

# Disaster Management in India with Reference to State of J & K: An Analysis

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## Abstract

The constitution of India is federal in nature wherein the division of powers is incorporated in part 11th for the smooth conduct of state affairs. Moreover the respective jurisdiction of federal units is expressly mentioned with regard to legislative, executive and financial matters whereas in case of non-specified matters the union parliament has exclusive jurisdiction to legislate on these subjects. The disaster management is one of those unspecified areas under 7th schedule wherein parliament is empowered under article 248 read with entry 97 of the union list to legislate in case of such eventuality and after the Disaster management Act, 2005 which is one of those legislations that came into the statute book to deal with natural as well as man-made disastrous incidents in our country. In this respect, fact cannot be denied that Indian subcontinent is among the world's most disaster prone areas as almost 85% land is vulnerable to single or multiple hazards, due to, physical geographical and climatic conditions, moreover disaster is not bound by political, social, economic or geographic boundaries therefore when it occurs it impacts. Accordingly, an attempt is made to analyze legal provisions as well as the institutional mechanism like NDMA, SDMA, DDMA, NIDM and NPDRR so far devised in India, highlighting their effectiveness in the present scenario to deal with disasters in India.

**Keywords:** Constitution, Federalism, Legislative Power, Disaster Management.

## Introduction

A constitution may be defined as a document having special legal sanctity which sets out the framework and principal functions of the different organs of a state besides to declare the principles governing operation of those organs<sup>1</sup>. It may be said to be a collection of certain principles according to which the powers of government (legislative, executive and judiciary) and the rights of citizens are governed. The object and purpose of constitution is to shape and fix the limits of governmental activities. It acts as the basic source from which government derives its power. It is thus rightly said that constitution is the legatee of past and legator of future. Because all emerging needs of the society in the country are supposed to be dealt with as per basic principles of the constitution either by interpretation<sup>2</sup> or by resorting to the conventional mode of amendments<sup>3</sup> except the basic structure of the constitution<sup>4</sup>.

## Federalism and Indian Constitution

Based on the division of sovereign power of a state, constitution can be classified as federal or unitary. When all powers are vested in the national/union government it is termed as the unitary form whereas on the other hand in the federal set up the sovereign power of the nation is divided between the union/federal/general government and their constituent units/provinces/states. Thus a dual form of government exists wherein both governments derive their powers as well as jurisdiction from their common source i.e. written constitution and co-ordinate with each other rather than subordination. In this context USA Constitution is the pioneer of all federal constitutions of world followed by Canadian and Australian constitutions respectively.

So far as the nature of Indian constitution is concerned, it has all basic features of federalism viz. division of powers between federal and provincial governments, supremacy of constitution, written constitution and an independent arbitrator. In this context the apex court of the country in *Keshavananda Bharti's case* observed that federalism is one of the basic features of Indian Constitution which cannot be altered even by parliament.

## Federal Principle: An Overview

The principle may be understood as 'the method of dividing powers, so that the general and regional governments are each within their

sphere to co-ordinate and independent; but not subordinate to each other as per Professor K.C. Wheare. The existence of co-ordinate authorities independent of each other is the gift of federal principle. It is rightly said that federalism is not static but a dynamic concept and is always in the process of evolution and constant adjustments. A *federal* Constitution envisages a demarcation of governmental functions and powers between the Centre (national/ federal/ union government) and the regions (states/ provincial/units etc.) by way of sanctions of the Constitution, which is a written document.

The Constitution of India is quasi-federal in nature and not strictly federal however Sir Ivor Jennings was of the view that India has a federation with strong centralizing policy yet as per D.D. Basu a constitutional authority, it is neither purely federal nor unitary, but a combination of both. So much so Dr B.R. Ambedkar, the architect of Indian Constitution opined that it would be both unitary as well as federal as per the requirements of time and circumstances i.e. all pointed out that Indian Constitution would work as a federal system in 'normal times' but in times of 'emergency' it could work as it were a unitary system.

Basically drafting committee wanted to make it clear that though India was to be a federation, the federation was not a result of agreements made by the States to join in the federation. The country is divided into different states for the convenience of administration in the country. The division of powers between federal and state governments are expressly incorporated in part XIth of the Indian constitution titled centre-state relations like:

#### **Legislative Relations**

The legislative jurisdiction of the union parliament and states legislative assemblies is demarcated as per the provisions of Indian constitution.

#### **Administrative Relations**

Regarding the administration both of union as well as states governments as per their jurisdiction. The delegation of their respective functions to be authorized either by union government or state government for each other as per the constitutional provisions.

#### **Financial Relations**

The third one is financial relations having power to levy tax which runs parallel to their respective legislative powers.

Moreover article of the Indian constitution speaks about the legislative competence of dual polity whereas article read with schedule seventh provides the areas for the operation of union as well as of federal government.

