have the overall responsibility for disaster management activities in the state.
b. Subject to the provisions of this Act, the State Commission can take any measure or measures, or issue any orders, directions, instructions, or guidelines, as may be deemed necessary or expedient for the purpose of carrying out such responsibilities and functions as provided under this Section.

(2) a. The State Commission shall prepare a state plan in accordance with the basic plan and shall be responsible for the implementation of the state plan.
b. The district disaster management plan, on its approval by the State Commission will become a part of state plan.
c. The State Commission shall get the state plan approved by the National Commission.
d. The state plan shall contain the provisions to manage all kinds of disasters in the state.

(3) a. Upon the occurrence of a disaster, the State Commission on its own or on a request from the District Council, may send a fact finding team, which shall include a member of the State Commission and the State Relief Commissioner, to the site of the disaster, to assess the extent of the damage.
b. On receipt of the report provided by the fact finding team, if the State Commission finds that the disaster exceeded the coping capacity of the district, then it shall declare such a disaster as a state disaster.
c. On receipt of the report provided by the fact finding team, if the State Commission finds that the disaster is within the coping capacity of the district, then if the situation warrants, it may request the state government to provide necessary additional assistance.
d. Upon the declaration of a State Disaster, the State Commission shall ensure the carrying out of the disaster management activities under its immediate supervision and it shall depute the State Relief Commissioner to the disaster site for administering the disaster management activities.

(4) The State Commission may make requests to the state government or the National Commission for additional assistance and such requests shall be accompanied by a report regarding the extent of the assistance required.

(5) The State Commission shall coordinate with, and carry out the orders, instructions, directions or guidelines of the National Commission for disaster management.

(6) a. The State Commission shall advice, assist and coordinate the District Council to carry out its functions and shall issue guidelines to the District Council from time to time.
b. The State Commission shall supervise the functions of the District Council.

(7) If necessary, the State Commission shall allocate additional relief materials, manpower or any other resources to the District Council for disaster management.

(8) The State Commission shall coordinate the disaster functions and ensure the availability of all relief requirements and shall supervise the stockpiles of relief supplies.

(9) a. The State Commission shall assign different responsibilities to the different departments of the state government regarding disaster management.
b. The State Commission shall supervise the position of disaster preparedness in the state and can issue appropriate orders, instructions or guidelines for its enhancement and ensure that it is sufficiently capable to tackle the disaster situation.

(10) a. The State Commission shall arrange for the maintenance of an expert group of a minimum of 300 people, to manage rescue and relief activity, in the event of a disaster and such expert groups shall be stationed in different parts of the state.
b. Personnel of such expert groups may be drawn from the police, fire fighters, Civil Defence or governmental or non-governmental organisations or from any other source the State Commission may feel appropriate.

(11) The State Commission shall be responsible for giving necessary training to the police, fire fighters, Civil Defence, Home Guards, NGOs, ex-service men, National Cadet Corps (NCC), youth and other similar
groups to carry out disaster management functions in the state.

(12) The State Commission shall create public awareness, through the District Councils, the Sub-district Forums, or any other governmental or non-governmental organisations about the different kinds of disasters and the measures that can be taken to prevent and mitigate such disasters.

(13) The State Commission shall be responsible for the development and installation of such communications and other operational facilities as may be required for disaster management purposes.

(14) The State Commission shall advise the state government regarding the utilisation of state funds for disaster management and all other matters relating to disaster and disaster management.

(15) a. The State Commission shall submit the ‘Annual State Disaster Report’ to the National Commission and to the state government on or before March 31 every year.

b. Such a report as has been mentioned in this subsection shall be made available to the public.

