

LEGAL FRAMEWORK OF DISASTER MANAGEMENT IN INDIA

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Abstract

Legal framework constitutes the foundational pivot around which different aspects of an activity are interwoven. It is probably for this reason that in constituting modern democratic political systems, it has been found essential to ordain that on the basis of a written Constitution. The issues and activities that could not find place in the scheme of a written Constitution, for obvious reasons, have been provided a sound legal basis by enacting a framework law on the subject. In India, one such issue has been the management of disasters. Despite being one of the most disaster prone countries in the world, the subject of disaster management could not find a place in the Constitution of India for reasons explained later in the paper. In fact, for a fairly long period of time, disasters, both natural and manmade, had been found to be managed in the classical colonial mode of trial and error resulting into untold miseries for the people and massive loss of lives and properties. The lurking dangers of climate change and its colossal impact on the occurrence of natural disasters prompted the international community to go for a recasting of the disaster management system in all parts of the world. In such an overhaul of the disaster management systems, central place was afforded to the provision of a sound legal framework. In the wake of these persuasions, Indian Parliament enacted the Disaster Management Act in 2005 to provide for the legal framework in which the structures, functionaries and activities related to management of disasters are organised and operationalised in order to make the country disaster free. The paper, therefore, seeks to critically analyse the legal framework of disaster management in the country.

I Introduction

INDIA HAPPENS to be one of those most disaster prone countries in the world that are fairly deficient on having a comprehensive constitutional-legal framework of disaster management. Interestingly, for obvious reasons, management of successive devastating disasters, till recently, has predominantly been based on discretionary trial and error approach of disaster managers in the absence of any specific constitutional stipulation or dedicated statutory enactment on the subject. In other words, owing to lack of categorical constitutional-legal stipulations, the issue of disaster management was conjecturally decided on the basis of its operational dynamics. Thus, for a long time, disaster management was supposed to fall within the exclusive legislative competence of the states with the central government having no or very limited say in the matter. Clearly, this resulted in a situation where different states evolved differing, and sometimes

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contradictory, policies and followed haphazard approaches on managing disasters despite commonality of causes and impacts of such disasters on the lives and assets of the people. Moreover, quite a large number of states thought it fit to continue with the relief-centric colonial policy without any innovation or improvisation in the policy of disaster management. In these circumstances, a subject of national importance with far reaching implications for the life and livelihood of the people, on the one hand, and sustainable economic development of the country, on the other, apparently fell to extreme apathy of the central government, and the states relegated the subject to utter insignificance presumably due to lack of any political mileage being drawn from it. The only avenue where states could not do without involvement of the central government has been financing of disaster management operations for which centre has been providing both plan as well as non-plan grants to states from time to time. But on other aspects of management of disasters, role of the central government had been bare minimum despite the colossal magnitude of a disaster or the inability of a state government to manage such disasters efficiently and effectively.

II Toward a legal framework

Over the years, with the greater realisation of the significance of efficient and effective disaster management, the critical role of a comprehensive framework of policy, along with legal and institutional arrangements in the management of disasters have been emphasized by scholars in various parts of the world. As Neil R. Britton points out, “Policy, legal and institutional arrangements form the foundation for any society’s approach to disaster management. Policies are based on information reviews that are drawn on to establish appropriate courses of action; legislation identifies explicit decisions about how a particular policy will be conducted and legitimizes those actions; and institutional arrangements identify specific agencies and their relationships for carrying out the missions and duties associated with the policy. Within this triumvirate, the laws that codify legislation are extremely important because they furnish an immutable ‘bottom line’ on subsequent courses of action.”¹ Moreover, laws have also been

¹ Neil R. Britton, “Getting the Foundation Right: In Pursuit of Effective Disaster Legislation for the Philippines” *Proceedings of 2nd Asian Conference on Earthquake Engineering 2006*, March 10-11, 2006, Manila, available at: <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=FA20D87666DC51DAE3CD651BED0405C8?doi=10.1.1.537.8768&rep=rep1&type=pdf> (last visited Nov 25, 2016).

understood as an expression of a society's power framework and its system of domination.² Therefore, it became of utmost significance in different countries, particularly the federal countries, to evolve a fine legal framework for management of disasters.

