

## DISASTER MANAGEMENT ACT, 2005: A FAILED LEGISLATION

- Akansha Pandey\*

### Abstract

*The perception management of disasters has undergone a change following the enactment of the Disaster Management Act, 2005. The Act provides institutional mechanisms like disaster management authorities at the centre and state levels to draw up and monitor the implementation of disaster management. The National Disaster Management Authority issues guidelines for the purposes of prevention and mitigation of disasters and prompt response to any disastrous situation, such as events emanating from natural and man-made causes and even those events that are caused by accident or negligence. However, certain incidents of flash floods, landslides, and pandemics show that the Act still has a long way to go. There are many challenges before the Act which shows that the Act is not serving its purpose.*

**Keywords:** Disaster Management, Disaster Risk Reduction, Disasters, Floods, COVID-19.

---

\*\* Research Scholar @ Faculty of Law, University of Allahabad.

## INTRODUCTION

Disasters affect all regions of the world. Though floods and storms are most widespread, while human deaths are more concentrated with the deadly droughts in Africa, storms in East and South Asia also take many lives. They are dynamic in nature with differential impacts on communities. Due to constantly changing environments, there is a need to recognise hazard and vulnerability characteristics in a more comprehensive manner. The latest report by the World Bank also recognises human suffering due to extreme hydroclimatic events.<sup>1</sup>

About 54 per cent of India's land area is vulnerable to earthquakes, 8.4 per cent to cyclonic wind and storm surges, and 4.9 per cent of the area is vulnerable to flood damage.<sup>2</sup> Diverse factors, natural and human-induced, adverse geo-climatic conditions, topographic features, environmental degradation, population growth, urbanisation, industrialisation, unscientific development practices, etc., play a huge role in accelerating the intensity and frequency of disasters resulting in huge economic losses and human casualties. These, coupled with the impact of climate change and climate variability, are accentuating disaster impacts and underscore the criticality of promoting disaster resilience and risk reduction practices. With increased socio-economic development, threats to Chemical, Biological, Radiological and Nuclear disasters<sup>3</sup> demand greater preparedness levels at national, state and district levels. For the past 30 years, the country has been hit by approximately 25 major disasters, including heat waves, cold waves, and heavy winds, which have affected some areas of the country. Floods, earthquakes, cyclones and hailstorms are the most frequently occurring disasters in India.<sup>4</sup> To control disasters and manage disasters, the Government of India enacted the Disaster Management Act in 2005.<sup>5</sup>

Disaster management includes an important aspect of disaster risk reduction. Since we cannot reduce the severity of natural hazards, the main opportunity for reducing risk lies in reducing vulnerability and exposure. Reducing these two components of risk requires identifying and reducing the underlying drivers of risk, which are particularly related to poor economic and urban development choices and practices, degradation of the environment, poverty and inequality and climate change, which create and exacerbate conditions of hazard, exposure &

---

<sup>1</sup> World Bank, Report: *An Epic Response: Innovative Governance for Flood and Draught Risk Management*, 2021.

<sup>2</sup> Government of India, Planning Commission of India, Report: Tenth Planning Commission (2002-2007).

<sup>3</sup> Hereinafter to be referred as CBRN disasters.

<sup>4</sup> Government of India, Disaster Management in India, Ministry of Home Affairs, 2011.

<sup>5</sup> Hereinafter to be referred as "DM Act, 2005".

vulnerability.<sup>6</sup> *This approach not only helps in the identification of possible victims but also helps in dealing with loss of employment and economic, social and cultural loss. Conforming these principles, The DM Act, 2005 empowers the National Disaster Management Authority to issue guidelines regarding the management of disasters.*

*The guidelines make disaster risk management a systematic process of using administrative directives, organisations, and operational skills to implement strategies and policies in order to lessen the impact of hazards and the possibility of disasters. The risks that result from disasters are large-scale voluntary migration, extreme weather events, biodiversity loss, water crises, the spread of infectious diseases, unemployment, etc. These risks are further compounded by other vulnerable variables like changing demography, unplanned urbanisation, socio-economic conditions, environmental degradation, etc. Disaster Risk Reduction measures essentially include pre-disaster and post disaster measures. Pre-disaster measures include activities like evacuation, attention to the injured, recovery and disposal of corpses, etc. Post-disaster measures include continued rescue, restoration of communication, survey, report and evaluation of damages, emergency repairs etc.<sup>7</sup>*

Thus, disaster risk reduction (DRR) is the most prominent theme in disaster management. It is not possible to eliminate each possibility of disaster; however, with due care and proper preparation, the risks and damages from disasters can be reduced considerably as India is prone to various natural and manmade disasters. The country has faced and faced, even today, several devastating disasters, including earthquakes, tsunamis and river floods in recent years. It is to be noted that if we take up some of the latest cases of disasters after the passing of the DM Act, 2005 to consider the effectiveness of the DM Act, then these cases summarise the situation very clearly that it had been almost decade and a half since India passed a DM Act, 2005 and clearly this cannot be said the Act of 2005 facilitated effective disaster management and preparedness.