9. Composition, Powers, Functions and Duties of the District Council for Disaster Management

(1) a. Every district will have a ‘District Disaster Management Council’ to carry out the disaster management activities in the district.

b. Subject to the provisions of this Act, the District Council can take any measure or measures, or issue any orders, directions, instructions or guidelines, as might be deemed necessary or expedient for the purpose of carrying out such responsibilities and functions as has been provided under this Section.

c. Members of the District Council are:
   i) The District Collector / the District Relief Commissioner (Coordinator)
   ii) The President of the District Panchayat / Zilla Parishad
   iii) The Superintendent of Police
   iv) The District Medical Officer
   v) The District Supply Officer
   vi) The Head of the Department of Civil Defence

d. The District Council may, in relation to a matter placed before it, or to a particular disaster, co-opt such person or persons, as it may consider necessary, either on a permanent basis or on a case-to-case basis, as member or members of the District Council.

(2) For the purpose of carrying out the provisions of this Act, the District Council:

a. Shall prepare a ‘District Disaster Management Plan’
   i) In accordance with the basic plan and the guidelines issued by the National Commission, the State Commission and the Nodal Ministries mentioned in Schedule II.
   ii) The District Council shall get the District Plan approved by the State Commission.
   iii) The District Council shall implement the District Plan.

b. Shall manage those disasters which are within the coping capacity of the district.

c. Shall assess the potential disasters that could hit the district and shall make preparations for managing such disasters.

d. Shall establish the stockpiling of relief and rescue materials or shall make preparations, to make it available, on short notice.

e. Shall identify the possible buildings, areas etc., which could be used as relief centres / camps and shall also make arrangements for water supply and sanitation in such buildings, areas etc.

f. Shall be responsible for the maintenance and inspection of establishments and equipment for disaster management.

g. Shall ensure the presence and service or services of specially trained Police, Fire fighters, Civil De-
fence officials, Home Guards and any other experts in relief, rescue and other disaster management operations, and shall also coordinate and direct their activities.

h. Shall ensure the cooperation and services of NGOs, voluntary groups and other philanthropic organisations for disaster management activities.

i. Shall maintain close contact with the State Commission and other District Councils.

j. If necessary, may request for additional assistance from the State Commission or other District Councils.

k. Shall carry out all the instructions, orders, directions and guidelines of the National Commission and the State Commission.

l. Shall constitute the ‘Sub-district Forum for Disaster Management’ and issue necessary instructions, orders, directions or guidelines for the Sub-district Forum for disaster management.

m. Shall be responsible for identifying, raising, training and equipping volunteers and maintaining a list of emergency contacts.

n. Shall advice and assist municipalities, panchayats, government departments, statutory organisations, voluntary agencies and other bodies including NGOs, private bodies or individuals, with respect to disaster management activities and may assign them responsibilities.

o. May constitute such committees, as it thinks fit for the purpose of carrying out disaster management activities.

p. Shall be responsible for assessing the disaster withstanding capacity of all constructions, buildings etc. and shall take steps for disaster proofing of such structures according to the prescribed safety norms.

q. Shall take steps to improve the public awareness about disaster and disaster management and shall ensure carrying out of periodical training, drills and exercises.

r. Shall disseminate early warnings and other information about disaster and disaster management.

s. Shall take all necessary action during an imminent threat of disaster, which includes recommendation or order for evacuation.

t. i) shall make a random assessment or collect information about the effects and shall dispatch the search, rescue and relief workers.

ii) Such search, rescue and relief workers shall be provided with all necessary assistance and support.

iii) Shall establish a ‘District Control Room’ for coordinating the disaster management functions.

u. Shall take all steps to ensure the rescue, relief and protection of disaster victims and shall coordinate all disaster management activities.

v. Shall make arrangements for the supply of food, water and medical assistance to the victims of disaster.

w. Shall make arrangements for equipping the relief centres/camps with adequate supply of food, water and medical assistance.

x. Shall ensure the proper distribution of relief without any discrimination.

y. Shall remove all life/safety-threatening dangers.

z. Shall take steps to protect private and public property.

aa. Shall take all steps to ensure clean-up, epidemic control, public health and sanitation.

bb. Shall take steps for the restoration of transportation and communication facilities.

cc. Shall be responsible for the disposal of corpses.

dd. Shall take all steps for the continuation of smooth running of administration, preservation of social order and control of criminal activities.

ee. May fix prices for essential commodities and/or make provisions for rationing.

ff. Shall be responsible for the removal of debris.
gg. Shall take all steps for the quick return to normalcy.

hh. Shall take necessary steps for the protection of the elderly, handicapped, infants, women and others who require special care.

ii. Can make any additional arrangements or take any steps, as it deems fit, on matters, related to measures for the prevention of disaster or for preventing the spread of disaster or for disaster management.

jj. (i) Shall submit the ‘Annual District Disaster Report’ to the State Commission on or before March 31 every year.

