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Disaster Management Act, 2005: A Disaster in Waiting?

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Until recently, the focus was on post-disaster relief and rehabilitation. However, the present philosophy lays more emphasis on mitigation and vulnerability reduction and it has become absolutely necessary to strike a balance between mitigation and managing disaster. Numerous deaths and enormous loss of property have compelled the state as well as civil society to ponder the question – are we well equipped to fight such emergency situations? In such a context, a welcome effort has come from the government of India. In the winter session, Parliament passed a legislation known as The Disaster Management Act, 2005. The objective of this article is to focus on the nitty-gritty of the act and to assess its effectiveness in combating the challenges of disasters and collateral issues.

Existing Mechanisms of Disaster Management

In India, states are primarily responsible for handling disasters. The government of India supplements the efforts by extending logistics and financial support such as contributing to State Calamity Relief Funds (75 per cent contribution by GoI and 25 per cent by state governments) for immediate relief, restoration of essential infrastructure and public assets in the social sector. In addition, a National Calamity Contingency Fund has been constituted at the central level for providing additional resources. Government of India also has different nodal ministries in charge of different types of disasters: Agriculture ministry for natural disasters, atomic energy for nuclear disasters and so on.

There is a National Crisis Management Committee (NCMC) under the cabinet secretary and Crisis Management Group (CMG) under the central relief commissioner. Besides, a group of ministers, group of secretaries and high level committees can be constituted whenever required by the situation. Similarly, at the state level, there is the state crisis management group headed by the chief secretary, the relief commissioners, contingency plans in the states as well as districts level. Apart from that, some states have their comprehensive relief codes.

The government of India has adopted mitigation and prevention as essential components of its development strategy. Several programmes and projects are in existence to deal with different types of disasters, e.g., earthquake risk mitigation, a project for cyclone mitigation (estimated cost Rs 1,050 crore), disaster risk management

Disaster Management Act, 2005

A Disaster in Waiting?

The Disaster Management Act passed in 2005 provides for a detailed action plan right from the central government to the district and local levels to draw, implement and execute disaster management plans. However, it overlooks significant aspects, such as classification of disasters, declaration of disaster-prone zones, streamlining of responsibilities and involvement of local communities.

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The Indian subcontinent is among the world's most disaster-prone areas. With its vast territory, large population and unique geo-climatic conditions, the subcontinent is frequently exposed to natural catastrophes. Even today natural hazards like floods, cyclones, droughts and earthquakes are not rare or unusual in the country. Among the 35 states and union territories, 25 are disaster prone. While the average loss of human life every year is 3,600, 1.42 million hectare crop area is affected and 2.36 million houses are

damaged annually. In India, while 40 million hectares of landmass is prone to floods, 68 per cent of the total areas is vulnerable to periodical droughts.¹

The intensity and frequency of disasters have increased in recent years. Examples can be drawn from the recent past when one after another disaster has shattered the subcontinent with irreparable loss of life and property. The tsunami of 2004, floods in various parts of the country and the earthquake in Jammu and Kashmir have once again raised the question of disaster management in India. The country requires a long-term development-oriented approach to disaster risk management.

programme (for 17 multi-hazard prone states with the assistance from UNDP, USAID and European Union).

An Overview of the Act

The Disaster Management Act provides for a detailed action plan right from the central government to the district and local levels to draw, implement and execute a disaster management plan. According to the act, a national disaster management authority will function under the chairmanship of the prime minister. Similarly, the state disaster management authorities will be under the chief ministers and the district disaster management authorities under the district magistrates. The national authority would be the nodal body and lay down all the plans and policies assisted by the secretaries of various ministries and department heads.

Mention has been made of setting up of a national institute of disaster management, which will be engaged in research, training of personnel for disaster management, building awareness. Minimum relief is to be provided in terms of medicines, shelter, water, food. Granting of loans has been taken into account. It speaks of a holistic effort through various wings of the government to ensure a prompt response to disasters. A chain of responsibilities and duties down to the local authorities has also been established. The act also specifies that experts in the field of disaster management be drawn on board in an advisory capacity. It recommends the setting up of a national disaster response force for the purpose of "specialist response" to a threatening disaster situation or disaster.

Pending the enforcement of the act, a National Disaster Management Authority (NDMA) has been set up through an executive order, headed by the prime minister.

Analysis of the Act

Many countries round the world have disaster related legislations. Several Indian states have relief codes, states like Gujarat have a specific legislation known as the Gujarat State Disaster Management Act, 2003 which came into existence after parts of the state were ravaged by an earthquake in 2001. In the light of some legislation from countries like Japan, South Africa, New Zealand and Canada as well as of Gujarat, the new Indian legislation is reviewed here to assess to what extent it is equipped to manage disasters. In the

process, the UN Guiding Principles on Internal Displacement have also been taken into consideration. There are certain areas which need some deliberation.

