

ANALYSIS OF HUMAN RIGHTS PROTECTION IN TIMES OF DISASTERS: A CASE STUDY OF JAMMU & KASHMIR

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Abstract

For many decades, the occurrence of disasters in Indian Territory has intensified. Although disasters are quick to strike, their consequences can be long to remember and can linger on for months and years. Disasters are the consequences of events triggered by natural and man-made hazards that seriously affect the social and economic development of a region. Traditionally, natural disasters have been seen as situations that create challenges and problems mainly of a humanitarian nature. However, it has come to be recognized, that human rights protection also needs to be provided in these contexts. All too often the human rights of disaster victims are not sufficiently taken into account. Unequal access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, loss of documentation, involuntary return or resettlement, and issues of property restitution are just some of the problems that are often encountered by those affected by the consequences of disasters. In addition, experience has shown that the longer the displacement lasts, the greater the risk of human rights violations. In light of this background, this paper will analyze and highlight human rights protection in times of disasters and key areas of the legal framework of disaster management from a human rights perspective focusing on its implementation in Jammu & Kashmir. Unfortunately, the study reveals that in the state of J&K there is a lack of attention to human rights protection and that measures needed to be taken to address issues. Therefore, enactment of law based on human rights has not been prioritized in disaster management, even though in managing disasters an understanding of the law in the context of human rights protection is crucial at every stage – i.e., the pre-disaster phase, the emergency phase and the post-disaster phase.

Key Words: *Disasters, Human Rights Protection, Fundamental Rights, Disaster Management, Good Governance Policies.*

Introduction

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The term Disaster as defined by United Nations (UN) is “a serious disruption of the functioning of a society, causing widespread human, material or environmental loss, which exceed the ability of the affected society to cope using its own resources.” The recent humanitarian crisis caused by disaster situations have raised new challenges, in particular in relation to the protection of the basic human rights of disaster-affected populations and victims at times of disasters. The need for ensuring human security in disaster management through the protection of human rights and promotion of good governance policies is one of the important aspects of the development of rights-based approach. This adds a new dimension to the existing studies relating to preparedness, the response including relief and rehabilitation, mitigation and ensures effective steps for disaster management. The human rights framework creates empowerment through legal tools and institutional structures in formulating ways by judicial and other forms of institutional interventions to protect the rights of people who could be affected by disasters as well as the victims of disasters. The disasters caused to mankind have proved that the repercussions that arise from all kinds of disasters would establish a co-relationship between sustainable development and disaster management. The integral facet of development implies the urging need for protection of human rights of individuals during disaster which is enshrined in the constitutional ethos.

The world is becoming increasingly vulnerable to disasters and disaster data in recent years shows an increase in the physical, social, and economic impacts of these tragedies. While a global perspective of disaster management is necessary, it is also important to emphasize local solutions. India has been traditionally vulnerable to natural disasters on account of its unique geo-climatic conditions. Floods, droughts, cyclones, earthquakes, landslides and other human-induced disasters have been recurrent phenomena. The loss in terms of private, community and public assets has been astronomical. The Munich Re Group has ranked India’s four largest cities within the 50 most vulnerable megacities in the world. India covers an area extending from snow covered mountains in the North to the tropical rainforests of South. Scientifically disasters are of two types Natural and Manmade. Natural Disasters are beyond human control as no one can stop them but we can always take a precaution which can either evade such disasters or at least lessen their effects. Man-made disasters are totally

manageable. There is a third category of disasters as well which has been altogether ignored by the experts on disaster management. The technological disaster is the third dimension of disasters which have been overlooked until today. Almost every type of natural or man-made hazard affects one or more parts of India and about one-third part of the country suffers from multiple hazards.

