

# LEGALFOXES LAW TIMES

## A DETAILED STUDY ON THE DISASTER MANAGEMENT ACT, 2005

- P. YUVASREE<sup>1</sup>

### INTRODUCTION:

***“THE SAFETY OF THE PEOPLE SHALL BE THE HIGHEST LAW”***

- ***MARCUS TULLIUS CICERO, ROMAN PHILOSOPHER, 106 BC***

This is the right time to discuss the disaster management laws in order to create awareness among the public to protect themselves during this quarantine. The Disaster Management Act, 2005 was enacted on 26 December, 2005 with its prime aim for the effective management of disasters and for matters connected to it. The Act consists of 79 sections in 11 chapters. It led to the establishment of National Disaster Management Authority in 2005 under Section 3(1) of this Act. Let us discuss the impacts of this act and functions of this NDMA in detail in the following paper.

### MOTIVE OF THE ACT:

The prominent aim of this Act is *“to build a safer and disaster resilient India by a holistic, proactive, technology-driven and sustainable development strategy that fosters a culture of prevention, preparedness and mitigation”*<sup>2</sup> Disaster Management plays a significant role in India as there are a number of incidents to quote as an example for the effective working of the Disaster Management in India, some of them are Kerala floods in August 2019, Chennai floods in 2016, COVID 19 in 2020 (India)

### FEATURES OF THE ACT:

- This Act enables the State to have its own disaster management legislations.
- It defines the term ‘Disaster’ and ‘Disaster Management’ under Section 2 (d) and 2 (e) of the Act.
- It has led to the establishment of institutional mechanisms like NECs to monitor and implement policies.

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- It takes effective measures with the support of the Government in the prevention and mitigation of disasters.
- It has provided Disaster Response Fund and Disaster Mitigation Fund at district, state and national levels.
- The NDRF by the Central Government includes the grants provided by a person or any institution in order to meet out the expenses for emergency response, relief and rehabilitation during the threatening of disasters. Whereas, NDMF includes fund for mitigation projects. Also the State government can establish such funds in State and District levels.
- National Calamity Contingency Fund(NCCF) has been constituted as per the recommendations of the 11<sup>th</sup> Finance Commission, which has been merged with NDRF in recommendation of the 13<sup>th</sup> Finance Commission.
- Every Government Ministry or Department should make provisions to carry out such funds in order to set out in its disaster management plan.

#### **DISASTER MANAGEMENT AUTHORITY:**

The Disaster management authorities have been classified into a three-tier management structure, such as National, State and District level Disaster Management Authorities. The NDMA has been created with its foremost responsibility to lay down policies, plans, guidelines for disaster management. Also, it has its primary function to act efficiently and respond timely during the disasters. It consists of nine members with the Prime Minister as its Chairperson. Under section 6 of this act, it lays down guidelines to be followed by the State Authorities in state plans.

The State Disaster Management Authorities have been mandated under Section 14 of the Act. It consists of eight members including the Chief Minister of a state as its Chairperson. Under Section 28 of the Act, it is ensured that all the Government Departments must comply the and prepare the disaster management plans as prescribed by the National and State level authorities.

The District Disaster Management Authority consists of the Collector or Deputy Collector or Deputy Commissioner or Deputy Magistrate as its chairperson. Under section 25 of the Act, the mode of membership for DDMA has been through election was mentioned. The authorities should act as a co-ordinating, planning and enforcing body for the Disaster Management.

Also there exists another kind of authority known as “Local Authority” which shall engage in training of officers and employees, also to manage resources in order to make them available during the period of disaster. It shall also be bound to do the construction projects to the specified standards. It carries out all relief, rehabilitation and reconstruction activities in its jurisdiction.

#### **EXECUTIVE COMMITTEES:**

The National and State level executive committees are formed under Section 8 and Section 22 of the Act respectively. The main motive of this committee is to implement the National plans and manage State plans. Disaster Management Plans for the entire nation. Also, to review and update the disaster management plans annually. They are also responsible for the preparation of the National These NECs compose of 14 Secretary level officers of the Government of India in almost all the Ministries of India. The Home Secretary serves as a Chairperson of this Committee, the Chief of the Integrated Defence Staff and Chiefs of Staff Committee is an ex-officio member of the NEC.

### **NATIONAL DISASTER RESPONSE FORCE:**

This NDRF has been constituted under section 44 and 45 of the Act. It came into force with its main purpose to provide a proper response during threatening disaster situation. It consists of a Director General, appointed by the Central Government.