Conceptually, legal arrangements refers to the “framework of laws, executive orders, and other legal instruments that set the ground rules for governmental and non-governmental activities related to disaster mitigation and management. Legal arrangements define authorities, responsibilities, and role of officials and organizations as they relate to disaster management. The legal framework is comprised of statutes, and executive acts/orders and implementing regulations that establish legal authority for programmes and organisations that relate to hazards, risk, and risk management. These laws may dictate - or encourage – policies, practices, processes, the assignment of authorities and responsibilities to individuals and/or institutions, and the creation of institutions or mechanisms for coordination or collaborative action among institutions.”³ However, not all countries in the world have been prompt enough to evolve efficient and effective legal arrangements for management of disasters on their own and in normal course of their activities. In most, if not all, of the countries, the evolution of legal arrangements for disaster management has been triggered by one or another of the following factors acting individually or in tandem with each other: major disasters, political shifts, the engagement of particularly dynamic individuals, and a well-educated and participative population.⁴ Thus, the pursuits towards a legal framework for disaster management in different countries have followed varying trajectory as a result of which quite remarkable asymmetry is visible in the status of legal framework for disaster management in different parts of the world.

Insofar as India is concerned, the issue of disaster management remained at the backburner of the priority sectors of the central as well as different state governments. Successive incidents of severe disasters failed to persuade these governments to review the existing legal framework of disaster management rooted in the colonial relief centric policy. Archaic famine code remained

² S. F. Moore, “Law” in A. Kuper and J. Kuper (eds.), *The Social Science Encyclopedia*, 446 (London: Routledge & Kegan Paul, 1985).

³ Shirley Mattingly, “Policy, Legal and Institutional Arrangements” *Proceedings of the Regional workshop on Best Practices for Disaster Mitigation*, 24-26 (Sep. 2002, Bali), available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.500.9363&rep=rep1&type=pdf> (last visited on Nov 26, 2016).

⁴ United Nations Development Programme (UNDP), *A Global Review: UNDP Support to Institutional and Legislative Systems for Disaster Risk Management* xv-xvi (Paris: Bureau for Crisis Prevention and Recovery, 2007).

the benchmark legislation around which the entire policy framework and administrative set up of disaster management in the country revolved. As a result, year after year, the common vulnerable people kept on suffering the vagaries of nature while the government appeared quite oblivious of the miseries of the victims of disasters.

Amid such an undesirable state of affairs, two significant developments induced the move to reshuffle the matrix of disaster management, and help in evolving a sound legal framework on the subject. One, the declaration by the United Nations General Assembly to observe the decade of 1990s as the International Decade for Natural Disaster Reduction (IDNDR) initiated a mammoth global campaign towards mainstreaming natural disasters in the broad socio-economic development strategy of the countries. Being an ardent adherent to the United Nations (UN) policies and programmes, India could not resist joining the global move for prioritizing disaster administrative framework for foolproof management of disasters. Two, the dawn of the new millennium in India was marked by a series of catastrophic natural disasters such as the Gujarat earthquake, 2001 and the Indian Ocean Tsunami, 2004. Leaving behind them a sorry trail of massive death and destruction, these disasters also exposed the inherent chinks and inadequacies of the concerned state governments to effectively manage the disasters of such a magnitude. Subsequently, the focus of attention was turned towards the Central Government with a call for its active involvement in evolving a comprehensive national legal framework for disaster management, along with creation of a dedicated federal agency to guide and coordinate the disaster management operations undertaken by states in times of calamitous events.

Under these pressing circumstances, the central government, which had already set up a High Powered Committee (HPC)⁵ on disaster management in 1999 to commemorate the conclusion of the IDNDR, started the process of drafting a federal law on the subject. Eventually, on a subject that has been argued to be within the exclusive legislative jurisdiction of the states, Parliament enacted the Disaster Management Act in 2005 that presently constitutes the core of legal framework of disaster management in the country. In the following paragraphs, an attempt has been made to read between the lines of the constitutional provisions, along with a critical

⁵ Report of the Committee was submitted in 2001. See, Government of India, *The Report of High Powered Committee on Disaster Management*, (Chairman: J. C. Pant), New Delhi: National Centre for Disaster Management, Indian Institute of Public Administration, 2001.

scrutiny of the provisions of the Disaster Management Act, 2005 to figure out the constitutional-legal framework of disaster management in India.