It is pertinent to mention here that the union list entries are like defence, foreign affairs and communication etc. Where in parliament has exclusive power to enact law/s for entire or for any part of the India. Similarly in state list<sup>5</sup> matters like public health, law and order, land including agriculture for state governments are enacted whereas with respect to concurrent list where in both union as well as state governments can make law, union legislation has overriding effect in case of conflicts between the

wo<sup>6</sup>. Not only this the framers of Indian constitution tried their best to incorporate exhaustive list of all the legislative subjects to avoid any future conflict between dual polities but in fact no worthy wisdom can decide about the future developments as such. To deal with any such situation about unspecified subjects, we have now article 248 read with entry 97 of the union list which empowers the parliament of India to pass laws on those matters by resorting to their residuary legislative power<sup>7</sup>.

As far as the expression Disaster Management is concerned no such expression is expressly mentioned in lists (I, II or III) of the seventh schedule. No doubt there are two entries in the State List which are supposed to be relevant for the expression disaster management like Entry 14, which deals with agriculture, including protection against pests and plant diseases and entry 17 enumerating issues viz. water, including water supply, drainage and embankments etc.

Yet some other entries of the seventh schedule which authorizes certain actions on the part of central or state government like entries 2-A<sup>8</sup> deals with deployment of any armed force of the union or any other force subject to the control of union or any contingent or unit thereof in any state in aid of the civil power; power/jurisdiction/privileges/liability of the member of such forces in case of deployment. It means that in case of extraordinary situation either natural or man-made union government can take such actions. Besides entry 30 which deals with carriages of passenger and goods by railway, sea or national waterways in mechanically propelled vessels, entry 52 that deals with industries, the control of which by the union are declared by parliament by law to be expedient in the public interest. The disaster like chemical can be dealt by union government. Also entry 53 regulation and development of oil fields and mineral oil resources, petroleum and petroleum products; other liquid and substances declared by parliament by law to be dangerously inflammable, entry 55 regulation of labor and safety in mines and oilfields and entry 56 inter-state rivers and river valleys to the extent to which such regulation and development under the control of the union are declared by parliament bylaw to be expedient in the public interest.

Furthermore under state list there is expression like public order, police, public health and sanitation, hospital and dispensaries, pilgrimages (within state), relief of the disabled and unemployable, water embankment<sup>9</sup>. Whereas under concurrent list the expression forest is added by 42nd amendment, 1976 where both union and state government can make law<sup>10</sup>. The Panchayati raj institution<sup>11</sup> and urban local bodies<sup>12</sup> have also jurisdiction to deal with matters like drinking water, health and sanitary, public distribution system fuel and fodder<sup>13</sup> whereas water supply, slum improvement including up gradation and vital statistics like birth and death, public health, sanitation conservancy and solid waste management comes under the urban local bodies<sup>14</sup>. But mere omission to mention that such expression is no excuse on the part of government to act for

mitigation as well as to take preventive measures to deal with such disastrous situation if any arises in any part of the country. In this context a high power committee felt that it is grossly inadequate and a new entry be included in the entries of t seventh schedule<sup>15</sup>.

However Indian parliament passed required piece of legislation by resorting to their residuary power which is now called as the Disaster Management Act, 2005<sup>16</sup> applicable in the entire territory of India with an aim to provide effective management of disasters and for matters connected therewith or incidental thereto.

#### **Disaster Management: As State's Obligation**

A number of constitutional provisions provide for State's obligation to provide relief and rehabilitation like article 21 which guarantees every person right to life and personal liberty. It casts a positive obligation on the State to take all possible steps for the prevention, preparedness and mitigation of disasters. The ensuing article has expanded the scope of life liberal interpretation which is the repository of all important human rights, especially after the judgment of Maneka Gandhi v Union of India<sup>17</sup> Besides, other provisions under constitution is article 38 which directs the State to promote the welfare of the people. Further article 51 directs state to honor the international treaty obligations etc. on account of India being a party to a number of international treaties on environment which contains specific provisions on disaster management like United Nations conference on human environment of 1972.

Hence, the rights of disaster victims to rescue, relief and rehabilitation rather than charity by state. Other aspects are like social justice which is one of the aspirations of Constitution of India to accord justice to all the sections of society by providing facilities and opportunities to remove inability/disabilities from which the poor are suffering and to secure dignity of their persons. Moreover we have a welfare state having aim to promote general welfare of the people.

Another implied implication in this perspective is under the doctrine of Parens Patriae (father of the country) which originated in British law as early as the 13th century. It implies that the king was the father of country and was under obligation to look after the interest of those who were unable to look after themselves. Sometimes the State was best qualified to take note on this role i.e State was responsible under the doctrine of parens patriae.