### **NATIONAL PLAN:**

This is a plan put forward by the NEC in consultation with the State Governments and various other bodies in disaster management. This plan is applicable to the entire country. It deals with the issues such as

- What are the preventive measures take for the disaster?
- What are the mitigation measures for integration in the development plans?
- How well a state can get prepared for fighting against the disaster?
- What are the roles and responsibilities of each departments and Government ministries?

All these issues are reviewed annually. The financial support would be provided by the Central Government as prescribed by the plan. As per the National plan, the other ministries and departments would develop their own plan.

### **NATIONAL INSTITUTE OF DISASTER MANAGMENT:**

It is also a statutory body instituted under this Act. This institute deals with the research and training activities in disaster management. Also, it involves in development of National level information relating to disaster management plans and policies, preventives and mitigation measures. Major duties of this Institution are:

- Develop training material
- Manage human resource plans
- Provide inputs to Government
- Promote materials for academic and professional courses
- Increase awareness
- Conduct study courses

**PENAL PROVISIONS:**

**Sections 51 to 60** of this Act deal with the punishment for offences under this act. This is a major and most important part of the Act. The penal provision starts with section 51 that provides punishment for Non-Compliance of the directions of the Central or State Govt, Executive Committees or any other Disaster Management Authorities, where the imprisonment for a period of one year or fine or both and maximum punishment of two years on the occurrence of any death or imminent danger.

Section 52 deals with the punishment of two years imprisonment with fine for false claim in obtaining relief or assistance.

Section 53 provides punishment of two years imprisonment and fine for misappropriation of money or materials.

Section 54 imposes one year imprisonment or fine for false warning.

Section 55 deals with the offences committed by the Government officials, in such case the head of the govt department to be held guilty unless he proves his or her innocence.

Section 56 imposes one year imprisonment or fine for disobedience of duty by any Government official.

Under section 57, one year imprisonment or fine or both has been provided for contravening the orders of authorities.

**CASES RELATING TO DISASTER MANAGEMENT:**

In *Dr Sanjay Lakhe Patil Vs The State of Maharashtra and 3 others*,<sup>3</sup> the Court held that the powers and functions of the District Authority under the section 30 of the Act includes the compliance of directions issued by the National and State authorities.

In *Ramanand Choudhary Vs The State of Bihar and Others*<sup>4</sup>, The High Court dealt with the definition of "Disaster Management" under section 2(e) of the Act.

In *Vikas Panjabrao Mathane Vs The State of Maharashtra*<sup>5</sup> the punishment for false claim under section 52 of the Act was imposed, where the punishment of six months imprisonment and fine of Rupees 10,000 was imposed.

In *Fertilizer Corporation of India Vs Koya Colliery Private Ltd*<sup>6</sup> the National Plan under the section 11 of the Act came into force.

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<sup>3</sup> AIR 2017 BOM 2315

<sup>4</sup> AIR 1975 PAT 328

<sup>5</sup> AIR 2018 BOM 4826

In *Niraj Kumar Sarkar Vs Union of India and Others*<sup>7</sup> the principles laid down by the National Authority under its power (section 6 of the Act) should be followed by the State and National Authorities.

In *Union of India Vs Thiyagarajan*<sup>8</sup> and in *Marymol T.P. Vs The Director General*<sup>9</sup> the composition of the National Disaster Response Fund was explained.

#### **METHODOLOGY:**

A research can be defined as a set of activities for an advancement of knowledge. Research methodology is a way to systematically solve the problem. The present research is a **doctrinal** research. It is completely based on collection of data, analyzing data, observation and refining data.

#### **CONCLUSION:**

*“DISASTER MANAGEMENT MUST ALWAYS BE PROACTIVE RATHER THAN REACTIVE”*

The author felt that it is the need of the hour for not only the public but also the legal professionals to remind the importance of the Disaster Management Act, 2005 during this quarantine. Though there were several bills put forward in the Parliament for amending the Disaster Management Act, 2005, it is one of the strongest legislations that successfully act along with the Epidemic Diseases Act, 1897 (123 YEARS OLD LEGISLATION) to fight against the *Corona virus or Covid 19*. This Act has been enacted and prepared by the Government and society for all eventualities that arise due to natural disasters like earthquakes, floods etc and to work towards minimising the death, injury and loss.

*“KNOWLEDGE IS THE KEY TO SURVIVAL, THE REAL BEAUTY OF THAT IS THAT IT DOESN'T WEIGH ANYTHING”*

- **RAY MEARS.**

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<sup>6</sup>2000 (3) BLJR 1698

<sup>7</sup>(1977) IILLJ 21 PAT

<sup>8</sup> AIR (2016) SC 1645

<sup>9</sup>AIR (2009) HC 21237