III Constitutional perspectives

Constitution of India does not have any explicit provision on the subject of disaster management. Despite being one of the world's lengthiest constitutions, the non-inclusion of disaster management in the constitution may probably be explained by three interrelated reasons. Firstly, being the supreme law of the land, a constitution is usually a body of basic laws to outline the fundamental contours of a polity with elaborate provisions on fundamental rights and indicative division of legislative, administrative and financial competencies of different strata of governments. So, in such a scheme of things, the operative subjects like disaster management is not supposed to figure in the constitutional provision as they are left to the prudence and wisdom of the government of the day to evolve appropriate policy and administrative framework to deal with the issue in hand. Secondly, and more importantly, at the time of framing the constitution, disaster management was not considered such a significant subject as to merit the attention of the constitution makers, and find a place in the provisions of the constitution. Finally, the prevalence of a number of colonial tools of disaster management such as Famine Code along with the existence of steel framed administrative machinery to conduct the rescue and relief operations in the times of disasters probably appeared sufficient for the national leaders to manage the disasters even in future as well. As a result, the subject of disaster management failed to secure a place in the elaborate scheme of division of vital subjects between the centre and states.

In the absence of any constitutional stipulation, for a long time, disaster management had conventionally been considered as falling within the competence of the states as per the colonial practice.⁶ Given the location of disaster prone areas in the geographical jurisdictions of the states, no doubt, make the state the first responders to the crisis situations created by the vagaries of nature. At the same time, most of the activities involved in the course of management of a disaster are of local nature to be carried out by the district and sub-district level officials working

⁶ Such a view has been taken by the mainstream scholarship as well as the numerous governmental committees and commissions on disaster management in the country. An indicative reference, for instance, on such a view could be found in, Government of India, *Report of the Task Force: A Review of the Disaster Management Act, 2005*, 39 (New Delhi: Ministry of Home Affairs, 2013).

under the administrative control of the state government. However, in the course of time with the subject gaining significance in the governance paradigm of the country, questions began to be raised on the appropriate legislative locale of the subject in order to not only bestow the responsibility for evolving suitable policy and creating an effective administrative apparatus for carrying out the disaster management activities but also to ensure accountability for proper management of disasters. It was in this context that the colonial practice of vesting the responsibility for management of disasters in the states has begun to be questioned.

Evidently, much of the typical kinds of disasters, both natural as well as manmade, owe their genesis in the systems and processes that are constitutionally the subject areas over which states have been accorded the legislative competence to enact laws and initiate administrative measures to mitigate adverse impacts on the life and livelihoods of the people. On account of these natural predispositions and their functional dynamics, conventionally management of disasters has been considered to be primary domain of the states on which the central government has minimum or no role to play. However, such circumstantial and conventional responsibility of the states for disaster management gradually became a kind of unbearable burden on them given the growing propensity and frequency of disasters with exceptional severity. Hence, it began to be argued that the states neither have financial resources nor are technically competent to manage disasters of a reasonably large magnitude. Rather, it would be simply farcical to charge the states with the responsibility of managing disasters without active and substantive support and assistance from the central government. Interestingly, disaster management has been one of those subjects over which the established jurisdiction of the states have been willingly allowed to be eroded to create a legitimate space for the Central Government to play an active role in it.

Ironically, in the post-constitutional history of the working of Indian federalism, there has been the ominous trend of disquieting increase in the legislative competence of the Central Government *vis-à-vis* states through the transfer of certain subjects from the state list to the concurrent list of seventh schedule of the Constitution. While states have generally been opposed to such moves on the part of the Central Government to disturb the original intent and scheme of the Constitution, their protest has sometimes reached unrelenting proportions on certain issues such as resource sharing, and constitution and deployment of central paramilitary forces in the states, especially in the name of counter-terror operations. But as far as the subject of disaster

management is concerned, gradual encroachment by the Central Government in this conventional domain of the states has not even taken note of by the states. On the contrary, states have been quite receptive of the central endeavours in the domain of disaster management as such efforts on the part of the central government would not only obviate their onerous responsibility in this thankless area of activity but also would engage the centre by way of financial, technical and logistical support. Thus, the subject of disaster management has conveniently been allowed to become a sort of concurrent subject over which not only the states but the central government could also enact laws, initiate administrative measures and provide financial assistance to states irrespective of the fact that the subject has traditionally been the core competence of the states.⁷