Thus, it imposes a positive obligation on the state or sovereign authority to protect persons under disability. This doctrine which was originally applicable to the king has been applied by courts in a number of cases to make the state responsible for providing relief to victims of disaster<sup>18</sup> In *Heller v. DOE*<sup>19</sup>, Justice Kennedy observed, *The State has a legitimate interest under its parens patriae powers in providing care to its citizens who are unable to care for themselves.*

Also, in the case of *State of Kerala v. N.M. Thomas*<sup>20</sup> it has been categorically held that the Court

is also 'State' within the meaning of article 12 of the Constitution of India. Thus, court can also act as *Parens Patriae* so as to meet the ends of justice. Relying on the above-mentioned reasoning, the Supreme Court stated that "in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of near relatives, next friend and doctors must be given due weight<sup>21</sup>.

In this direction there are two tests in relation to maxim .These tests help the court to ascertain the course of action that it can adopt depending upon the situation. It is important to remember that these tests are merely guiding principles so as to help the court to reach a logical conclusion as given below.

#### **Best Interests Test**

The Best interests test requires the Court to ascertain the course of action which would serve the best interests of the person in question. It is important to note that the Court's decision should be guided by the interests of the victim alone and not those of other stakeholders such as guardians or society in general.

#### **Substituted Judgment Test**

The application of Substituted Judgment test requires the court to step into the shoes of a person who is considered to be mentally incapable and attempt to make the decision which they said person would have made, if he/she was competent to do so.

#### **Doctrine of Parens Patriae Vis-A-Vis Indian Constitution**

Conceptually, the Parens Patriae theory is the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations. The Directive Principles as well as the Fundamental Rights enshrined in our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by Constitution and where the citizens are not in a position to assert these rights, the State comes into picture and protects the rights of such Citizens<sup>22</sup>. The Preamble to our Constitution read with Article 38<sup>23</sup> Article 39<sup>24</sup> and Article 39-A<sup>25</sup> makes it amply clear that the State must take up these responsibilities. The State must strive to promote social, economic and political welfare of the people while discharging these commitments, the state may even deprive some rights and privileges of the individual victims or their heirs to protect their other important rights in a better manner and secure the ends of social welfare. Some Scholars believe that Constitution is a Social Contract entered into by the people amongst themselves so as to live cooperatively and harmoniously. The doctrine of Parens Patriae is simply one of the links in this long chain. This doctrine makes sure that the voiceless, abandoned and disabled people are ultimately the responsibility of the State and the State must take all the steps to ensure their well-being as they are not in a position to do so.

Also commission was constituted to review the working of Indian constitution in 2002. That noted that mechanism for adequate and immediate state responses to emergencies and disaster management

are wholly inadequate, examined suggestions made by union ministry of agriculture that management of disasters and emergencies, natural or man-made be included in List III of the Seventh Schedule and recommended that disaster mitigation should be linked with development as without disaster preparedness, development itself is at risk<sup>26</sup>.

Further Madan Mohan Punchhi commission, second commission on Centre-State relations was constituted in 2007 to look into the new issues of Centre-State relations. The commission made number of recommendations in its seven volume report presented to Government on March 30, 2010, while analyzing the scope of emergency and concept of localized emergency in particular. It noted that it is necessary that a legal framework for exercising the power of "localized emergency" be provided by an independent Statute. As per the Commission's recommendation, only exceptional situations like natural or man-made disasters of such dimensions which are beyond the capacity of the State to cope with and fall within the scope of "external aggression" or "internal disturbance" be considered for the purposes of a separate legislation. More so commission has provided a detailed list of specific conditions to be considered for such a framework legislation enabling invocation of "localized emergency". And stress was that it is important legislation providing appropriate administrative co-ordination between the union and the states concerned.

It is pertinent to cite here that traditional approach towards disaster management was on relief and rehabilitation, post disaster and very little effort was concentrated on disaster mitigation and preparedness in the country. This approach witnessed a sea change especially with the launch of Tenth Five Year Plan (2002-07) recognizing disaster management as a development issue for the first time. It was observed that while hazards both natural or otherwise, are inevitable the disaster that follows need not be so and the society can be prepared to cope with them effectively, whenever they occurred and called for a multi-prone strategy for total risk management, comprising prevention, preparedness response and recovery and imitating development efforts aimed towards risk reduction and mitigation. It was stated that only then we can look forward to sustainable development. The Tenth Five Year Plan prescribed a number of policy guidelines at the macro level, operational guidelines for incorporating disaster management practices into development plans and specific schemes for the prevention and mitigation of disasters.

