

## Legal Considerations during Disasters in India

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**Abstract:** Law and ethics have an important role to play during disasters. As affirmed in the Hyogo Framework for Action, law is a critical tool for empowering action and adapting to a changing world. In addition to coordinating functions, legal frameworks at the international, national and state level, laws provide a framework for the manner in which actions should be taken. Law also plays an important role in protecting the vulnerable and disadvantaged population by respecting human dignity and rights.

Developing legal frameworks to reduce the risks of disasters is more complicated than improving response mechanisms, as it includes the whole of the society and government. Legal measures are needed to expedite recovery efforts, secure land for temporary shelters or rebuild destroyed homes.

**Keywords:** Law, disasters

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### I. Introduction

Law and ethics have an important role to play during disasters. As affirmed in the Hyogo Framework for Action, law is a critical tool for empowering action and adapting to a changing world. In addition to coordinating functions, legal frameworks at the international, national and state level, laws provide a framework for the manner in which actions should be taken. Law also plays an important role in protecting the vulnerable and disadvantaged population by respecting human dignity and rights.

Without legal preparedness for calamities, people will suffer hardships and recovery process will take longer. Governments have a responsibility to mitigate risks and respond effectively during disasters.

Incorporation of ethical principles and legal standards into all phases of the disaster cycle is fundamental to effective and fair disaster response. The complex information landscape makes meeting this goal challenging, but legal standards have to be applied to health care, public health, and emergency management in disasters. Strengthening of the existing legal framework, ensuring an effective coordinated administrative infrastructure with unity of command and well defined responsibilities at all levels is the need of the hour. Laws and legislations are the key to better overall management of these catastrophes at macro and micro level in an all-hazards approach to disaster planning.

### VARIOUS ACTS ENACTED IN INDIA TO TACKLE DISASTERS

Considering the institutional reform process, the union government has formulated a comprehensive disaster management legislation. This provides for a legal and institutional framework of disaster management at all levels in the country. The Disaster Management Act, 2005 (DMA) under the 'social security and social insurance, employment and unemployment' clause embedded in our Constitution. This ensures a holistic and an agile disaster management instrument, covering all aspects of prevention, mitigation, preparedness (rather than rehabilitation), reconstruction and recovery.

Under the Hazardous Waste (Management and Handling) Rules, 1989 {HW(MH)R} industries are obliged to take steps and ensure that hazardous waste disposal is managed in a manner that ensures protection of the local population and the immediate environment from any adverse effects. It is mandatory for an occupier to identify the major hazards posed by the unit and take steps to prevent and limit the consequences of an accident and also to inform and train its workers in occupational safety.

The Manufacture, Storage and Import of Hazardous Chemical Rules of 1989 has the objective of preventing major accidents arising from industrial activity, limit the effects of such accidents, both on humans and the environment, and harmonize the various control measures and agencies to prevent and limit major accidents. Pollution control authorities are authorized to inspect industrial establishments and ensure that they do not pollute or desecrate the environment. Industrial establishments are also obliged to submit safety audit

reports pertaining to offsite and on site emergency disaster management, if any, and action plans for contingencies.

The Public Liability Insurance Act, 1991 (PLI 1991) was enacted to provide prompt and immediate relief to victims of accidents incurred while handling hazardous substances. The Act imparts a statutory recognition to 'no fault' liability wherein death or injury to any individual or damage to property from hazardous substances has to be compensated by the owner of the establishment. Industrial units are also mandated to pay for insurance policies to compensate victims in the event of industrial disasters. The Act also provides for the establishment of a calamity relief fund to provide compensation to victims. The owner of the industrial establishment has to remit a contribution to the corpus fund.

The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 (CA Rules 1996) prescribes a four-tier crises management protocol at the local, District, State and Central levels. The central crisis group is the apex body in the country to deal with and provide expert guidelines for planning and handling chemical accidents in the country. This crisis group continuously monitors the post accident situation and suggests measures for prevention and/or re-occurrence of such accidents. The group members meet once in six months and respond to queries from state and districts groups. The central crisis group gives information regarding prevention, preparedness and mitigation of chemical accidents.