Notwithstanding the relative silence of the Constitution, certain pointers towards understanding the mind of the constitution makers on the legislative locale of disaster management may be gathered by looking at the placement of the core subjects to which the majority, if not all, of the natural as well as manmade disasters relate. For instance, two major natural disasters in India, flood and drought, relate primarily to the excess and deficiency of water in rivers as well as other sources of water respectively in a particular region. By implication, therefore, it would be natural for that level of government in the federal system of the country to manage the issues related to the excess of water, *i. e.*, flood, as well as deficiency of water, *i.e.*, drought to which the subjects of water and rivers have been allocated in the scheme of division of legislative subjects through the three lists in the seventh schedule of the Constitution. Another criterion to decipher the appropriate legislative locale of the disaster management is through the application of the doctrine of residuary powers to the Indian constitution. By application of this doctrine, it can be discerned that whichever subjects of legislative competence have not been allocated to any levels of government through the constitutional scheme of the divisions of powers, such subjects would automatically fall in the domain of the Central Government which has been made the repository of residuary powers in the Constitution of India. That way, since disaster management does not figure in the scheme of enumerated subjects in any of the three lists of the seventh schedule of

⁷ Recommendation for inserting a new entry 'Management of Disasters and Emergencies, natural or manmade' in the List III (Concurrent List) of the Seventh Schedule of the Constitution has most categorically been made by Second Administrative Reforms Commission. See, Second Administrative Reforms Commission, *Third Report – Crisis Management: From Despair to Hope* 35 (New Delhi: Government of India, 2006).

the Constitution, the Central Government is the rightful holder of legislative competence to make laws on the subject. As a subject of legislative competence, disaster management may, thus, impliedly be taken to be part of the provisions of article 248 dealing with residuary power of legislation. By providing that parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent list or state list, article 248 extends its jurisdiction to the subject of disaster management in view of the fact that that subject does not find mention in any of the list given in the seventh schedule of the Constitution.

As far as constitutional provisions are concerned, entry 56 of list I (Union List) envisages legislative power of the Central Government over ‘regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest.’ As regards the competence of state governments, entry 17 of list II (state list) provides that states can legislate on the subjects of ‘water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.’ On the conjoined reading of these provisions, two broad conclusions may be drawn regarding their implications for disaster management. One, these constitutional provisions pertain exclusively to water that arguably may have impact on only certain specific natural disasters such as flood and drought. Insofar as other manmade disasters like industrial accidents, and natural disasters like earthquake, cyclones, landslides, avalanches etcetera are concerned, these provisions are silent and therefore irrelevant for them. Two, even with respect to the water-related natural disasters, the constitutional scheme of things are decisively weighed in favour of the central government as the provisions of entry 17 of list II are made subject to the overriding provisions of entry 56 of list I. In other words, the states competence to make laws on water and related issues is confined only to their territorial jurisdiction beyond which it is the other state or the Central Government that can make laws. Interestingly, while enacting the Disaster Management Act, 2005, the Central government invoked the provisions under entry 23, namely, ‘Social Security and Social Insurance; Employment and Unemployment’ in the concurrent list to draw constitutional competence to pass the legislation.

IV Disaster Management Act, 2005

After prolonged discussions and pursuant to the recommendations of the High Power Committee on Disaster Management, the parliament enacted the Disaster Management Act in 2005 to act as the foundational legislation in the country. The Act not only stipulates the national agencies and functionaries along with their powers and functions, it also lays out a comprehensive framework within which the state, district and local level bodies are constituted and officials designated to discharge their assigned tasks and responsibilities in the management of disasters. In the definitional part of the Act, two significant omissions are apparent given the need for providing the widest possible connotation to the terms used in the Act. First, as the Second Administrative Reforms Commission points out, the definition of disaster adopted by the Act “does not cover a variety of other crisis situations that may or may not culminate in a disaster.”⁸ Second, the idea of disaster management has been conceptualised in a quite narrow sense in the Act as it does not include the component of mainstreaming development in the realm of disaster management. As a matter of fact, most, if not all, of both natural and manmade disasters are a byproduct of the unsound developmental activities carried out by people. Hence, in order to evolve a disaster resilient society in the long run, it is of utmost importance that disaster management is factored in a significant way in the developmental activities undertaken by the people.

On the whole, the Act seeks to create a top-down model of disaster management in India by imposing the overbearing authority of a central agency both in planning and execution of the disaster management policies and plans in the country. At the apex level, the National Disaster Management Authority (NDMA) is constituted to formulate policies and approve the national plan for disaster management apart from coordinating “the enforcement and implementation of the policy and plan for disaster management.”⁹ As the executive arm of the NDMA, the National Executive Committee (NEC) has been provided for, among others, assisting “the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.”¹⁰ What is startling in such a framework of disaster management in India is the fact that the states are now no more the final authority in formulating their policies and plans for disaster management and

⁸ *Id.* at 39.

⁹ Disaster Management Act, 2005, s. 6 (2) (f).