Even a CAG's performance audit of the functioning of the NDMA<sup>8</sup> found that despite considerable progress in setting up institutions and creating funding arrangements, there are critical gaps in the preparedness level for various disasters. The system that came into effect after the DM Act 2005 has yet to achieve its desired impact. The National Disaster Management Authority, which was conceived as the apex planning and supervising body, was found

---

<sup>6</sup> Global Assessment Report on Disaster Risk Reduction, 2015, Making Development Sustainable: The Future of Disaster Risk Management, *available at*: <https://www.preventionweb.net/english/hyogo/gar/2015/en/home/> (visited on December 4, 2020). (supra note 272)

<sup>7</sup> Dr. Kavita Chalakal, "Relevance on Ecosystem Management as a Solution for Natural Disaster Risk Reduction", in S. Sivakumar, Manohar Thairani *et. al.* (eds), *Disaster Management in SAARC Countries* 50 (Mohan Law House, 2019)

<sup>8</sup> Government of India, *Report No. 5 of 2013 - Performance Audit of Disaster Preparedness in India of Union Government*, (Ministry of Home Affairs, 2013).

ineffective in its functioning in most of the core areas. It neither had information nor control over the progress of work at the state level nor was it proven successful in the implementation of various projects. Similarly, national guidelines on disaster preparedness and risk reduction developed by NDMA were not adopted and applied by either nodal agencies or the state governments themselves.<sup>9</sup>

In this context, if we take up the illustration of floods and events of landslides triggered by damming, deforestation, or exacerbated by climate change, human-induced natural disasters in several regions of India have pointed to a need for stronger environmental protection laws. The above-mentioned cases and other events where the Act failed to serve its purpose are discussed below:

### FAILURE OF FLOOD MANAGEMENT

The government of India has set up various committees for the management of floods, such as Rashtriya Barh Ayog, Task Force 2004, and Working Group on Water Resources for XI Plan. The government has also framed National Water Policy 2002 and 2012 to govern the planning and development of water resources and their optimum utilisation. The reports of the above committees/policies gave certain recommendations for the management of floods in a time-bound manner. To achieve the above recommendations, schemes for flood control, viz. Flood Management Programme, Flood Forecasting, River Management Activities and Works related to Border Areas, and an Emergency Action Plan for the Dam were implemented. Key recommendations of *Rashtriya Barh Ayog*, such as *scientific assessment of flood-prone areas and enactment of the Flood Plain Zoning Act*, have not materialised. Performance and concurrent evaluation were not done as per scheme guidelines.<sup>10</sup>

It has also been found that there were huge delays in the completion of river management activities and works related to border area projects, which were long-term solutions for the flood problems in Assam, north Bihar, and eastern Uttar Pradesh. It was also found that in seven States (Assam, Himachal Pradesh, Punjab, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal), land was not acquired before the start of work with the result that the projects were stalled, resulting in unfruitful expenditure of 59.88 crore in 13 projects in these States.<sup>11</sup> Even the

---

<sup>9</sup> Himanshu Upadhyay, "Uttarakhand tragedy: How we ignored the writing on the wall", *available at: <http://www.indiatogether.org/disaster-government>*, (visited on January 21, 2020).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

Public Accounts Committee<sup>12</sup> with regard to floods, submitted in its report<sup>13</sup> that there are several deficiencies in the forecasting infrastructure. These deficiencies included non-functional telemetry systems (used for measurement and communication) and the absence of dedicated communication facilities in forecasting stations. The committee recommended that these deficiencies be rectified.

If we take other examples, then floods in Kerala in 2018-19 are also worth mentioning. It is to be noted that NDMA guidelines on flood provide that adequate flood cushion should be provided in water storage projects to facilitate better flood management and that flood control should be given overriding consideration in reservoir regulation policy, even at the cost of sacrificing some irrigation or power benefits<sup>14</sup> and says, “..reservoirs do moderate floods”.<sup>15</sup> In Kerala, there are seventy-nine dams/ reservoirs/ barrages under the control of the Kerala State Electricity Board and Irrigation Department, Government of Kerala. However, it was admitted by the state that though reservoirs are commonly built for the conservation of water and flood control but in Kerala, none of them is for flood control, and their purpose is to generate power or irrigation.<sup>16</sup> This type of system prevails in Kerala, and ignoring NDMA guidelines regarding flood control makes the entire arrangement futile.