The Coastal Regulation Notification 2009 was to define the High Tide Line (HTL) and Coastal Regulation Zone (CRZ). These specify the activities permitted and restricted in the vicinity of the CRZ. This regulation zone was further divided into four categories (CRZ I-IV) as per permitted land use and widened the definition of CRZ by including the land area from HTL to 500 m on the landward side to afford protection from cyclone, floods and tsunamis. As per this notification a new category called area 'requiring special consideration' has been created for protecting the coastal areas from hazards. This notification prohibits new construction of industries and expansion of existing industries within the CRZ. The new concept of Coastal Regulation Management Plan has been introduced for regulating coastal development activities. This helps to regulate and protect the encroachment to these areas from illegal mining and other activities.

The National Health Bill, 2009 (NHB 2009) targets the state and local bodies to provide essential services during the time of emergencies. The Bill demands co-operation between centre and state governments for providing essential public health services during emergencies. The Bill has a separate chapter that deals with protection from environmental disasters, protection from outbreak of epidemics and other public health emergencies. The National Public Health Board was constituted to provide financial, technical and human resource assistance during emergencies and lay down guidelines for preventing and controlling communicable diseases. At the same time the State Health Board is entrusted with identifying and preventing epidemics and outbreak of communicable diseases.

The Environment Protection Act (EPA) 1986, safeguards, protects and improves the quality of the environment from unregulated industrial or other activities. It enforces actions to control environmental pollution and prohibits persons carrying on any industry, operation or process from discharging or emitting any environmental pollutants in excess of prescribed standards. The EPA imposes obligation on persons handling any hazardous substance to follow prescribed procedure and comply with prescribed safeguards.

### **Disaster Management in India**

Disasters very often trigger the (sometimes unsolicited) arrival of a large number of NGOs, church groups, diaspora communities and even individuals and private companies. Cross-border assistance to and from neighbouring countries is facilitated by means of bilateral agreements which offer regional and local authorities a framework to cooperate in matters of disaster response on a public legal basis.

Legal frameworks must be in place to facilitate international relief efforts during disasters. These measures need to be in place before a disaster strikes. Once a major emergency occurs, there is no time to shepherd legislations through the parliament or engage in consultations to ensure that the new regulations conform with the spirit of the law of the land. There is a need, therefore, for international disaster response law to streamline legal issues during catastrophes.

Assisting actors and their organizations should abide by the laws of the affected State and applicable international laws, coordinate with domestic authorities, in accordance with the principles of humanity, neutrality and impartiality. Aid provided must adhere to the following norms:

- (a) That aid priorities are calculated on the basis of need alone.
- (b) That aid is provided without any adverse distinction (such as in regard to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons.
- (c) That aid is provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance.
- (d) That aid is not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery assistance.

- (e) That aid provided is sensitive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, and persons living with HIV and other debilitating illnesses.
- (f) That the aid given is adequate enough to meet the needs of affected persons and consistent with any applicable international standards of quality.
- (g) That aid is coordinated with other relevant domestic and assisting actors.
- (h) That aid is provided in a manner that is sensitive to local cultural, social and religious customs and traditions.
- (i) That aid is given with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation.
- (j) That aid is provided by competent and adequately trained personnel.
- (k) That aid is commensurate with the organizational capacities of the actors.
- (l) That the aid rendered strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters.
- (m) That aid minimizes negative impacts on the local community, economy, job markets, development objectives and the environment.
- (n) That aid is provided in a transparent manner, sharing appropriate information on activities and funding.

### **Legal issues during international assistance during disasters**

With regard to disaster relief and initial recovery personnel of assisting countries and eligible assisting humanitarian organizations, affected countries should:

- (a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities.
- (b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits.
- (c) Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, driver's license and other types of licenses/certificates that are necessary for disaster relief or initial recovery functions.
- (d) Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel.
- (e) Assisting States and eligible assisting humanitarian organizations should consider to what degree disaster relief and initial recovery objectives can be met through hiring local staff. (1)

## **II. Relief Worker Liability**

A relief worker can be prosecuted for ill-treatment or major negligence or ignorance. Damage claims for injuries or involuntary manslaughter charges for the death of disaster victims can occur. Medical treatment by non-registered relief workers is not allowed. Special regulation in recognizing diploma's and certificates of foreign relief workers during a crisis may be required. Otherwise the physician, pharmacist or nurse may be obliged to submit a direct online request to the State licensing authorities for special temporary registration. If this is time consuming or delayed, they may be permitted to operate under the full responsibility and liability of a local registered medic. In the case a professional practitioner renders unauthorized assistance in an acute emergency situation, he or she is not liable for prosecution. (2)

### **Relief Goods & Equipments**

With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should be:

- (a) Exempted from customs duties, taxes, tariffs or governmental fees.
- (b) Exempted from export, transit, and import restrictions with simplified and bare minimal documentation requirements.
- (c) Permitted re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.