(ii) Such report, as has been mentioned in the immediately preceding sub-clause of this sub-section shall be made available to the public.

10. Composition and Functions of the Sub-district Forum for Disaster Management

(1) a. Every sub-division will have a ‘Sub-district Forum for Disaster Management’.

b. The Sub-Divisional Officer will be the coordinator of the Sub-district Forum.

c. The President, Vice President and the Opposition Leaders of the local bodies, and the Village and Taluk Officers, within the local limits of that sub-division, will be the members of the Sub-District Forum.

(2) For the purpose of carrying out the provisions of this Act, the Sub-District Forum

a. Shall assist the District Council in carrying out its functions.

b. Shall collect all necessary facts and information relating to disaster management and shall pass on the same to the District Council.

c. Shall endeavour to ensure the active involvement, association and support of the public for disaster management activities, mainly through the panchayats and gram sabhas.

d. Shall spread awareness about disaster and disaster management.

e. Shall bring the attention of the District Council towards any new aspect of disaster or disaster management.

f. Shall carry out all orders, instructions, directions or guidelines of the District Council, the State Commission or the National Commission as the case may be.

11. Special Powers of Central Relief Commissioner, State Relief Commissioner and District Relief Commissioner

(1) Notwithstanding anything that is contained in this Act or in any other law, for the time being in force and for the purpose of expeditiously and efficiently carrying out the provisions of this Act during and immediately after the disaster, it shall be lawful for the Central Relief Commissioner, the State Relief Commissioner or the District Relief Commissioner, as the case may be,

a. To issue any such orders, instructions, directions or guidelines to all departments and authorities, including the police, para military force, fire fighters, Home Guards and Civil Defence as might be considered necessary by him and it shall carry out such orders, instructions, directions or guidelines.

(i) To requisition the services of any adult private individual below the age of sixty and to assign him such responsibility consistent with his age, ability, education, specialisation, skill, as may be deemed fit and proper, for the purpose of carrying out disaster management activities.

(ii) To requisition men and materials from any government organisation, department, corporation, company, public sector undertaking and the like, with a view to carry out disaster management activities, and the persons in charge of such organisations, departments, companies, corporations, public sector undertakings and the like shall
be bound to comply with the requisition, made in this regard.

(iii) To requisition from any establishment, public or private, or from private person, any land, building, premises, vehicles, equipment, materials or any other thing, which he considers necessary, to carry out the disaster management activities.

(iv) Whoever, being called upon by the Central Relief Commissioner, the State Relief Commissioner or the District Relief Commissioner, under this clause, without reasonable excuse, refuses or neglects to do so, shall be deemed to have committed an offence punishable under Section 187 of the Indian Penal Code.

b. To enter into, if necessary, by force, any building or land, with or without assistants or workmen, in order to make any inquiry, inspection, measurement, valuation or survey to execute any work, which is for the purpose of carrying out the provisions of this Act.

c. To make any entry into any place, to open or cause to be opened, any door, gate or barrier for saving life and/or properties, if he considers opening thereof necessary for the purpose of such entry, in spite of the fact that the owner or occupier is absent, or being present refuses to open such door, gate or barrier, for the purposes specified below:

i) Removal of debris.

ii) Conduct search and rescue operations.

iii) Providing emergency shelter or hospital.

iv) Provisioning of food, medicine and other essential needs.

v) Requisitioning transport from private parties or which is available nearby.

vi) Construction of temporary bridges.

vii) Demolition of unsafe structures, which may endanger the public.

viii) Warning about further risk and hazards.

ix) Dissemination of information including do’s and don’ts.
	x) Rendering technical advice to governments including local governments.

xi) Reduction of all immediate threats to life and public health and safety.

d. To evacuate people by force for the purpose of saving life.

e. To use or cause to use media, print or electronic, or any other source, for disseminating information.

f. To order the disposal of corpses of the victims of a disaster, without post-mortem.

g. To take all or any other action or measure as he considers necessary and appropriate, to carry out disaster management activities.

h. To delegate all or any of the powers under this Section to any other person.