Whereas the 11th five year plan (2007-12) was a shift from response centric disaster management to disaster mitigation. The Eleventh Five Year Plan also came up with a number of guidelines and disaster management comprises of six elements i.e., prevention, mitigation and preparedness in pre-disaster phase, and response, rehabilitation and reconstruction in post-disaster phase<sup>27</sup> and whereas 12th finance commission also mandated to review the financial arrangements for disaster management.

Interestingly keeping in mind this approach, S.2 (e) of the Disaster Management Act defines disaster management 'as a continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for- (i) prevention of danger or threat of any disaster; (ii) mitigation or reduction of disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any disaster; (v) prompt response to any threatening disaster situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster; (vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction<sup>28</sup>.

#### **United Nations and Disaster Management**

The United Nations General Assembly designated the 1990s as the International Decade for Natural Disaster Reduction (IDNDR). Its basic objective was to decrease the loss of life, property destruction, social and economic disruption caused by natural disasters, such as earthquakes, tsunamis, floods, landslides, volcanic eruptions, droughts, locust infestations, and other disasters of natural origin. A significant step in this regard was the 1st World Conference held on 23 to 27 May 1994 wherein the Yokohama Strategy and Plan of Action was given effect<sup>29</sup>. The plan aims to reduce societal vulnerability and therewith decrease consequences of natural disasters. UN-member states were asked to establish National Platforms which would facilitate the adjustment of general disaster risk reduction objectives to national/local conditions implementing the agreed policies and to expand the understanding and perception of important disaster risks reduction on national levels. Under the same resolution, the second Wednesday of October was designated as the International Day for Natural Disaster Reduction. Thereafter the IDNDR was replaced and continued by International Strategy for Disaster Reduction (ISDR). The overriding goal was to reduce human, social, economic and environmental losses due to natural hazards and related technological and environmental disasters. The 2002 World Summit on Sustainable Development-enforced awareness of the need for risk and vulnerability reduction in order to secure sustainable development.

#### **Disaster Management and Indian Subcontinent**

The efficient policy and effective institutional support are a sine quo non for disaster management in the present scenario in view of the climatic changes and development taking place around the world as well as in India. Because India's geographical condition is such that it is vulnerable to a number of natural disasters. About 55% of the country's total area is in Seismic Zones III-V and is vulnerable to earthquakes, 68 % of net sown area is vulnerable to drought, 4 core hectare mass is vulnerable to floods, sub-Himalayan/Western Ghats is vulnerable to landslides and the coastal States are vulnerable to cyclones. Even other than natural disasters, the country is also prone to man-made disasters<sup>30</sup>. The natural disaster is the act of God but the losses incidental to it are acts of men.<sup>31</sup> The high susceptibility of the country makes it imperative to have through disaster management plan in place.

Consequently State of J&K is one of such multi-hazards prone region in India with natural disaster like earthquake, floods, landslides, avalanches, snow storms etc. major disasters occurred in the state are like Snow Blizzard at Waltengu Nad (Kulgam district) February, 2005<sup>32</sup>, Kashmir Earthquake of October, 2005<sup>33</sup>, Leh Cloudburst and Flash floods, August 2010<sup>34</sup>, Cloud burst at Bagger (District Doda of Jammu region), June 2011 A cloud burst occurred at Bagger in District Doda on 8th June 2011, where 17 structures got Washed away and three people got died. The dead bodies got washed away and have not been traced till date<sup>35</sup>. Last year's flood disaster (2014) exposed the state administration especial in Kashmir region. Moreover the two district of the state i.e. Leh (IV Seismic Zone) and Kupwara (V Seismic Zone) are identified for UNDP Disaster Risk Reduction project in India. In this context the J&K division bench has issued required direction.

#### **Disasters In India: A Survey**

Disaster can be defined as a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage and destruction of, property, or damage or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. Disaster occurs when the dimension of an emergency situation grows to such an extent that the impact of the hazard is beyond the coping capability of the local community and/or the concerned local authority.

As such disaster can be divided into natural hazards and unnatural or man-made disasters. Natural disasters will include earthquake, cyclone, tsunami, hailstorms, flood, drought, glacial movements etc. Man-made disasters include chemical, industrial and nuclear disasters.

#### **Earthquake**

As per figures available almost 59% of India's geographic area is vulnerable to earthquake<sup>36</sup> and National Disaster Management Authority has come up with guidelines for management of earthquakes. The guidelines provide a broad overview of the disaster management plans which are required to be prepared by the Central and State government. As per the present scenario, the State Executive Committees (SECs) of the State Disaster Management Authorities are responsible for developing their disaster management plans. The techno-legal framework comprising of model bye-laws to be introduced by respective States has been issued by MHA in 2007. The framework lays stress on the compliance of earthquake-resistant design. The State governments are required to review, revise and update the town and country planning Acts, land use and zoning regulations, building bye-laws and DCRs at least once every five years<sup>37</sup>.