With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:

- (a) Waive or reduce inspection requirements. Where waiver is not possible, relief goods and equipment must be cleared rapidly and as a matter of priority, through a "preclearance" process where feasible.
- (b) Arrange for inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.

In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and conformity with the national law of the affected State and international standards.

Assisting States and eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or the environment.

### **Customs & Excise Legal Issues**

With relation to relief goods and relief appliances, receiving as well as transit States must make arrangements regarding exemptions or clearance of import duties, taxes and import restrictions and develop regulations to facilitate speedy procedures for custom inspection of relief goods (if possible at a separate location) to prevent delays at immigration.

Customs may handle the import of relief goods based on 'clearance for materials' basis- customs formalities may have to be met afterwards. As long as relief goods have a SAARC member country as their final destination they may be exempt from import duties and excise duties. The Food and Consumer Product Safety Authority governs possible exemptions for food from animal origin on an ad hoc basis. The same applies to rescue dogs. Conditions for exemption are that the relief goods are distributed free of charge and that a permit needs to be provided if the exempted goods are brought into free market. This applies equally to donations, borrowed goods, as well as goods that are used by the importing relief actors themselves. In addition, relief goods are exempt from GST, excise duties and consumer tax for non-alcoholic drinks.

Although relief goods and materials are required to meet customs formalities, the goods can be transported immediately to the regional distribution centre upon arrival, based on the urgency of the situation. The customs declaration can be filed by drawing up a certified inventory list. These regulations apply only to disaster relief materials meant for government organizations (State, Province or Municipality) or organizations recognized by the competent authorities (like the Red Cross, Oxfam and the Salvation Army), and that equipment is to be returned when assistance is no longer required.

For animal origin foods, local regulations apply directly and therefore there is no special domestic regulation regarding inspection of imported food. In case of a disaster, the Food and Consumer Product Safety Authority will decide ad hoc on matters of food imports.

### **Legal Issues With Transportation**

Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting state or humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required, for the delivery of assistance.

Affected States should grant temporary recognition to foreign registration plates when vehicles are imported by assisting States to assist humanitarian organizations or on their behalf, for disaster relief and initial recovery assistance. Affected States should waive or expedite the granting of any applicable licenses and issue exit, transit and entry visas for the operating personnel of such transport vehicles expeditiously. The Ministry of Defence may also assist relief efforts by making its vehicles available under coordination of the NDMA and the requisition of additional civilian vehicles may also be considered. The Home Ministry is authorized to claim means of transport from bodies or persons, in case a shortage in relief goods occurs.

### **Legal Issues - Communications**

Barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian organizations must be lifted or eased. Humanitarian organizations must be granted priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations. The Armed Forces can also be requested for radio systems and communication bandwidths. Alternatively, stakeholders may contractually engage amateur HAM operators for establishing communication networks.

### **Legal Issues: Medications**

Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by assisting States and eligible assisting humanitarian organizations. Initial recovery assistance must be consistent with public

safety and international laws. Medical, surgical and laboratory material are considered to be temporary imports and are fully exempt from import duties, VAT and excise duties. This includes spare parts, accessories and regular gear.

Permission for delivery of non-registered pharmaceuticals is to be granted by the Ministry of Health. This procedure may be simplified, in which case the medication need not be tested extensively for safety. Additional rules apply for blood products, vaccines and medication falling under the Narcotic Drugs & Psychotropic Substances (NDPS) Act. Blood products and vaccines are to be examined beforehand by Public Health authorities

Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of following medications and equipment:

(a) Any medications imported should be approved for use in the originating and affected State.

(b) Medications for use in operations should be transported and maintained in appropriate conditions to ensure their quality and guarded against misappropriation and abuse.

(c) Any medications donated for use by other NGOs in the affected State should be:

(i) At least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities.

(ii) Transported and maintained in appropriate conditions (e.g. cold chain) to ensure their quality until they reach the affected State.