The act refers to a "disaster" as "substantial loss" of life and property, again in section 13, it refers to "disasters of severe magnitude". How will we differentiate between the two situations? Who is going to decide this? Moreover in the second case, relief in loan repayment or fresh loans may be granted. Favouritism will certainly play its role in this aspect.

The act complicates the issue more as it has no provision for declaration of a disaster or disaster-prone zones and classification of disaster (national or regional). The Disaster Management Act, 2002 of South Africa or our own Gujarat act has detailed provisions in these areas. Without an area being declared as "disaster prone", a pro-active role by the state cannot be expected. Classification helps in assessing the extent of damages.

One of the unique features of the South African legislation is the addressing of a disaster as a "progressive or sudden" phenomenon. In the context of the Indian act, disasters are portrayed only as sudden acts. But in many cases it is progressive. The best example can be the cases of epidemics which often affect a considerable portion of the population. The horror of plague that swept through south-central, south-western, and northern India in 1994 is still fresh in our memory. Diseases like malaria and dengue haunt metro cities like Kolkata every year. In 2005, over 1,600 people in the city were affected by dengue. Still an effective mechanism has not been drawn to fight such situations or take a proactive role to check such ordeals. Once the situation gets out of control, the blame game starts among the various departments of the government and the civic authorities. Again in India, each year, tuberculosis kills half a million people and diarrhoeal diseases more than 6,00,000. These do not happen suddenly, but aren't these "disasters"? On the whole, the matter of public health has been unable to find any space in the new Indian legislation.

The act provides for establishment of a number of statutory bodies such as the national disaster management authority, state disaster management authorities and district disaster management authorities, etc, advisory committees, executive committees and sub-committees under the government. The establishment of so many committees and authorities does not seem

to have a strong logical foundation. There are such overlapping duties found among various authorities in the act that they are bound to confuse people. Further, the coordination among these bodies appears to be very cumbersome.

So far as the constitution of authorities is concerned, the maximum number of members is fixed at 10. Among 10 members, nine are to be nominated by the prime minister, the ex officio chairperson. No qualification is necessary for the members, whereas in the Gujarat act, the members of the state authority are clearly mentioned who include the director-general of police and the state relief commissioner. Being an authority at the national level, the eligibility for members should have been spelt out in the act. In the context of the political scenario of our country, the appointments to the national authority can be strongly influenced by political motives. This will certainly lead to unsuitable people being appointed to high posts.

The local authorities, who probably have a valuable role to play, are barely mentioned in the act. There are detailed provisions regarding the functions of different authorities, including government departments. In the case of local authorities, there

are no such substantive provisions, but only a minor reference to taking necessary measures for disaster management. Under the Gujarat legislation, detailed responsibilities are laid down for the local authorities. Regarding the importance of the lower strata of the administration, some instances of foreign legislation can be cited. One of the striking features under the Emergency Programme Act of British Columbia, Canada, is the importance of decision-making placed in the hands of the local authority. The local authority is empowered to declare local emergency, if it is satisfied that an emergency exists or appears imminent. Under the Disaster Relief Act, 1947 of Japan, the prefectoral governor may delegate a part of his authority for the implementation to relief activities to a head of municipality, in order to conduct relief activities in a speedy manner.

No disaster can be ever dealt with effectively only through administrative set-up, alienating the community as a whole. But unfortunately, the act entirely ignores this very important aspect. The act is going to be implemented entirely through the government system. The Gujarat act makes the community, private sector enterprises and

even the individuals duty-bound to assist the collector or the commissioner in countering disasters. Inspirations can be drawn from foreign legislation. New Zealand enacted the Civil Defence Emergency Management (CDEM) Act, 2002 to counter emergency situations including disasters. Under this act, local authorities, non-government agencies, the voluntary sector, churches, and community groups are involved in disaster risk management activities at both national and community levels and are tied into the process through the pre-incident planning and agreements. For example, Red Cross has the responsibility at both national and regional levels for registration of victims of disasters. Article 1 of the Japanese legislation clearly specifies that the purpose of the act is to protect victims of disaster and maintain social order by causing the central government to provide needed relief services "on an emergency basis in cooperation with local public entities and the Japan Red Cross, other entities, and the people of Japan". Under the act, the prefectoral governor can cause persons engaged in medical services, civil engineering and construction services, or transportation services to engage in

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activities related to relief activities (article 24). The South African law emphasises the establishment of a national framework for disaster management comprising all national, provincial and municipal organs of state, statutory functionaries along with non-governmental institutions involved in disaster management, the private sector, communities and individuals. Such provisions prove that a lot of responsibilities have been pumped into the management process through the process of community participation.