Powers referred to in this Section shall be exercised with utmost care and caution and it shall be well reasoned and in writing.

Chapter IV

FINANCIAL ARRANGEMENTS, COMPENSATION, INSURANCE AND DISASTER LOAN

12. Financial Arrangements

(1) a. The Government of India shall maintain a National Disaster Fund, for the purpose of providing immediate relief upon the advice of the National Commission.

b. The Calamity Relief Fund, presently maintained by the Government of India, in the same pattern, shall be recognised as the National Disaster Fund for the purpose of this sub-section.

(2) a. The Government of India shall maintain a ‘National Disaster Contingency Fund’ for the purpose of meeting urgent and unforeseen expenditure for the purpose of disaster management and this shall be in addition to the National Disaster Fund.

b. The initial corpus of the National Disaster Contingency Fund will be a sum not less than 1000 crore rupees.
c. Spending from the National Disaster Contingency Fund shall be in accordance with the advice of the National Commission.

(3) a. Every state government shall maintain a 'State Disaster Fund' with an initial corpus of a minimum of 100 crore rupees.
b. Spending from the 'State Disaster Fund' shall be in accordance with the advice of the State Commission.

(4) a. Every District Administration shall maintain a 'District Disaster Fund' with an initial corpus of a minimum of 1 crore rupees.
b. Spending from the 'District Disaster Fund' shall be in accordance with the advice of the District Council.

(5) The District Council may request the State Commission and the State Commission may request the National Commission for additional financial assistance and all such requests shall be accompanied by a report, about the extent of required funding.

(6) a. The National Disaster Fund, the State Disaster Fund or the District Disaster Fund shall be used only for the purpose of providing immediate relief and rescue.
b. Expenditure to be made on the restoration of infrastructure and other capital assets, except those which are intrinsically connected with the relief operations and connectivity with the affected area and population, shall be met from the 'Plan Funds' on priority basis as maintained by the Government of India or state government, and not from the National Disaster Fund, the State Disaster Fund or the District Disaster Fund.

(7) Notwithstanding anything contained in Section 12(6), not less than 10 percent of the National Disaster Fund, the State Disaster Fund or the District Disaster Fund shall be used, for preparations and planning for disaster.

(8) a. Financial contributions or assistance received from the general public or abroad or from any other sources, shall be credited to the National Disaster Fund, the State Disaster Fund or the District Disaster Fund, as the case may be.
b. If any financial contribution or assistance is received for the management of a particular disaster, then such contribution shall be used only for the purpose of the management of such disaster.

(9) a. Notwithstanding anything contained in Section 12(6), if the National Commission, the State Commission or the District Council finds it absolutely necessary, they may request to distribute a portion of the fund to just compensate the loss arising from disaster.
b. Such portion referred to in the preceding sub-clause shall not exceed five percent of the total fund.

(10) All funding, assistance, allocation, auditing or any other financial transactions under this Act shall be in accordance with the prescribed rule and shall be subject to such conditions as are imposed under the rule.

13. Compensation

(1) Every person who suffers injury, loss or damage, or any establishment, which suffers loss or damage, while carrying out disaster management activities or any other order under this Act, shall be entitled to reasonable compensation for such injury, loss or damage.

(2) Notwithstanding anything contained in Section 12(6), the National Commission, the State Commission or the District Council shall calculate the compensation and make request to pay such compensation from the respective funds.

14. Insurance

(1) The Government of India shall make necessary rules or regulations, for making life and property insurance mandatory, in areas vulnerable to disaster, as identified by the National Commission, the State Commission or the District Council.
(2) The Government of India shall endeavour to make necessary rules or regulations, for making life and property insurance mandatory to such persons or property, not covered under Section 14(1).