(iii) Appropriately labelled in a language understood in the affected State mentioning the International Nonproprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

Normal requirements regarding fumigation, prohibitions and restrictions on food imports and exports by assisting States and eligible assisting humanitarian organizations in disaster relief operations may have to be modified or compromised.

#### **Legal Issues: Finance**

The costs of providing international disaster relief or initial recovery assistance should normally be borne by the assisting States or assisting humanitarian organization. However, assisting States may agree in advance with the affected State for the reimbursement of certain costs and fees, or for the temporary loan of equipment or, under circumstances, provide certain services at reduced or no cost to assisting States and eligible assisting humanitarian organizations, which may include:

a. In-country transport, including by national airlines

b. Use of buildings and land for office and warehouse space and

c. Use of cargo handling equipment and logistic support.

Upon request, the central Government can advance a financial contribution to the costs resulting from the actual disaster response from the National Calamity

#### **Legal Issues In Patient Care During Disasters**

Physicians are expected to work within the framework of the law of the land and deliver ethical medical care to victims of disasters. Doctors can sometimes find themselves at odds with individual patient's rights, such as Jehovah's Witness' refusal of blood transfusions etc.

Identification of victims

Identifying the dead is a major task during disasters and the names of the dead and the affected are usually inadequate. Many dead people are buried without any record of their identities. Besides issues of compensation to the next of kin, the lacuna has resulted in false claims being raised by unscrupulous persons.

#### **Disabled and Orphaned victims**

The issue of the orphans, widows and other disabled victims during disasters remains inaccurate and large numbers do not submit their claims. Even though the Central and State Governments and other agencies come forward to adopt orphaned children, they may not be able to provide enough orphanages or foster homes or shelters who are rendered homeless or abandoned. Disputes for compensation and false claims arise. Local Tahsildars or revenue official may also not be competent enough to decide disputes on complex issues involving guardianship.

Insurance claim settlement is another area of controversy. Boats and the nets destroyed in a cyclone often belong to people who had purchase them in their names and rent it out to the fishermen. Because of lack of title deeds, the fishermen are not competent enough to make claims from the insurance companies for the loss of boats.

Informed Consent

The nature of acute trauma is such that treating physicians may not have time or due to impaired communication, they are not able to take a proper informed consent, discuss treatment options and consider victim's wishes with regard to their care. Documentation of informed consent before surgical procedures is vitally important regardless of the patient's mental status. Detention or treatment of competent patients against their will constitutes assault and battery as per law. The information details to be entered in the patient's case sheet are:

- (a) Date, time, place of discussion and how? (mention phone number)
- (b) Participants and their relationship to patient
- (c) Nature of injury, intended and related procedures

If intoxicated/mentally impaired/incompetent/unconscious or any other impediments, a surrogate decision maker or legal representative must be sought. A legal spouse is usually the primary legal rep of an adult patient. Patient's parents, siblings or children, legal guardians can be contacted. If time permits, the court can appoint a temporary guardian or the medical superintendent of the hospital can give consent on behalf in emergencies. Advanced directives are legal and binding documents prepared in anticipation of situations where a victim is incapacitated. These may express limitation to medical care administered. If available, they must be reviewed with the family members and followed explicitly.

If uninsured and non paying patients have to be transferred from private to government hospitals because of their inability to pay, make sure the receiving hospital agrees to accept such a patient (space and personnel availability) and enter reason for transfer in case documents. Transportation must be with qualified medical personnel and resuscitation equipment in transit.

Determination of brain death does not require consent of victim's family, but review of neurologic criteria by neurologist, neurosurgeon and treating physician is mandatory. Proof of absence of brain activity clinically, and diagnostic confirmation by nuclear scan or angiography is the rule. As brain death is synonymous with death, patient can be taken off life support with family's consent.

In case of medication errors, missed diagnosis, hostile family, unexpected poor outcome or complicated hospital course seek legal consultation. (3)

### **law and human rights**

There is a need for ensuring human security in disaster management through protection of human rights and promotion of good governance policies in a rights based approach. A fair, just and reasonable attitude with right to rescue, relief and rehabilitation under the doctrine of *parens patriae* to protect life and property of individuals is expected, especially in times of crisis. Poor preparedness and inadequate response strategies disrupts human life, affects livelihoods, overwhelms capacity to respond and causes forced displacement of communities. States have obligations to implement preventive measures to protect people from risks posed by disasters. Humanitarian assistance involves diverse stakeholders and critical decision making in volatile situations.