#### **Floods**

India is highly vulnerable to floods about 40 million hectares out of a geographical area of 3290 lakh hectares is prone to floods. The flood

management being a State subject, the primary onus is on state. The low-lying areas of Kashmir valley especially Sonawari, Awantipora and Srinagar. Whereas low-lying area in Jammu region is also prone to floods<sup>38</sup>.

#### **Landslides and Avalanches**

The landslides & avalanches are one of the major hydro-geological hazards affecting India both in magnitude and frequency especially in hilly states like Himachal Pradesh, Uttarakhand and Jammu and Kashmir, the high reaches of Kashmir like Anantnag, Kargil, Gurez, Kulgam, Leh whereas Doda, Ramban, Kishtwar and Banihal are prone to avalanches. Ramban and Banihal area along the nation highway towards Kashmir are highly prone to landslides.

#### **Cyclones out of the 7,516 km Long Coastline, Close to 5,700 km is prone to Cyclones and Tsunamis**

The primary Act in this regard is the Environment Protection Act, 1986. Moreover, in 1991 Coastal Regulation Zone notification was issued.

#### **Tsunami**

The term Tsunami comes from the Japanese term meaning "harbor wave". India's coastal areas are vulnerable to tsunami and India has in past been a witness to massive loss of life and property due to it. As it happened in 2004 coastline of Tamil Nadu, Kerala, Andhra Pradesh, Pondicherry, Andaman & Nicobar Island of India caused huge loss to lives and property.

#### **Chemical Disaster**

Chemical disasters are a by-product of industrialization. The Bhopal gas tragedy (1984) and its effect is still visible making it clear that though the frequency of chemical disasters may be low, it can have a very negative effect of huge magnitude having both long and short term effects. The management of chemical disasters is primarily the domain of Ministry of Environment and Forests.

#### **Biological Disasters**

These are the scenarios involving disease, disability or death on a large scale among humans, animals and plants due to toxins or disease caused by live organisms or their products. The Acts primarily dealing with it are the Epidemic Diseases Act, provisions under Indian Penal Code (IPC) and Criminal Procedure Code (Cr.P.C), The Water (Prevention and Control of Pollution), Water (Prevention and Control of Pollution) Rules, 1975, Air (Prevention and Control of Pollution) Act, 1981, and the Rules (1983), Environmental (Protection) Act, 1986, and the Rules (1986).

The state of J&K has its own legislation<sup>39</sup> to provide for town, villages and other areas destroyed by natural calamities in the state but with no significance pro-disaster or post disaster implications. No doubt we have a ministry of revenue, relief and rehabilitation with two relief commissions' office at both capitals of the state.

#### **Statutory Measures: An Analysis**

After taking into consideration the wide effect of the various disastrous incidents and lack of effective and concrete institutional arrangement in India the union parliament enacted the Disaster

Management Act, 2005 with an aim to provide for effective management of disaster and for matters connected therewith or incidental thereto. It applies to entire territory of India. The expression disaster and disaster management are defined in this Act for clear understanding as under:

Disaster can be defined as a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area<sup>40</sup>.

#### **Disaster Management: A Conceptual Analysis**

It is a continuous and integrated process of planning, organizing, co-coordinating and implementing measures which are necessary or expedient for,

1. Preventing danger or threat of any disaster,
2. Mitigation or reduction of risk in disaster or its severity or consequences,
3. Capacity building,
4. Preparedness to deal with any disaster,
5. Quick response to any treating disaster situation,
6. Assessing the severity or magnitude of the effect of any disaster,
7. Evacuation, rescue and relief,
8. Rehabilitation and reconstruction,

It also provides for the constitution of a number of institutions at national, state and district levels. At the national level, National Disaster Management Authority (NDMA) which is headed by the Prime Minister<sup>41</sup> being ex-officio chairman along with other members not exceeding nine in number to be nominated by the chairman of the nation authority. It has responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster along with power to approve nation plan, to lay down guideline to be followed by the state authority in drawing up the state plan and to co-ordinate the enforcement and implementation of the policy and plan for disaster management<sup>42</sup>. Whereas other of such body at national level is called national executive committee to be constituted by the union government with a view to assist the NDMA in performance of its functions under the Act. The composition of the NEC is that secretaries to government of India in charge of the ministry/department of the central government having administrative control of disaster management is the chairman, and other members are the secretary in charge of ministry like agricultural, atomic energy, defence, environment, forest finance(expenditure) health etc. and chief of the integrated defence staff of the chief of staff committee being its ex-officio members, their function is to assist NDMA and to prepare national plan, to provide necessary technical assistance to state government, to promote general education and awareness relating to disaster management<sup>43</sup> through National Institute of Disaster Management in the field of disaster management<sup>44</sup>. It has also a nodal centre