(3) It shall be lawful for the Government of India to use the District Councils, the municipalities, the panchayats, or any other authorities under this Act, to carry out the insurance contracts with the insurance companies.

(4) The state government shall make arrangements for the payment of the insurance premium of people below poverty line.

(5) The Government of India, the state government or the local self-government shall insure all the public property or shall act as self-insurer.

15. Disaster loan

(1) a. The Government of India shall make necessary provisions, so as to make available, low or interest free disaster loans available to citizens or entities, to mitigate the effects of disaster.

b. Such loans, referred to in the preceding clause, shall also be available, to make necessary preparations for facing disaster.

Explanation: ‘Preparations’ in this clause means, activities like flood or earthquake proofing, retrofitting, fire safety measures etc., which are to be carried out according to the safety guidelines issued by the National Commission or the State Commission or the District Council.

(2) a. The State Commission may request the state government to give loans to any local self-government, which has suffered a substantial loss of tax or other revenues as a result of a disaster and has demonstrated a need for financial assistance in order to perform its governmental functions.

b. All loans granted under this clause shall be in accordance with the prescribed rules and shall be subject to such conditions as are imposed under the rules.

Chapter V

REHABILITATION

16. Rehabilitation

(1) a. The National Commission, the State Commission or the District Council as the case may be, shall chalk out the rehabilitation programs and implement the work of rehabilitation, after the disaster.

b. If any NGO or any other philanthropic organisation offers to carry out rehabilitation activities, then such work shall be coordinated by the concerned District Council. Further, such work shall be in accordance with the rehabilitation program.

c. The Sub-district Forum shall be consulted before the implementation of rehabilitation programs.

d. All rehabilitation programs shall be in accordance with the prescribed rules and shall be subjected to such conditions as are imposed under the rules or regulations.

Chapter VI

NON-DISCRIMINATION

17. Non-discrimination in disaster management

The National Commission, the State Commission and the District Commission shall ensure that all the disaster management activities are accomplished in an equitable and impartial manner without discrimination on the grounds of race, colour, religion, caste, sex, age, language, economic status, political affiliation or on any other grounds.

Chapter VII

DISPUTE SETTLEMENT AND PROTECTION OF HUMAN RIGHTS

18. Dispute settlement

(1) The principal District Judge in each district shall be considered as the Ombudsman for the purpose of this Act.
(2) The Ombudsman can exercise jurisdiction over legal, factual or any other issue, which shall occur or emanate due to a disaster or disaster management activity.

(3) The Ombudsman can enquire into such an issue, on a complaint by any person or suo moto and can give necessary recommendation to the concerned authority.

(4) The Ombudsman shall constitute a committee, comprising of publicly respected and specialist persons to advise and assist him.

(5) The Ombudsman may hold Lok Adalats to settle legal, factual or other issues, referred to in sub-section (2) of this Section.

(6) Subject to sub-sections (1) to (5) of this Section, the provisions of the Legal Services Authorities Act, 1987 is applicable, in relation to legal aid, assistance, services or any other matter.

19. Protection of Human Rights

(1) The Human Rights Commission constituted under the Protection of Human Rights Act, 1993, can exercise its powers and functions under Section 12 of that Act, in relation to any aspect of disaster management or any other thing done or any other thing purported to be done, under this Act.

Chapter VIII

LIABILITIES AND LEGAL PROCEEDINGS

20. Liabilities and Legal Proceedings

(1) a. Wilful violation of any duty imposed by this Act or rules made thereunder shall be deemed to be an offence.

b. Such offences shall be punishable with imprisonment of one year or with a fine of 10,000 rupees or with both.

c. Every offence under this Act shall be cognisable and non-bailable within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) a. Whoever fails to comply with or contravenes any of the provisions of this Act or the rules made thereunder or orders, directions, instructions or guidelines issued in this behalf, shall in respect of each such failure or contravention, be guilty of an offence against this Act.

b. Such offence shall be punishable with imprisonment of either description, simple or rigorous, for a term, which may extend to six months or with a fine, which may extend to Rs. 5000/- or with both.

c. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class, shall try any offence under this Act.