The Hyogo framework for action has three goals in disaster management:-

- (a) Integration of disaster risk reduction into sustainable development policies and planning
- (b) Development of strengthening mechanisms and capacities to enhance resilience to hazards.
- (c) Systematic incorporation of risk reduction into emergency preparedness, response and recovery programs.

Human rights during calamities must be people-centred and ensure:

- (i) Non discrimination of victims
- (ii) Right to security, shelter, health services, food, clean water, sanitation and compensation
- (iii) Creation and sustaining conditions congenial to good health
- (iv) Organization of urgent relief to address the immediate needs of affected population

Benchmarks, targets and indicators of risk reduction and risk mitigation must ensure protection of human rights issues, especially that of vulnerable groups (aged, women, children, disabled) within the affected population from early recovery to long term reconstruction and development.

### **disaster legislations**

Legislative measures are delineated by providing answers to a given set of questions around the first four of five priorities laid down in the Hyogo Framework for Action, 2005-2015. These focus on:

1. Ensuring that disaster risk reduction (DRR) is a national and a local priority with a strong institutional basis for implementation, including through "policy, legislative and institutional frameworks"
2. Identifying, assessing and monitoring disaster risks and enhance early warning
3. Using knowledge, innovation and education to build a culture of safety and resilience at all levels
4. Reducing the underlying risk factors

Safe construction of new buildings and retrofitting of selected lifeline buildings will be required to ensure hazard safety as per the 2005 National Building Code of India. Building codes from the Bureau of

Indian Standards has to be observed and updated every five years. Proper land use planning with safeguards will reduce vulnerability through appropriate compliance mechanisms and legislations as necessary. Hazard zone mapping and vulnerability analysis in disaster-prone areas utilizing Geographic information (GIS) based databases {Like the national database for emergency management (NDEM) and national spatial data infrastructure (NSDI)} and remote sensing data is mandatory.

National Flood Mitigation Project Central Water Commission (CWC) the Flood Management Programme (FMP) under the aegis of the Ministry of Water Resources (MoWR). by the NDMA. One of the primary functions of this project is to carry out special studies on threat perception/vulnerability analysis/flood disaster risk assessment of the flood prone areas. Geological Survey of India (GSI) has been designated as a nodal agency for conducting landslide risk analysis. The Snow and Avalanche Study Establishment is the nodal agency for conducting studies related to avalanches.

### **III. Conclusions**

It is recommended that Indian authorities consider including legal and/or operational guidelines for non-State actors like NGOs, private institutions and the Red Cross and Red Crescent Movements/Oxfam in a manual of Incoming Foreign Assistance. This arrangement should be guided by quality standards laid down by the Indian authorities covering relief tasks that are of essential nature for a specific disaster scenario and also include operational procedures, clarification of command structures and instructions for non-State disaster responders. These standards should, at minimum, include the requirement that the aid provided for by a non-State actor be based on the principles of humanity, neutrality and impartiality. Some blind spots in disaster management legislation and regulations will crop up and result in under-regulation of incoming assistance rendered by non state parties. These will have to be reviewed and addressed periodically and policies converted to action points at ground level so that standard operational policies are evolved, translating into actionable plans during a disaster.

### **References**

- [1]. McDonald, Fiona, Eburn, Michael & Smith, Erin. *Legal and Ethical Aspects of Disaster Management*. Disaster Health Management: A Primer for Students and Practitioners 2016. Routledge, Abington, Oxon.
- [2]. Daya Kaul, Md. Ayaz, Lohitkumar S N. *Disaster Management In India*. United Nations report
- [3]. South Sudan Red Cross and the International Federation of Red Cross and Red Crescent Societies (IFRC). *Law and Disasters in South Sudan Workshop Report*, 2012.
- [4]. RCRC. *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (IDRL Guidelines)*, 30th International Conference, IRCRC, 2007.
- [5]. UN General Assembly resolutions 63/139,63/141 and 63/141
- [6]. Aliakbari F, Hammad K, Bahrami M, Aein F. Ethical and legal challenges associated with disaster nursing. *Nurs Ethics*. 2015 Jun;22(4):493-503

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