Jammu & Kashmir – A brief sketch

The state of Jammu & Kashmir is strategically located in the north-west corner of India. It shares its borders with China in the east, Pakistan in the West, Afghanistan and Russia in the North and plains of Punjab and Himachal in the south and south-east. The state enjoys special status on account of Article 370 of Indian Constitution. It has its own Constitution and various provisions of Acts, Laws and Regulations enforced by Government of India are enforced in the state only after they are ratified by the state legislature. The State is divided into three distinct divisions namely Kashmir division, Jammu division and Ladakh division. Jammu & Kashmir (J&K) is a multi hazard-prone state in India with natural disasters like earthquakes, landslides, floods, avalanches, high-velocity winds, snow storms, besides manmade disasters including road accidents, fires, terrorist activities etc. occurring in various parts of the state. Owing to its peculiar topography, rugged terrain, extreme weather conditions and above all an underdeveloped economy especially a poor road and communication network, the state of J&K has witnessed a multitude of disasters has always paid heavily in terms of loss of life, livelihood and property.

Unseasonal thundershowers and hailstorm in Udhampur District left behind a trail of destruction in the entire district in May-June 2004 taking a heavy toll of human and animal life. The J&K state which lies in seismic zone IV & V is highly prone to earthquakes and on 8th of October, 2005 a devastating earthquake of magnitude 7.6 resulted in the deadliest earthquakes of the sub-continent. Leh Cloudburst and Flash Floods in August 2008; Cloudburst at Baggar (Doda District) in June 2011; Jammu & Kashmir Flash Floods, September 2014; Incidents of Landslides triggered by heavy rainfall hit the state in the recent past caused suspension of pilgrimage to the cave shrine of Vaishno Devi, suspension of the annual pilgrimage to Amarnath Yatra, closure of Jammu Srinagar National Highway, closure of Leh-Manali road in Ladakh region of J&K innumerable times. Not only this, Militancy has also become a common feature of the state in the recent past. Incidents of human-induced disasters are also very common in the state.

Disaster Management - Indian Scenario

In 2005, India passed its Disaster Management Law known as the Disaster Management Act, 2005. The Act establishes a National Disaster Management Authority and other Authorities at various levels to coordinate their activities in disaster management. The Act defines “disaster management means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for mitigation or reduction of risk of any disaster or its severity or consequences; preparedness to deal with the disasters; rehabilitation and reconstruction. The Act interalia deals with the provisions regarding the protection of human rights by virtue of providing specific guidelines with reference to minimum standards of relief to be provided to persons affected by the disaster as recommended by the National Authority, which shall include the minimum requirements in relation to shelter, drinking, water, medical and sanitation. This is a distinct feature of the Disaster Management Act, 2005. These legal provisions are considered to be the sacroscent legislative measures as the intent of the legislature in enacting this Act is to provide for the effective management of disasters and to uphold the human rights of the disasters affected people. The Disaster Management Law is a legal umbrella of the country’s disaster management implementation that includes a development based approach which ensures better protection of human rights of individuals during disasters situations.

The Regulation of Human Rights Protection in Times of Disasters

Developing disaster management plans at all levels of government is the right thing to do. While national policies and plans are essentials, when a disaster occurs it is almost always local communities and local authorities who are in the front line of response. Such planning processes should include both measures to reduce the risks of disasters and to enable an effective response when disasters do happen. And there are ways to ensure that such plans and policies respect the human rights to affected communities. People shouldn’t lose their basic human rights when a disaster occurs. Therefore, Human rights protection is an action which is associated with prevention, response, rehabilitation, reconstruction and environmental development in connection with human rights.

International guidelines on protecting people in situations of natural disasters identify four categories of rights which should be upheld when planning for, responding to or recovering from a disaster. And India is also working on the same line of actions by following- The Fundamental Rights encompasses in the Constitution of India; The United Nations Charter;

The Universal Declaration on Human Rights (UDHR) 1948; The International Covenant on Civil and Political Rights 1966 & its Protocol; The International Covenant on Economic, Social and Cultural Rights 1966 & its Protocol.