(3) a. Where an offence under this Act has been committed by any department of the government, the Head of Department or office shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that, nothing contained in this clause, shall render such head, liable to punishment, if he proves that the offence was committed without his knowledge or that he exercised due diligence, to prevent the commission of such offence.

b. Notwithstanding anything contained in the preceding sub-clause, where an offence under this Act has been committed by a department of the government, and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any officer or official, other than that of the Head of the Department or office, then such officer or official, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) a. Where a body corporate commits an offence against this Act, each of the following persons shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly;
i) The Managing Director, manager or any other
governing officer, by whatever name called and
every member of the governing body thereof, by
whatever name called; and

ii) Every person who manages or acts or takes
part in the management, administration, or gov-
ernance of the business of the body corporate.

b. This clause applies so as to limit or affect the
liability of a body corporate to be proceeded against
and punished for an offence against this Act.

(5) a. Any official/functionary entrusted with or engaged
in any disaster management activity, if found re-
sponsible, directly or indirectly, for loss of public
money or damage to public property shall be li-
able for the recovery of funds, which shall be as
established in the legal system of the country, of
the total loss or damage caused.

b. An amount as established in the legal system of the
country, shall be recovered and penalty in cash shall
be imposed on such official or functionary without
prejudice to any other legal proceedings or criminal
prosecution that may be launched against him.

c. The concerned authority, for imposing such pen-
alty for loss of public money and damage to the
public property, shall be as prescribed.

(6) a. No prosecution shall be instituted against any per-
son, other than a public servant, under this Act,
without the previous sanction of the National
Commission, the State Commission or the Dis-
trict Council.

b. No prosecution shall be instituted against a public
servant under this Act, without the previous sanc-
tion of the National Commission or the State
Commission.

Chapter IX

MISCELLANEOUS

21. Miscellaneous provisions

(1) No suit, prosecution or other legal proceedings shall
lie against any officer, employee, agency or person, in
respect of anything, which is in good faith done or is
intended to be done under this Act.

(2) No civil court shall have jurisdiction to entertain any
suit or proceeding in respect of anything done, action
taken or order or direction or instruction or guideline
issued by the Government of India, the state govern-
ment or any other authority or office in pursuance of
any power conferred by or in relation to its or his
function under this Act.

(3) a. If any difficulty arises in giving effect to the pro-
visions of this Act, the Government of India may,
by order in the official gazette, make such provi-
sions not inconsistent with the provisions of this
Act as appears to be necessary or expedient for
removing such difficulty.

Provided that no such order shall be made after
the expiry of the period of three years from the
date of commencement of this Act.

b. Every order made under this sub-section shall, as
soon as it may be, after it is made be, laid before
both Houses of Parliament.

(4) a. Subject to the provisions of clause - b of this sub-
section, the provisions of this Act and the rules or
orders made thereunder, shall have effect, notwith-
standing anything inconsistent therewith, contained
in any enactment other than this Act.

b. Where any act or omission constitutes an offence
punishable under this Act and also under any other
Act, then the offender found guilty of such of-
fence, shall be liable to be punished, under the other
Act and not under this Act.

(5) The Government of India or state government shall
consult the National Commission or the State Com-
misson, as the case may be, in all policy matters, re-
lated to disaster and disaster management.

(6) The National Commission, the State Commission or the
District Council as the case may be, shall make necessary
arrangements for actively involving the non-governmental
or other philanthropic organisations, with a proven
track record in disaster management activities.
(7) The National Commission, the State Commission or the District Council as the case may be, may reward any person or organisation, for distinguished services in disaster management.

(8) Any person appointed or asked to exercise any function under this Act, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

(9) a. Notwithstanding anything contained in this Act, it shall be lawful for the Government of India to direct or order or instruct any authority or authorities under this Act, to carry out any of its function or functions during an emergency situation.