Thus, when a major part of India is mainly affected by floods, management of floods is of paramount importance.

## **SECOND WAVE OF COVID-19**

The easing of lockdowns by States/ Union Territories (UTs) combined with pandemic fatigue, lack of community adherence to COVID-appropriate behaviour and evolution and circulation of more transmissible variants of SARS-CoV-2 viruses all played a part in the second surge that India witnessed from April to May 2021.<sup>17</sup> As far as second wave is concerned, the second Covid surge exposed the infrastructural deficiencies and lack of preparedness on the part of governments at the Centre and the states. The government was seen putting the focus on election campaigns instead of preparing the country for a lurking second wave. It is to be noted that even before elections were held, Kerala was among the top two states with the highest

---

<sup>12</sup> Chairperson: Professor KV Thomas.

<sup>13</sup> “Disaster Preparedness in India” submitted on December 10, 2015.

<sup>14</sup> Paragraph 5.3, NDMA Guidelines on Flood, 2008.; Similar provision given in Paragraph 17.2, National Water Policy (2002).

<sup>15</sup> Paragraph 5.4, NDMA Guidelines on Flood, 2008.

<sup>16</sup> Paragraph 105, 106 and 218 of the Counter Affidavit filed on behalf of State of Kerala in WPC 29296 OF 2018.

<sup>17</sup> Answer to Unstarred Question No. 273 by Minister of State in The Ministry of Home Affairs, in Lok Sabha.

number of daily cases, and even during the second wave, the state had the third highest daily Covid cases. On that count, Delhi saw the biggest jump, which jumped from 0.4 % on February 26 to 31.8 % on April 28.<sup>18</sup>

During that period, India recorded more than 2 crore cases of COVID-19 in the second wave of the pandemic, accounting for nearly two-thirds of all infections reported since the outbreak of the virus in the country. 2,56,931 deaths have been reported in the second wave, 62% of the country's total covid toll of 414,129.<sup>19</sup>

Many Indian cities reported a chronic shortage of hospital beds. It was also evident in the desperate cries for help on social media platforms. Disturbing reports of people dying without getting timely treatment came from all over the country. Big religious gatherings, the reopening of most public places and crowded election rallies were being blamed for the uptick.

The situation was much more dire when it came to ICU beds. Several cities had just a few dozen ICU beds left, and they frantically tried to build extra capacity in hotels and stadiums. Crematoriums ran day and night in several cities, and people had to wait for hours to get the deceased cremated or buried. Experts say this shows that the actual number of deaths could be much higher.<sup>20</sup> In *Cognizance For Extension Of Limitation, In Re*,<sup>21</sup> the Court directed that the Central Government shall, in collaboration with the States, prepare a buffer stock of oxygen for emergency purposes and decentralise the location of the emergency stocks. The emergency stocks should be created within the next four days and are to be replenished on a day-to-day basis, in addition to the existing allocation of oxygen supply to the States. Further, the Central Government was ordered to revisit its initiatives and protocols, including the availability of oxygen, the availability and pricing of vaccines, and the availability of essential drugs at affordable prices.

The data available proved that the authorities failed in the management of the second wave. The shortage of oxygen cylinders, the non-availability of beds in hospitals, and the frequent changes in medication given to COVID patients show a lack of preparation on the part of the

---

<sup>18</sup> Kaushik Deka, "Is the Election Commission responsible for the second wave of Covid cases?" *India Today*, June 23, 2021 available at: <https://www.indiatoday.in/india-today-insight/story/is-the-election-commission-responsible-for-the-second-wave-of-covid-cases-1796437-2021-04-29>

<sup>19</sup> Amit Bhattacharya, "Covid-19: Second wave cases cross 2cr, nearly 2/3rd of total" *the Times of India*, April 20 2021 available at: <https://timesofindia.indiatimes.com/india/covid-19-second-wave-cases-cross-2cr-nearly-2/3rd-of-total-infections/Art.show/84539120.cms>

<sup>20</sup> Vikas Pandey and Shadab Nazmi, "Covid-19 in India: Why second coronavirus wave is devastating" *BBC News*, August 25, 2021 available at: <https://www.bbc.com/news/world-asia-india-56811315>

<sup>21</sup> *Cognizance For Extension of Limitation, In re*, (2020) 19 SCC 10, (2021) 17 SCC 231, *See also*, (2022) 3 SCC 117, (2021) 18 SCC 250, (2021) 5 SCC 452, *Novacare Drug Specialities (P) Ltd. v. State of Goa*, 2023 SCC OnLine Bom 1557

government. Though the second wave came around one year after the advent of COVID-19 in India, authorities still didn't seem to be fully prepared. There was no capacity building beforehand. Also, previous guidelines (before the outbreak of the second wave) were not properly implemented.