First is the imperative to protect the lives, security and physical integrity of persons affected by disasters and to uphold family unity. This group of rights directs attention to the secondary impacts of disasters. People sometimes need to be moved from areas where their lives are at risk but they need to be moved in a way that upholds their rights. Measures should be taken to ensure that families are not separated and that people are safe when they live in temporary shelters, with families or among communities. And people also need to be protected against violence, including gender-based violence, which unfortunately often increases in the aftermath of a conflict.

Secondly, there is an imperative to protect rights related to the provisions of food, health, shelter and education in the aftermath of a disaster and to do so in ways that uphold the rights of affected people. This means that particular attention must be paid to groups who are particularly vulnerable and marginalised and to ensure that assistance is provided to people on the basis of need and is not discriminatory in nature.

The **third** set of rights relates to housing, land and property; restoration of livelihoods; and secondary and higher education. Issues around land and property are particularly contentious in many parts of the world and women (particularly widows) and orphaned children often need particular assistance to reclaim housing or land deeds after a disaster. Rehabilitation of livelihoods after a disaster requires not only political commitment and technical expertise, but also sensitivity to the needs and rights of particular groups.

Fourthly, there is a set of rights related to documentation, freedom of movement, and to civil and political rights that need to be upheld, particularly as times goes on. In applying rights-based approach to disaster management, the issues of information and participation of affected communities are crucial. People have a right to information and a right to participate in decisions that affect their lives-including preparedness training and measures to reduce the risks of disasters. These are not 'luxuries' to be considered after basic needs have been met, but should be incorporated into all phases of disaster management. Moreover, experience has shown that supporting community participation isn't just the morally right thing to do-it also results in more effective disaster preparedness, response and recovery.

Human Rights Protection in times of Disasters in the state of Jammu & Kashmir: An Analysis

In the prevalent scenario of disasters in the country, particularly in the state of Jammu & Kashmir, the fundamental issue is to focus on the people who are affected by disasters. And the human rights framework helps to do that by stressing the rights of the victims. All of these disaster issues have underlined the need for ensuring human security in disaster management through the protection of human rights and promotion of good governance policies.

Unfortunately, the study reveals that there are still no well recognized, comprehensive and legally-binding regulations in J&K which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural disaster. In addition, many international disaster response operations are subject to ad-hoc rules and systems, which vary dramatically from country to country and impede the provision of fast and effective assistance, thus putting lives and dignity at risk.

The present study concludes, in disaster management, there are at least three phases, creating three distinct needs to protect the human rights with special reference to Jammu & Kashmir, these are:

(a) Human Rights Protection in the Pre- Disaster Phase:

In this phase, the society in a disaster-prone territory must obtain effective information about natural disasters. Education, training about natural disasters and preparation for evacuation to a safe location are all required. But in practice the following factors make the information phase of natural disaster management less effective in J&K:

- Lack of information about natural disasters;
- Lack of training in natural disasters;
- Failure of the city and environmental planning;
- Lack of appropriate laws or failure of enforcement (e.g. illegal logging, etc).

As a result, the J&K Government fails to meet the standards required by Article 26 UDHR and Article 13 CESC on the Protection of Economic, Social and Cultural Rights and Protection of Civil and Political Rights.

(b) Human Rights Protection in the Disaster Emergency Phase:

In this phase, there must be no discrimination in the distribution of assistance. The definition of non-discrimination in this respect is that all people have the same position before the law, subject to cultural and religious differences – such as respecting marginalised society in food assistance distribution and in the division of women and men so that they do not share evacuation shelters. However, in practice there are a number of factors which prevent an effective response in J&K:

- Lack of planning and mitigation;
- Lack of coordination between a central and local government with respect to the distribution of aid and assistance;
- Discrimination in the giving of aid and assistance;
- Fraud and Illegal adoption and human trafficking.