¹⁰ *Id.* s.10 (1).

their execution on their own discretion. They not only have to follow the broad guidelines and policy schema put forward by the NDMA but also have to comply with the directions issued by the NEC in case they found to be deviant in following the national framework of disaster management in their states. In this regard, it has been succinctly argued that, “under the Act, the NDMA and the NEC will not only approve the national plans and the plans of the respective union ministries/departments; they will also lay down guidelines for the state authorities, coordinate the enforcement and implementation of these policies and plans for disaster management and ensure timely response. All these functions traditionally have been performed by State Governments. What, in fact, is however, needed is further empowerment and delegation to the front-end functionaries when it comes to implementation of disaster management efforts. Moreover, in any crisis situation, expeditious and appropriate response is the essence, and the field functionaries, the State Governments and the line departments and ministries of the Union Government being aware of the field situation would be in the best position to provide timely and effective response, if they are fully authorized to do so.”¹¹

At the sub-national level and on the lines of the national framework, the Act provides for the constitution of corresponding bodies at the state level also in the name of the State Disaster Management Authority (SDMA) and the State Executive Committee (SEC). One marked improvement, however, in the stipulated powers and functions of the SDMA in comparison to the NDMA has been the provision under section 18(2) (g) “to review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein.” Had this power also been given to the NDMA to do the same with different departments of the Central Government, the entire philosophy of disaster management might have undergone a total transformation in the country. Similar appreciable provisions have also been made under section 24 of the Act to assign certain powers and functions to the SEC in the event of a threatening disaster situation.

In a way, the most commendable part of the Act has been chapter IV dealing with District Disaster Management Authority (DDMA). In recognition of the fact that it is the district administration which has to mount the most formidable efforts in the case of a disaster situation,

¹¹ Second Administrative Reforms Commission, 39-40 (*Third Report – Crisis Management: From Despair to Hope*, 2006).

and establishing an organic link among the disaster management authorities at various levels, the Act envisages the creation of DDMA as the pivot around which the structure of disaster management at the district level would be erected. What is, however, amiss in the given structure of the DDMA is the minuscule presence of people's representatives in the DDMA in comparison to the large number of officials. Still, the most vital aspect of DDMA is efficient and effective discharge of the mammoth responsibilities ordained for it in the Act. In fact, the range and variety of activities of the DDMA are so enormous that it has to be very alert and prompt in case it thinks of making the particular district disaster resilient. Though the Act establishes a top-down model of disaster management in which the successive lower authorities have less leverage in the given field, the DDMA seems to be placed in such a unique position that if it takes a proactive approach for long term prevention and short term mitigation of disasters in the district, it can wrest the commanding charge of disaster management from the higher authorities, at least in the case of the district concerned.

The efficiency and effectiveness of the district level functionaries would be greatly enhanced provided they receive willing and active cooperation of the local authorities and communities. On this count, the Act seems to be deficient as just passing references have been made with reference to the local authorities and communities in planning, executing and monitoring the disaster management related activities in the particular area. While envisaging the responsibilities of the local authorities, the Act enumerates just the stereotypical functions of the local bodies without providing for an integration of their activities with those of the district authorities. Moreover, instead of emphasizing and mainstreaming the role of the local community, the same has been hyphenated with the other agencies in such a way as if the local community is duty bound to assist them in the times of disaster. The Act seems oblivious of the fact that the whole canvas of disaster management activities gets confined to the active and willing support and cooperation of the local community without which there is very little chance of making the country disaster resilient.

In more than ten years of working of the Act, the provision which has brought unquestionable laurels to the Act has been the ones relating to the creation of National Disaster Response Force (NDRF).¹² As a matter of fact, the dynamics of disaster management is such that when a disaster

¹² *Id.* at Ch. VIII, s. 44, 45.

strikes an area, the foremost task at hand for the governments and other agencies is to save the lives of the people caught in the vortex of the disaster. Previously, such activities were carried out by the security forces and the people who did not have specialised training and logistics to undertake the rescue operations in a professional manner. As a result, a substantial number of lives were lost in the absence of timely and professionally conducted rescue operations in the event of calamitous events. What NDRF has done is to fill this portentous void in the entire framework of disaster management with its battalions strategically positioned in different parts of the country in such a way that they could be available for quick and effective response within no time of the occurrence or likelihood of the occurrence of disaster.