While India's large population presents an administrative challenge in dealing with any disaster, the country demonstrated ardency in effectively managing a pandemic such as COVID-19. Overall, the management of disasters should be strengthened. This biological disaster of a national magnitude necessitated close administrative and political coordination, led by the Centre and followed by State governments, Disaster Management Authorities, and other stakeholders. The DM Act, 2005, and federal structure, as well as national and state political and administrative agencies, should have been more collaborative and consultative in tackling the second wave. Issues like movement of migrant labourers, availability of food, arranging livelihoods to daily wagers, relief camps, entitlement of statutory minimum relief, etc. that directly affected the well being of millions in the country needed special attention.

On a concluding note, it may be said that issuing guidance on various disasters is not only the sole function of the authorities under the DM Act, 2005, but it is also a vital function of the authorities to implement the guidelines effectively and to be prepared for any other unforeseen natural or human-induced calamity in order to minimise the aftermath of the disaster.

## MAN-MADE DISASTER IN HIMACHAL PRADESH

Kullu and Manali, two of the most popular tourist destinations in Himachal Pradesh, witnessed flash floods in the months of July and August 2023. The disaster comprised of extreme weather situations leading to devastating landslides, widespread damage and collapse of several buildings due to floods, one-way traffic jams, detours, washed-away bridges, and the constant threat of further landslides. As per the India Meteorological Department (IMD), the unprecedented rainfall resulted in widespread damage to public and private properties, overflowing of major rivers, blockage of roads, flashfloods, damage to bridges, and complete disruptions of electrical and communication systems, including loss of human lives.<sup>22</sup>

As per local experts, the disaster was likely to be caused by unplanned construction in this vulnerable region. Anand Sharma, a retired meteorologist with the Indian Meteorological

---

<sup>22</sup> Parveen K. Dogra , "A Himalayan disaster and its aftermath", *the Indian Express*, September 18, 2023 *available at:* <https://indianexpress.com/article/cities/shimla/a-himalayan-disaster-himachal-aftermath-kullu-mandi-shimla-8944612/>



Department, claimed that the Himachal disaster was the result of poor planning and governance.<sup>23</sup> Factors like unplanned urbanisation, the presence of numerous hydropower plants in the state and unscientific construction of the national highway were claimed to be the reasons for making the Himachal Pradesh disaster a man-made disaster. Heightened vulnerabilities to disaster risks are clearly related to expanding population, urbanisation and industrialisation, development within high-risk zones, environmental degradation and climate change.<sup>24</sup>

Moreover, in Himachal Pradesh, there are currently 168 hydropower projects in operation. These hydropower projects have transformed mountain rivers into mere streams. A senior Geomorphologist in Shimla highlighted that the hasty construction of hydropower projects has made earthquake-prone Himachal Pradesh even more susceptible to landslides.<sup>25</sup> In addition, the establishment of massive cement plants and extensive cutting of mountains in districts like Bilaspur, Solan, and Chamba have resulted in significant land use changes that contribute to flash floods during rainfall. The cement plants altered the natural landscape, and the removal of vegetation led to a reduced capacity of land to absorb water.<sup>26</sup> Recognising the drawbacks of such projects, the Himachal Pradesh government itself had acknowledged that 21 such hydro projects caused destruction as they disposed of debris into rivers and riverbeds, causing water levels in the Beas and Parvati rivers to rise. This turned heavy rainfall into a flash flood.<sup>27</sup>

Further, it was also alleged that NHPC released excessive water without prior warnings, leading to devastation in Sainj Valley in Kullu, where over 80 houses were swept away.<sup>28</sup> Although the concerned authorities were obliged to follow the safety guidelines and all other rules and regulations mandating safety measures to ensure that the life and properties of the people living in the vicinity of the hydropower projects and in the areas that could be affected by the flow of the waters from these projects are safeguarded.<sup>29</sup>

---

<sup>23</sup> Chonchui Ngashangva and Sibi Arasu, "Heavy rain and landslides kill scores of people in Indian Himalayas", the Los Angeles Times, August 17, 2023, *available at*: <https://www.latimes.com/world-nation/story/2023-08-17/deadly-rains-landslides-india-himalaya>

<sup>24</sup> Government of India, National Policy on Disaster Management, (Ministry of Home Affairs, 2009).