In the process of excluding the community, the other important aspect which is missing in the Indian act is the recognition of traditional knowledge. The question may be raised about why such an initiative is necessary. In New Zealand, it is incumbent on the ministry of civil defence and emergency management (CDEM) groups to consult with Maori (indigenous tribes) on hazards and risks and the options for their treatment, when developing a CDEM group plan. If tribals in the Andamans could survive the tsunami, it was because their existing warning systems worked well in comparison to our non-existent modern systems. The fact that traditional houses of wood and stone survived the Uttarkashi earthquake not so long ago while modern buildings collapsed offered a similar lesson.² Native intelligence is significant and technical expertise needs to treat this as complementary. The affected communities require sufficient space to voice their concerns.

Another significant aspect of the act is that the actions of the national, state and district authorities as well as the central and state governments cannot be challenged except in the Supreme Court or the high courts having respective jurisdictions. Granting the officials such a high degree of immunity encourages them to indulge in such activities which may go against the objective of the act. Hence, it affects people's right to seek justice. Conversely, it imposes punishment for false claims. Many studies, even in the context of the tsunami had clearly shown that many people have been excluded on the basis of caste, religion, etc, by the state in the relief and rehabilitation process. With jurisdiction vested only in the higher courts, it will create enormous difficulties for such alienated people to get their due share. Again, losing documents in disasters is a common phenomenon. So they cannot account for their lost properties. Does that mean those unfortunate lots will not get compensation and be punished for asking for the same?³

Disasters often displace a large number of people to new places within their countries. There are reports of government's forced eviction from the coast in the state of Tamil Nadu after the tsunami in the name of safety. The government of Tamil Nadu has brought out government order (GO) 172 which is highly debated and alleged to induce people to relocate. In case of partly damaged houses built before 1991 within 200 m of the high tide line the owners will get a new house worth Rs 1.5 lakh, constructed by the government, provided the owners are willing to move beyond 200 m. But the owners unwilling to move out will have to undertake all the repair work without any government assistance. In case of fully damaged houses there is no option but of moving out, as new construction in the same place is strictly prohibited according to this GO. This is a clear policy of the government forcing the helpless people to relocate. Willing owners have to relinquish their old property to the government in favour of a new abode. The property so relinquished would be used for "public purposes". Nothing is mentioned about the nature of these public purposes. In such circumstances, there is no legal hindrance for the state to go ahead even with tourism projects at the expense of those poor people.⁴ There is a growing recognition towards the United Nations Guiding Principles on Internal Displacement which include people displaced internally due to natural disasters. It categorically states that it is the primary responsibility of the state to prevent and avoid arbitrary displacement of its people. The act appears to have concentrated more on disaster management through government system rather than focusing on the fact that the affected communities also have a right to relief and rehabilitation as well as the right not to be displaced unnecessarily.

Conclusion

As the act has an overriding effect, it is going to be the supreme legislation in the field of disaster management. So it is better that some areas are carefully looked into before it gives rise to a multiplicity of problems after its implementation. Some suggestions may be forwarded: (i) Declaration of disasters or disaster-prone zones and classification of disasters is a must. Keeping a constant watch and analysing the causes can reduce the possibilities of disasters and improve the conditions of disaster-prone zones. It helps in better

management of progressive disasters also. Modalities can be worked out to assign those works to various bodies referred to in the act. (ii) Qualifications for the members to be appointed in the national authority must be laid down. Incorporation of some experienced people outside the government mechanism should be mandatory. (iii) The powers and functions of the various authorities and committees need to be worked out carefully so that there are not many overlapping areas. (iv) Creation of too many plans and policies should be avoided as far as possible. (v) The entire system must have a budget of its own with provisions for accounts and audit of the funds referred to in the act should be provided to ensure transparency. (vi) Considering the plight of the people during disasters and the lackadaisical response of the authorities in many cases, the penal provisions for false claims must be removed. (vii) Provisions of challenging the actions of the officials only in higher courts need to be removed. The involvement of the local authorities and voluntary organisations regarding the ground level activities need to be stressed. The emphasis of disaster management efforts should focus on rights of the communities and the people who live in them.

The act falls short of the expectations in all aspects, considering the time involved in the making of the legislation. Finally, it may be concluded that it will spell a greater disaster if there is no careful formulation of rules and regulations. It is better if the act goes for some amendments. **EPW**

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Notes

1 S K Swami, presentation as 'Organisation of Disaster Response in India at Central and State Government Levels', Annual Conference of Relief Commissioners, 2001. Available at www.ndmindia.ric.in/documents/DisasterResponse.ppt.

2 *'Disaster Management: Putting People First'* available at <http://www.indiatogether.org/2005/apr/vup-disaster.htm#continue>

3 Tsunami Legal Action Committee (TLAC) comprising of the organisations, namely, People's Watch-Tamil Nadu (PW-TN), SOCO Trust and Human Rights Law Network (HRLN) received an unprecedented number of over 1,88,000 complaints from the people on the issues of missing persons, death compensation, missing documents, etc, which point towards inefficiency of the state machinery in carrying out the relief and rehabilitation works effectively.

4 Full text of the GO available at <http://www.tn.gov.in/tsunami/gorders/rev-e-172-2005.htm>