Financing has been one of the most critical and controversial aspects of the framework of disaster management in India since its inception. On this aspect, therefore, the Act makes elaborate provisions on creation of two distinct funds to deal with the response and mitigation aspects of disaster management distinctly. Accordingly, the Disaster Response Fund has been envisaged to be created at the national, state and district levels for meeting any threatening disaster situation or disaster. The National Disaster Response Fund is to be composed of an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf provide as well as any grant or donation made by individuals or institutions towards the purpose of disaster management.¹³ The other fund called National Disaster Mitigation Fund is to be constituted for financing the projects and programmes to be initiated for disaster mitigation. While the administering authority for National Disaster Response Fund would be the NEC, the National Disaster Mitigation Fund is to be administered by the NDMA. Similar provisions have also been made for the constitution and administration of the two funds at the state and district levels.

In sum, the Disaster Management Act, 2005 remains the pivot around which the legal framework of disaster management in the country revolves. Undoubtedly, this Act provides the framework law in accordance with which the states could also pattern their respective disaster management laws. In the evolution of legal framework of disaster management, this Act has gone a long way in encouraging the states to formulate their own legislations to provide for an efficient and effective management of disasters.

¹³ *Id.*, s. 46.

V Disaster Management Acts of states

In the realm of disaster management legislation, the states are pioneer in comparison to the central legislation in India. While the central government was in the process of consultation and deliberations for finalising its disaster management act, the state of Gujarat pioneered to get the Gujarat State Disaster Management Act, 2003 enacted in the same year to provide for the machinery, resources and the processes for well-organized and effective management of disasters in the state. The trigger for enactment of the Gujarat Act came from the colossal loss of life and property in the wake of the Bhuj earthquake of 2001. The remarkable endeavour of Gujarat was followed by Bihar to enact the Bihar Disaster Management Act, 2004. These attempts on the part of major disaster prone states set a spin-off effect for other likewise states to follow the suit. Subsequently, the states of Uttaranchal and Uttar Pradesh also passed their respective disaster management acts in 2005, along with the passage of the central legislation on the subject. Despite the existence of central legislation as the foremost law on disaster management in India, it is worthwhile to have a critical scrutiny of the state legislations to get the novelties and nuances of states understanding of disaster management machinery and processes.

Given the pioneering nature of Gujarat State Disaster Management Act, it was quite expected that it would set the broad contours of disaster management in the country to be followed by all other enactments. Consequently, apart from the fine and standard provisions, the omissions of the Act are also borrowed by a few state legislations. In this context, a notable oversight of the Gujarat Act seems to be its definition of the concept of disaster management. Continuing with the colonial policy of relief centric perspective of disaster management, the Act defines disaster management as “a continuous and integrated process of planning and implementing of measures with a view to: (i) mitigating or reducing the risk of disasters; (ii) mitigating the severity or consequences of disasters; (iii) capacity-building; (iv) emergency preparedness; (v) assessing the effects of disasters; (vi) providing emergency relief and rescue; and (vii) post-disaster rehabilitation and reconstruction.”¹⁴ The missing link in this, otherwise comprehensive understanding of disaster management is the mainstreaming of disaster management in the overall development strategy of the state. The contemporary discourse on disaster management

¹⁴ Gujarat State Disaster Management Act, 2003, s. 2 (h), available at: <http://acts.gov.in/GJ/787.pdf> (last viewed on Nov 28, 2016).

focuses more on disaster prevention which can be done only with the mainstreaming of disaster management in the development strategy of a given place. But since the Gujarat Disaster Management Act, 2003 set a particular tone in conceptualising the idea of disaster management, the same became the standard for the other states like Bihar, Uttar Pradesh and Uttaranchal to follow in formulating their disaster legislations.

Notwithstanding certain inadequacies, the Gujarat Act provides a commendable piece of legislation on disaster management containing almost all the elements that go into making a good disaster management law. For instance, envisaging the creation of the Gujarat State Disaster Management Authority as the dedicated body at the apex level, the Act clearly defines the powers, functions and responsibilities of all the important stakeholders in disaster management. It establishes both vertical as well as horizontal linkages among important state government officials related to disaster management such as the heads of government departments, commissioner, collectors and lower level functionaries. An appreciable provision of the Act is the placement of local authorities such as Municipal Corporation, nagar panchayats, municipal council, district panchayats, taluka panchayats, gram panchayats, and notified area committee or cantonment board, in the forefront of disaster management activities in the state. However, the decisive power and leadership position in the disaster management activities are invariably vested in the official agencies which may act as a dampener for the community and other non-governmental agencies to take independent charge of disaster management in a particular area. Despite such aberrations, the Gujarat Act remained the model legislation for other states to follow till the enactment of the national law on efficient and effective management of disasters in India.