One of the officials in the State Disaster Response Force (SDRF) 2nd Battalion, J&K, believes that “disasters do not differentiate between men and women, but the consequences of disasters create different levels of victimization among men and women. There have been a number of instances of victimization of women in the aftermath of natural disasters in the form of aid discrimination”. This is due to the vulnerability of women during disasters and post-disaster rebuilding. Underlining the urgent need for focussing on a gender perspective in times of disasters. APWLD report noted that women’s rights were especially prone to violation due to the socio-economic status and existing patriarchal structure of societies. The study also reveals that there is caste-based discrimination while distributing aid as well as implementing rehabilitation programmes in the aftermath of disasters. This is the case even when the legal and constitutional framework in India prohibits such acts of discrimination.

(c) Human Rights Protection in the Post- Disaster Phase:

In this phase, the most important things are monitoring assistance distribution, providing rehabilitation, and furthering recovery development. It is essential to establish effective monitoring mechanisms, benchmarks and indicators to ensure that the protection of the human rights of those affected by natural disasters, including those who are internally displaced, is effectively implemented. Furthermore, all disaster prevention, relief and recovery should be assessed so as to evaluate whether those activities are being carried out in accordance with international human rights and humanitarian standards as outlined in the Operational Guidelines. There are many problems in the protection of human rights in this phase. These include:

- Lack of attention to the needs of victims, particularly in mental health recovery;
- Corruption in the development process;
- Development which is not suited to the local culture;
- Compensation which focuses only on the rights of men and not women (eg, (land certification)).

As a result of these factors, it is apparent that implementation of human rights protection in the post-natural disaster phase by the J&K Government violates Article 17 UDHR and Article 1 Protocol 1/ECHR.

Conclusion

Unfortunately, the study reveals that in the state of J&K there is a lack of attention to human rights protection and that measures needed to be taken to address issues such as discrimination. It is clear that Jammu & Kashmir government lacks well recognized, comprehensive and legally-binding regulations which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural disasters. It also lacks awareness and understanding of the provisions which it should enact to comply with international requirements on the protection of human rights in the wake of natural disasters. Hence, it is suggested that Human Rights Protection be recognized as a basic principle in the management of natural and man-made disasters. As a matter of urgency, an International Natural Disaster Response Law must be enacted as a binding international regulation. Human rights protection must be implemented at every phase of natural disaster management. The Indian Government along with J&K Government must recognize its responsibility to protect human rights, and as a matter of good governance must activate the role of the National Disaster Management Authority and the J&K State Disaster Management Authority. There must be cooperation at all levels – by individuals, states and international organizations (including NGOs) to conduct disaster management based on the need to protect human rights.

References

Inter-Agency Standing Committee. (2008). *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disasters*. Brooking-Bern Project on Internal Displacement.

Puspita, N.Y. (2010). *Legal Analysis of Human Rights Protection in Times of Natural Disasters and its Implementation in Indonesia*. Asian Law Institute, National University of Singapore.

Shaw, R., & Krishnamurthy, R. R. (2009). *Disaster Management: Global Challenges and Local Solutions*. Himayatnagar, India: Universities Press.

State plans: Planning commission, Government of India. (2015) State Plans. Planning Commission. [Retrieved from http://planningcommission.nic.in/plans/stateplan/index.php?state=sdr_jandk.htm]

IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, 2011.

See Canadian Red Cross, “Predictable, Preventable: Overcoming the Challenges of Violence during and after Disaster”. <http://www.redcross.ca/article.asp?id=42867&tid=001>

DR I.B.R. Supancana, Programme of the International Federation of Red Cross and Red Crescent Societies (IFRC), “International Disaster Response Law, Rules and Principles (IDRL)” at 1; see also International Disaster Response Law (IDRL), Appeal No. 01.100/2004 at 1 and compare with David P Fidler, “The Indian Ocean Tsunami and International Law” (2005) ASIL Insight at 1-2.

Human Rights and Natural Disasters, *supra* note 9 at 13.

Disaster Management Act, 2005. Section 2 (e).

Disaster Management Act, 2005. Section 2 (e) (ii).

Disaster Management Act, 2005. Section 2 (e) (vii).

Disaster Management Act, 2005. Section 12.