for radiological, nuclear, biological and chemical emergency response depending upon the type of disaster, different ministries have been designated as the nodal ministry<sup>45</sup>. Besides these, a National Disaster Response Force<sup>46</sup> has been constituted. At present, National Disaster Response Force consists of Ten Battalions, three each from the BSF and CRPF and two each from CISF and ITBP constituted in the year of 2006 under the domain of union ministry of home. Each battalion have 18 self-contained specialist search and rescue teams of 45 personnel each including engineers, technicians, electricians, dog squads and medical/paramedics. The total strength of each battalion is 1,149. The union cabinet has also approved the conversion/up-gradation of 02 Battalion from SSB. All the ten battalions have been equipped and trained to respond natural as well as man-made disasters. Four battalions of them are also trained and equipped for response during chemical, biological, radiological and nuclear (CBRN) emergencies. This is the only dedicated disaster response force of the world. The only agency with comprehensive response capabilities having multi-disciplinary and multi-skilled, high-tech, standalone nature, experienced paramilitary personnel specially trained and equipped for disaster response having capabilities for undertaking disaster response, prevention, mitigation and capacity building in the field of Specialized response during disasters, Proactive deployment during impending disaster situations, Acquire and continually upgrade its own training and skills, Liaison, Reconnaissance, Rehearsals and Mock Drills, Impart basic and operational level training to State Response Forces (Police, Civil Defence and Home Guards) vis-à-vis community- All NDRF Battalions are actively engaged in various and Public Awareness Campaign.

#### **State Disaster Management Authority**

The model is replicated at the State level with State Disaster Management Authority<sup>47</sup> headed by chief minister who shall be ex-officio chairman of the body along with other member not more than nine in number nominated by chairman. The State Disaster Management Authorities also lays down policies and plans for disaster management in their respective states. The chairman (chief secretary of the state government) of the state executive committee shall be chief executive officer of the State Executive Committee. It is empowered to control and restrict vehicular traffic to and from or with the vulnerable or affected area. It also provide shelter, food, drinking water, essential provision, healthcare and serve in accordance with the standards laid down by national authority and state authority. The unsafe building can be demolished if seems to be so<sup>48</sup>. The function of the SDMA is to approve state plan and to co-ordinate the implementation of the state plan<sup>49</sup>.

#### **District Disaster Management Authority**

The third such body to be constituted at district level to be known as District Disaster Management Authorities headed by collector/District Magistrate/Deputy Commissioner as its ex-officio chairman. The elected representative of the local authority who shall be the co-chairman,

superintendent of police, chief medical officer and two other district level officer to be appointed by state government as its members. DDMA is the planning, coordinating and implementing bodies for disaster management in the district.

#### **National Platform for Disaster Risk Reduction (NPDRR)**

The Government of India recognizes the need to evolve a participatory process of decision making in disaster management with active involvement of the Central & State Governments and stakeholders including people representing different interests in the field of disaster management. An institutional mechanism to address this need will not only strengthen the disaster management structure and institutions all over the Country but also will strengthen the federal polity and democratic governance in the larger interest of its people hence decided to reconstitute such body with the multi-stakeholders<sup>50</sup> viz. With the union home minister to act as whereas Minister of State in charge of Disaster Management in the Ministry of Home Affairs and Vice-chairman national disaster management authority is the vice chairman besides representatives of the Government of India and Vice Chairman, NITI Aayog are other members and representatives of state governments & union territories administrations beside the representatives of local self- governments like municipalities etc. with following functions.

1. To review the progress made in the field of disaster management from time to time.
2. To appraise the extent and manner in which the Disaster Management Policy has been implemented by the Central and State Governments, and other concerned agencies, and to give appropriate advice in the matter.
3. To advise regarding coordination between the Central and State Governments/UT Administrations, State Governments, local Governments and civil society organizations for development of Disaster Risk Reduction.
4. To advise suo-motu or on a reference made by the Central Government or any State Government or a Union Territory Administration on any question pertaining to disaster management.
5. To review the Disaster Management Policy.

#### **Nodal Agencies for Disaster Management**

The Ministry of Home Affairs is the nodal ministry for natural disasters. Ministry of Agriculture is responsible for drought relief, whereas air accidents are looked upon by Ministry of Civil Aviation. Railways accidents are handled by Ministry of Railways. Chemical disasters are handled by Ministry of Environment & Forests. Department of Atomic Energy is responsible for handling nuclear disasters while biological disasters come under the purview of Ministry of Health.

Significantly the other notable statutory provisions of the enactment are like minimum standards and relief to be provided to person affected by disaster through entire country like relief in shelter, food, drinking water, medical cover and sanitation. There are special provision for widows and orphans<sup>51</sup>.