After Gujarat, Bihar became the second state in India to pass legislation named Bihar Disaster Management Act in 2004 to provide for comprehensive and efficient machinery for management of recurring disasters in the state. Geospatially, Bihar is one of the most flood prone states in the country with a high probability of other disasters such as drought and earthquake also striking parts of state. It has, therefore, been incumbent upon the state government to go for a distinct legislation dealing with different aspects of disaster management in the state. Accordingly, the enactment of Bihar Disaster Management Act, 2004 is seen as a remarkable step in the direction of restructuring and reorienting the archaic disaster management machinery in the state marred

by both natural and manmade disasters year after year. Though Gujarat had preceded in enacting its disaster management legislation thereby setting a sort of model for others to follow, Bihar legislation did not emulate the Gujarat law either in structure or in comprehensiveness. Bihar law is more schematic and indicative leaving a number of operational and logistical aspects to be delineated by the state government functionaries as and when required. While such legislation leaves certain vital components of disaster management at the discretion of the incumbent officials, it has the advantage of flexibility in the management of a calamitous situation. But its actual form, functioning and outcome become apparent only with the passage of time when the provisions of the Act are implemented.

Without envisaging for creation of any state level apex body dedicated for managing disasters, the Bihar Act vests the state government with the overall responsibility of disaster management in the state. The only specific body it stipulates for the purposes of disaster management is what is named as Standing Technical Committee (STC) which was given the overall responsibility of responding to the occurrence of disasters in the state. However, the STC could not redeem itself from the bureaucratic shackles typical to Indian public administration and proved to be a disaster in itself. The state government, therefore, in no time, adopted the national law as passed in 2005 and subjected the state legislation to the provisions enshrined in the Disaster Management Act 2005. In accordance with the provisions of the national law, it established the Bihar State Disaster Management Authority (BSDMA) in 2007 with the objective to “lay down the state disaster management policy; approve the state disaster management plan; approve the disaster management plans prepared by the departments of the Government of the Bihar; lay down guidelines to be followed by the departments of the Government of the State for mainstreaming; recommend provision of funds for mitigation and preparedness measures; and coordinate the implementation of the State Plan.”¹⁵ Subsequently, the disaster management structure of the state has been remodelled as per the central legislation with similar structures and functions assigned to them.

That way, the Bihar legislation does not provide for much innovative and path-breaking structures and functions of the disaster management bodies. It preferred to continue with the colonial institutions of state relief commissioner and district collector as the mainstay of disaster

¹⁵ “Evolution of BSDMA”, available at: <http://bsdma.org/AboutUs.aspx?id=2> (last visited on Dec 1, 2016).

management machinery in the state. The improvised disaster management machinery remains heavily dependent on the official functionaries for all the activities related to disaster management right from policy making, planning to implement such policies and programmes. Complete overlooking of people's participation in the management of disasters in the state remains the most notable omission in the Bihar legislation keeping in view the futuristic perspective of disaster management.

Another important state prone to multiple natural hazards is Uttarakhand. Situated in the mountainous north of the country, Uttarakhand's proneness to hazards of flood and earthquake emanate from its dense network of rivers and active tectonic movements in the Himalayas respectively. Hence, in order to provide a sound legal foundation of disaster management in the state, the government enacted the Uttarakhand Disaster Mitigation, Management and Prevention Act, 2005. As is evident from the nomenclature of the Act, this landmark legislation in the state sought to constitute a framework of disaster management whose overlaying aspects have further been clarified as mitigation and prevention of disasters. Significantly, in the scheme of structures outlined in the Act, an unconventional provision, at least in state legislations, has been made for the creation of a Disaster Mitigation and Management Centre to act as the nodal agency for data collection, research, extension and public awareness activities related to disaster management in the state. Among the other specific bodies related to disaster management, the creation of Uttarakhand State Disaster Management Agency is notable for its being vested with the responsibility of acting as the apex body of disaster management in the state. Otherwise, most of the other provisions in the Act follow the similar pattern as prevalent in other states with the traditional administrative authorities and functionaries dovetailed with the task of managing disasters at both planning and execution levels. But an important shortcoming of Uttarakhand Act is its total neglect of the role of community and the general public in providing critical support for efficient and effective management of disasters in the state. This omission is likely to compromise with the competence of the official in prevention and mitigation of disasters in the state.