Explanation: ‘Emergency situation’ in this sub-section means situations like riots, wars, terrorist activities etc.

b. Such function or functions shall be under the immediate supervision of the Government of India.

(10)a. The Government of India or state government may make necessary rules to carry out the provisions of this Act.

b. All rules made by the Government of India or the state government as the case may be, shall be published in the Official Gazette and on such publication, shall have effect, as if the rules were enacted in this Act.

c. Every rule made by the Government of India or the state government as the case may be, shall be laid, as soon as, may be after it is made, before Parliament or the state legislature respectively.
The First Schedule

CALAMITIES

Water and Climate Related Calamities
1. Flood or drainage
2. Cyclone
3. Hurricane
4. Hailstorm
5. Cloud burst
6. Heat wave
7. Cold wave
8. Drought
9. Crop failure
10. Famines
11. Sea erosion
12. Snow storm
13. Blizzard
14. Sand storm
15. Thunder or lightning

Geologically Related Calamities
16. Landslides, rock-slides or mudflows
17. Earthquakes
18. Avalanche
19. Volcanic eruptions
20. Rivers changing path

Chemical, Industrial and Nuclear Related Calamities
21. Chemical and industrial disasters
22. Nuclear disasters

Accident Related Calamities
23. Forest fires
24. Urban fires
25. Mine flooding or mine fires or mine collapse
26. Oil spill
27. Building collapse
28. Dam failures/dam bursts
29. Festival related disasters
30. Fire and electrical disasters
31. Air, road and train accidents
32. Boat capsizing
33. Village fire

Biologically Related Calamities
34. Biological disasters and epidemics
35. Pest attacks
36. Cattle epidemics
37. Food poisoning

The Second Schedule

NODAL MINISTRIES

<table>
<thead>
<tr>
<th>Type of Disaster/Calamity</th>
<th>Nodal Ministry/Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Accidents</td>
<td>Ministry of Civil Aviation</td>
</tr>
<tr>
<td>Railway Accidents</td>
<td>Ministry of Railways</td>
</tr>
<tr>
<td>Chemical Disaster</td>
<td>Ministry of Environment</td>
</tr>
<tr>
<td>Biological Disaster</td>
<td>Ministry of Health</td>
</tr>
<tr>
<td>Nuclear Disaster</td>
<td>Department of Atomic Energy</td>
</tr>
<tr>
<td>Natural Disaster</td>
<td>Ministry of Agriculture</td>
</tr>
<tr>
<td>Other Disasters</td>
<td>Concerned Ministries</td>
</tr>
</tbody>
</table>

Disaster Management: Towards A Legal Framework
References


Environment Data Report 1999-2000. UNDP.


Disaster Management: Towards A Legal Framework


Pal, Chandra 1999. Environmental Pollution and Development: Environmental Law, Policy and Judiciary, Mittal Publisher, New Delhi.


Report of the World Commission on Dams (November 2000) (available online: http://www.dams.org/)


References


Websites

www.adrc.or.jp/countryreport/JPN/fPNeng99/fapan99.htm
www.alertnet.org
www.amol.noaa.gov.hrd
www.bptmc.org www.bvi.gov.bv
www.bivacations.com
www.cdera.org
www.cia.gov/cialpublications/factbookigeosltd.html
www.ck/geor.htm
www.coe.tame.amedd.army.mil
www.colorado.edu/hazards
www.conservationtech.com
www.cyclonegujarat98.net
www.disaster.org
www.disasterrecovery.net
www.disasterrelief.org
www.ema.gov.au
www.emergency.qld.gov.auisesises-history.htm
www.emform.org
www.esri.com/hazards
wwwfema.govimit
wwwfema.govlr-n-rid
wwwfema.govlr-n-ridec...guid.htm
Disaster Management: Towards A Legal Framework