Further provisions for relief in loan repayment in case of disaster of sever nature.<sup>52</sup> In addition to this a full chapter<sup>53</sup> provides for certain acts to be an offence under this Act and made punishable like he who obstruct or refuse to follow an officer either of union government or state government while on duty under this Act. It is pertinent to mention here that no court can take cognizance of such offence unless complaint by NDMA, SDMA, DDMA or a notice of not less than thirty days given by any person with intention to union government/state government or district management authority<sup>54</sup>.

#### **Judicial Approach**

In this regard the judiciary in India has also done a impeccable job through its judicial craftsmanship as In *B.J. Diwan v State of Gujarat (2001)* 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. Again in *Kishen Pattanayak v State of Orissa*<sup>55</sup> the Hon'ble Supreme Court considered a letter written to the Hon'ble Chief Justice of India, highlighting the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty, by the petitioners as a writ petition. This writ petition was taken along with another writ petition filed by Indian People's Front alleging starvation deaths, drought diseases and famine in the districts of Koraput and Kalahandi due to utter negligence and callousness of the administration and the Government of Orissa. In order to ascertain the correct state of affairs, the Hon'ble Court was pleased to direct the District Judge of Kalahandi to enquire as to whether the State Government has, in fact, implemented the social welfare measures in the district of Kalahandi and whether such measures were adequate to meet the needs of the people there. The Hon'ble Supreme Court held that a district-level Natural Calamities Committee consisting of the Collector, other officials and the popular representatives like MPs and MLAs of the district, who are required to review the progress of relief work and the measures taken to meet the drought conditions from time to time was sufficient and no new committee was required to be formed. The Committee was to hold at least one meeting every two months and the function of the Committee would not be confined only to the cases of starvation deaths, but it shall be responsible for looking after the welfare of the people of the district. In *M.K. Balkrishna v Union of India*<sup>56</sup> the Hon'ble Supreme Court while suo motu expanding the scope of writ petition originally filed for protection of wetlands in the country for preservation of the environment and maintaining the ecology underlined the terrible water shortage faced by people in India. The Hon'ble Court held that acute shortage of clean drinking water was one of the stark realities today which threaten the guaranteed fundamental right to get water as a part of right to life under article 21 of the constitution of India and recently J&K high

court division bench also issued necessary directions to concerned authorities with regard to the disaster related issues in the state while hearing a public interest litigation that periodic disaster management drill should be conducted so that all stake holders are kept alert to face any type of natural disaster in the state<sup>57</sup>

### Conclusion and Suggestions

The sum-up of the above endeavor can be seen that after 1990,s economic reform developmental activities took place both planned and unplanned which resulted in many folds ill effects causing huge loss to lives and property in the country. The factors compounding the disaster like changing demographics and socio-economic condition, unplanned urbanization, development within high risk zones, environmental degradation, climate change, geological hazards and epidemics. To deal with such situation parliament passed very important piece of legislation for the effective administration off disastrous situation which is applicable to entire country uniformly including the state of J&K. The institutions created under the Act, no doubt proved successful to mitigate the ill effect of the various disasters in India e.g. pre cyclone arrangement in coastal state in India as we have seen the relief and rescue operation to deal flood havoc in the Kashmir valley in 2014. The uniform standard for relief to all victims of whatever kind of disaster should apply. The penal provisions are there with prior condition to serve notice of thirty days. So for as the J&K is concerned it has approved first ever state disaster management plan and established the requisite institution as per the provisions.

The suggestion put forth after analysis of the disaster management jurisprudence in India is that institution established should be made continuous bodies both at state level rather than adhoc arrangement either by establishing new minister or a separate department with requisite manual power. The condition of thirty days' notice for cognizance should be abolished with more severe penalty for the violation of any provisions of the Act. There should not be any delay to take post disaster relief and rehabilitate action. The NDRF unit should be deployed in disaster prone state to provide training and pre disaster tips to general public along with wide publicity of any warning of such situation with the help of media. All developmental activities should be adhered to techno-legal framework like National Buildings Code (NBC) and other codes as laid. The disaster management should be included in especially higher secondary and college level as one of the main components of environmental study.