The other state whose disaster management legislation precedes that of the central legislation is that of Uttar Pradesh. Like the other states mentioned above, Uttar Pradesh is also one of the most disaster prone states in India with all major disasters barring cyclone ravaging one part of

the state or the other at different points of time year after year. Hence, it was natural for the state to emulate its predecessors in enacting a comprehensive disaster management legislation without looking for any central lead on the issue. However, what is most interesting about the Uttar Pradesh disaster management legislation is its almost ditto copying of the disaster management legislation of Gujarat. While there can be nothing wrong in borrowing from certain document or legislations provided that suits the interests of the borrower law perfectly, this does not seem to be the case with the disaster profile of Uttar Pradesh. Given the vast geographical stretch of the state into a number of distinct geospatial sub-regions each facing a distinct threat of natural disaster different from the other, it would have been better if the state had been more innovative and adopted regional approach in disaster management than its wholesale adoption of Gujarat legislation for the state. There seems to be lack of ingenuity and appreciation of the prevalence of distinct disaster profile of the state in formulation of its disaster management plan. Moreover, in toto replication of the Gujarat legislation, the Uttar Pradesh law on disaster management also suffers from the same deficiencies and demerits which underline the legislation of Gujarat.

Nonetheless, credit must be given to these states for at least implementing the idea of having a distinct disaster management legislation to provide for a comprehensive policy and plan for disaster management and creating a competent machinery to implement them. Undoubtedly, these states have been few of most disaster prone states in the country, and have been repeatedly ravaged by one or other kinds of disasters in recent history. But when they found that the central government is found wanting in its efforts towards evolving a federal legislation on the subject, they thought it fit to make their own endeavours in enacting state legislations. This demonstrates the sincerity and proactive approach of the concerned states in persevering on their own to get their states rid of the problems facing them relentlessly. Though these legislations suffer from a number of lacunae in terms of both policy orientations as well as placing disproportionate reliance on the governmental machinery and functionaries in prevention, mitigation and management of disasters, what goes without saying is their acknowledgment of disaster management such a pressing problem whose solution needs the enactment of an appropriate legislation. In fact, apart from providing for a sound legal foundation for disaster management in the concerned states, these legislations combinedly also played the role of a catalyst that prompted the central as well as many other states to go for enactment of suitable laws for disaster management.

VI Conclusion

Forceful emergence of the idea of disaster management as a vital function of government during mid- 1980s presented a piquant situation for both legal luminaries as well as the government functionaries to figure out the constitutional locale for enacting appropriate legislation and dovetailing corresponding executive responsibility for the same. In the absence of any specific reference to the subject in the constitutional distribution of powers between centre and the state, it has traditionally been derived from the colonial practice that disaster management, presumably given its insignificance in the governmental reckoning during the colonial period, is a state subject insofar as the specification of its constitutional domain is concerned. But soon the state governments realized that disaster management is as complex and expensive a task as simple and inexpensive it appears on the surface. As a result, there began a rethinking in resituating the constitutional locale of the subject in such a way that the central government also gets an important role to play in the whole exercise of making India disaster resilient. Almost all the committees and commission set up to review the working of the constitution as well as the governmental machinery arrived at the conclusion that at best disaster management can be a concurrent subject rather than considering it under exclusive jurisdiction of the states.

Owing to the vigorous pursuits at international level to make the world disaster resilient on the one hand, and the different parts of the country getting ravaged by a series of natural disasters, on the other, it became somewhat indispensable for the governments, both central as well as states, to enact dedicated legislations providing for a comprehensive plan and machinery to implement the same for efficient and effective management of disasters in the country. Clearly, the states emerged as the pioneers in this field as they got their laws enacted even when the central government was in the midst of consultation and drafting its own legislation. Eventually, the central legislation on the subject was enacted in 2005 raising a number of federal issues in the management of disasters in India. For instance, the point was raised that how the central government could get the power of issuing directions to the states for compulsory compliance in an area which has till now been understood to be the exclusive domain of the states. Similarly, the creation of a mammoth machinery for disaster management at the central level has also been questioned on the ground that the appropriate powers and functions of the central government in management of disasters remains confined to evolving policy guidelines and sanctioning

sufficient quantum of resources to the states in carrying out their primary responsibilities of disaster management. More than this on the part of the central government might be construed to be undue interference in the domain of the states. Thankfully, due the developmental and humanitarian nature of activities involved in the management of disasters, the subject has not become a point of one-upmanship between centre and states. But the issue remains a potential flashpoint in the centre-state relations in future.