<sup>25</sup> *Ibid.*

<sup>26</sup> Tikender Singh Panwar, "Himachal Floods: A Man-Made Disaster" the Hindu, July 30, 2023 *available at*: [https://epaper.thehindu.com/ccidist-ws/th/th\\_delhi/issues/45124/OPS/GR0BHGSOG.1+GTMBHH32L.1.html](https://epaper.thehindu.com/ccidist-ws/th/th_delhi/issues/45124/OPS/GR0BHGSOG.1+GTMBHH32L.1.html)

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *In re: Release of Water from Dikchu Hydel Power Project*, WP(PIL) No. 04 of 2017. *available at*: <https://indiankanoon.org/doc/38092800/?type=print>



Furthermore, the erroneous cutting of rocks during highway expansion was one of the contributing factors to landslides apart from heavy rainfall.<sup>30</sup> Negligence in road widening efforts by the NHAI and poor disaster management practices of the National Hydroelectric Power Corporation were among the reasons for the devastation. The consequences of such road expansions are evident during even normal rainfall, as it leads to slips and slides, amplifying the magnitude of the destruction during heavy rain or floods. In response to this need, roads were being constructed hastily without considering essential land-cutting and gradient requirements.<sup>31</sup> Degradation of natural topography, vegetation and disturbance of natural drainage patterns due to massive construction has resulted in environmental degradation in the hill towns. Construction activity on high and unstable slopes characterised by a high percentage of ground coverage is taking place, thereby limiting natural light, air and ventilation, which is likely to affect human health and well-being.<sup>32</sup> Noting that Shimla has transformed into concrete jungles characterised by depleting forest/greenery, unchecked construction, barren hills covered with buildings, narrow and accident-prone roads, and encroachments on roads and public areas, the new constructions do not contribute to sustainability and led to environmental degradation.<sup>33</sup>

In addition, the interim report from the Multi-Sector Committee<sup>34</sup> linked unscientific and illegal mining along river beds to a natural calamity in the state, causing extensive damage during monsoons. The interim report has highlighted that 68 out of 131 stone crushers in the Beas River in Himachal Pradesh were running without permission. Only 50 stone crushers were operating legally. The report stressed the environmental imbalance in the Beas River basin, calling for a scientific study and proposing short-, medium-, and long-term measures for stone crusher operations. Thus, the unscientific and illegal mining along the river beds was also responsible for the calamity in the state, causing huge damage to life and property.<sup>35</sup>

Consequently, it can be construed that all the data and reports were available regarding inadequate infrastructure development, maintenance & unsustainable tourism-related activities

---

<sup>30</sup> *Supra* note 22

<sup>31</sup> *Supra* note 26

<sup>32</sup> Ashwani Kumar, *Review Of Building Regulations For Safety Against Hazards In Indian Hill Towns*, Department of Architecture and Planning, Malaviya National Institute of Technology, 2018.

<sup>33</sup> Man Aman Singh Chinna, "For years, experts raised red flags in Himachal: buildings blocking natural drainage, overburdened hills, unstable slopes", *the Indian Express*, August 24, 2023 available at: <https://indianexpress.com/article/cities/chandigarh/environmental-degradation-of-hills-8907176/>

<sup>34</sup> The multi-sector committee established by the Himachal Pradesh government to investigate the causes of flash floods and landslides during the monsoon.

<sup>35</sup> Anand Bodh, "Himachal Pradesh: CM Sukhvinder Singh Sukhu says 63 stones crushers in Beas basin were involved in illegal mining", *the Times of India*, November 20, 2023 available at: <https://timesofindia.indiatimes.com/city/shimla/himachal-pradesh-cm-sukhvinder-singh-sukhu-says-63-stones-crushers-in-beas-basin-were-involved-in-illegal-mining/articleshow/105361716.cms>

but disaster management authorities preferred negligence over disaster preparedness and mitigation. Violation of environmental regulations led to aggravation of the disaster.

On a concluding note, it may be said that issuing guidelines on various disasters is not only the sole functions of the authorities under the DM Act, 2005 but it is also a vital function of the authorities to implement the guidelines effectively and to be prepared for any other unforeseen natural or human induced calamity in order to minimize the aftermath of disaster.