### References

1. M.P. *The Constitutional Law of India (2008) and see also Wade and Phillips, Constitutional Law 1(1965)*
2. *Either by Supreme Court or High Courts of the country*
3. *Article 368 ; The constitution of India*
4. *AIR 1973, SC, 1473*
5. *The state list referred above is applicable to all states of the Indian federation except the state of*

*J&K. the temporary provision incorporated under article 370 of the Indian Constitution for the state of J&K limited the jurisdiction of the parliament under union list to only those subject which are either acceded on 26 October 1947 or for which concurrence is given by the state government from time to time and all other matters within the ambit of the state government. That is why the state of J&K enjoys wider legislative jurisdiction in the Indian federation than other states. Some time it is referred as special status of J&K*

6. *Supra note 3, Article 254*
7. *Residuary power of the parliament under entry 97 of the union list that also restricted application to the state of J&K.*
8. *Inserted by 42nd Constitutional Amendment Act,1976*
9. *Entries 1, 2,6,7,9 & 17 respectively of the IIInd list*
10. *Entry 17-A*
11. *Added by 73rd Constitutional Amendment Act,1992*
12. *Added by 74th Constitutional Amendment Act,1992*
13. *Schedule 11 for Panchyat Raj Institution ( 29 entries)*
14. *Schedule 12th(18 entries)*
15. *High Power Committee Report,2001*
16. *Hereinafter referred as ACT*
17. *AIR 1978 SC 597*
18. *This doctrine is not dependent upon any constitutional provisions or presence of any legislative enactment. We find evidence of States obligation to protect its citizens in the Famine Relief Code adopted after the Great Famine of 1876-1878. This famine led to the constitution of the Famine Commission of 1880 and eventual adoption of Famine Relief Code. India probably has the world's oldest disaster relief code which started in1880. This relief code provides details of the relief to be given by the government to the affected people*
19. *(509) US 312*
20. *1976 (1) SCR 906*
21. *Aruna Ramchandra Shanbaug v. Union of India , 2011 (3) SCALE 298*
22. *Charan Lal Sahu v. Union of India . AIR 1990 SC 1480*
23. *Article 38 (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2)The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.*
24. *Article 39 The State shall, in particular, direct its policy towards securing*
  - a. *that the citizens, men and women equally, have the right to an adequate means of livelihood;*

- b. that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d. that there is equal pay for equal work for both men and women;
- e. that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f. That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
25. Article 39-A The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
26. The National Commission to Review the Working of the Constitution Report,2002
27. See *infra* note 30,P.15
28. S.2; Disaster Management Act, 2005
29. See *supra* note 15, P.14
30. Compendium of Law on Disaster Management, January 2015 National Disaster Management Authority Government of India, p.11
31. Jacob P. Alex, Disaster Management : Towards A Legal Framework ,p.1
32. 18/02/2005 a snow blizzard occurred in villages Waltengu Nad, Pachgam and Nigeenpora affecting 128 families consisting of 618 souls. During the incident 175 were lost along with other loss to properties
33. 08/10/2005 a devastating earthquake of magnitude 7.6 resulted in 953 deaths and 418 injuries in J&K (also more than 80,000 deaths in PoK) This was one of the deadliest earthquakes in the sub-continent. 23,782 houses were fully damaged in the quake in J&K. 40.3% of the deaths comprised children below 10 years of age, thereby depicting their vulnerability and signifying the importance of school safety
34. On the intervening night of 5- 6/08/ 2010, Leh witnessed a devastating cloudburst followed by flash floods .The unprecedented event resulted in the death of over 250 people and damage worth crores of rupees .The areas in and around Leh, especially Choglamsar, where people had constructed houses along the dry water course had no idea that the stream could get flooded and wash away everything whatever came in its way.
35. J&K Disaster Management Policy,2011  
To institutionalize Disaster Risk Reduction into governance as envisaged in Disaster Management Act, 2005 and National Disaster Management Policy, 2009  
Following are aim and objective of the above policy.
- a. To promote and mainstream DRR into developmental planning
- b. To build capacities and promote effective institutional mechanisms for mainstreaming DRR
36. To promote community-based DRR to reduce vulnerabilities and effective responses through awareness-generation and capacity-building
- a. To promote research and development for Disaster Risk Reduction through appropriate disaster prevention, mitigation and preparedness measures and strategies
- b. To develop mechanism for an effective, well-coordinated and timely response system
- a. To establish a framework for post-disaster recovery and reconstruction
37. National Disaster Management Guidelines- Management of Earthquakes, April 2007,
38. *Id.*
39. J&K Natural Calamities Destroyed Area Improvement Act, Svt.2011(1954 AD) and rules under Act,1963
40. Section 2(d),DMA,2005
41. *Ibid.* Section 3
42. *Ibid.* Section 6
43. *Ibid.* Section 8
44. *Ibid.* Section 42
45. *Id.*
46. *Ibid.* Sections 44
47. *Ibid.* Section 14
48. *Ibid.* Section 24
49. *Ibid.* Section 18
50. MHA, New Delhi, the 5th July, 2017
51. S.12, Disaster Management Act,2005
52. *Ibid.* S.13
53. Chapter X titled as Offences and Penalties
54. *Ibid.* S. 60
55. AIR1989; SC ;677
56. 2009;( 5) SCC; 511
57. Journey Line,11th October 2017,p.3