www.fema.gov
www.fire.org
www.gujarat-earthquake.gov.in
www.gujaratindia.co.districtwise.html
www.homestead.com/emergencymanagement/files/21STCEN2.HTM
www.hope.be/07publi/leaflet disasterI04-mp-dk.htm
www.infojapan.org/policy/disaster/21stI2.html
www.islandsun.com
www.magwien.gv.at/english/acute/workshop/p_wifCe.htm
www.ncdmindia.nic.in
www.news.bbc.co.uk/hilenglish/south_asia
www.oas.org
www.ocb.selenglish/handbook/holland.html
www.odci.gov/leia/publication/factbook/geos/cw.htm
www.oneworld.org/idndrframeset.html
www.photius.com

www.png.info/dis-comm.html
www.PrepareNow.org
www.quake.wr.usgs.gov
www.reliefweb.int/ocha_ol/programs/idndr/yokohama/preface.html
www.sdnp.undp.org/-eclac/CARMIN/DOCS/biv.htm
www.southasadiasasters.net
www.stonefly.arc.nasa.gov
www.ucl.ac.uk/geolsci/researcltiben-grei
www.udel.edu/drc
www.unige.cl/idndr
www.unige.cl/idndr
www.unisdr.org/unisdr/plan/htm
www.unisr.org/index.htm
www.unu.edu
www.usgs.gov/hazards/index.html
www.vita.org
www.wsicorp.com
About the Series Editors

Aasha Kapur Mehta is Professor of Economics at the Indian Institute of Public Administration, New Delhi and leads the Chronic Poverty Research Centre's work in India. She has a Masters from Delhi School of Economics, an M.Phil from Jawaharlal Nehru University and a PhD from Iowa State University, USA. She has been teaching since 1975, initially at a college of Delhi University and then at IIPA since 1986. She is a Fulbright scholar and a McNamara fellow. Her area of research is now entirely focused on poverty reduction and equity related issues.

Pradeep Sharma is an Assistant Resident Representative and heads the Public Policy and Local Governance Unit in the India Country Office of United Nations Development Programme (UNDP). A post-graduate from University of East Anglia (UK) and Doctorate from Jawaharlal Nehru University, he has held several advisory positions in the Government of India and has taught economic policy at LBS National Academy of Administration, Mussoorie. He has several publications to his credit.

Sujata Singh is an Associate Professor at the Indian Institute of Public Administration. She completed her doctoral studies in Public Administration and Public Policy at Auburn University, USA. Her primary research interests are in the area of Comparative and Development Administration, Public Policy Analysis, Organizational Theory and Evaluation of Rural Development Programmes.

R.K. Tiwari is Senior Consultant, Centre for Public Policy and Governance, Institute of Applied Manpower Research, Delhi. He was formerly Professor of Public Administration at the Indian Institute of Public Administration (IIPA), New Delhi. He received his education at Gwalior, Allahabad and Delhi. He has undertaken a number of research studies in Development Administration, Rural Development, Personnel Administration, Tribal Development, Human Rights and Public Policy. He has conducted consultancy assignments for the Department of Posts and in the Ministry of Rural Development, Government of India; and for the Government of Orissa and the Narmada Planning Agency, Government of Madhya Pradesh. He has published several books.
Jacob P. Alex is a practicing lawyer in Kerala High Court in Constitutional and Civil side. He earlier served as Law Clerk-cum-Research Assistant in the Supreme Court of India with Hon'ble Justice S. Rajendra Babu (Former Chief Justice of India) for two years. He is associated with NJA-Ministry of Justice-Government of India Project on Access to Justice as Kerala State Research Committee Convenor and submitted a field research report (Tamilnadu) for Tea Board of India Project on Implementation of Plantations Labour Act. He was junior researcher (Prison Reforms) for the Ford Foundation Project on Criminal Justice Administration.

Mr. Jacob was actively involved with disaster relief work in Latur (Maharashtra) and Bhuj (Gujarat).

He participated in the Model UN Summit at the United Nations Headquarters at New York, William C Vis International Commercial Arbitration Moot Court at Vienna and International Development Studies Program at the University of Oslo, Norway. He has published fourteen articles in various journals of national and international repute.

For further information, please contact:

Indian Institute of Public Administration
I. P. Estate, Ring Road
New Delhi 110 002

United Nations Development Programme
55, Lodi Estate
New Delhi - 110 003