



## JUDICIAL RESPONSE TO THE DISASTER SITUATION

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### INTRODUCTION

A number of constitutional provisions provide for State's obligation to provide relief and rehabilitation. Article 21 of the Indian Constitution guarantees every person right to life and personal liberty. It casts a positive obligation on the State to take all possible steps for prevention, preparedness and mitigation of disasters. Article 21 has been liberally interpreted by the Supreme Court to expand the scope of life and can be said to be the repository of all important human rights. Besides, this Article 38 directs State to promote the welfare of the people. Article 51 directs State to honor the international treaty obligations. India is a party to a number of international treaties on environment which contain specific provision on disaster management.

The doctrine of *parens patriae*.

Doctrine of *parens patriae* imposes an obligation on the State or sovereign authority to protect persons under disability. This doctrine which was originally applicable to the king has been applied by Courts in a number of cases to make the State responsible for providing relief to victims of disaster.

### THE STATE OBLIGATIONS UNDER ART. 21 OF THE CONSTITUTION

*B.J. Diwan vs. State of Gujarat*<sup>1</sup>: On the morning of 26th January 2001, an earthquake of a high magnitude, more than 7 on Richter Scale, shook whole of Gujarat and more devastatingly of its entire Kutch district, leaving thousands dead, injured, crippled, orphaned and homeless. The Government was unprepared to meet such unforeseen natural calamity and still finds it difficult through its inadequate machinery to carry out the stupendous task of rescue, relief and rehabilitation of the quake victims. In such calamity and adversity, the entire Nation has shown compassion and co-operation by extending help and providing relief material in kind and cash to the victims. It is a divine wrath, but turned into blessing in the sense that in facing the calamity the helping hands extended by people all over the world in the shape of help and support has united the people and brought to surface the inherent virtues and qualities of human being. There has been an exemplary display of fellowship, co-operation, mutual help and love from all over the world regardless of class, caste, creed and cultural differences. Not only from within the Nation, but from all over the world from different countries, Governments, social service organizations and individuals relief material in the form of tents, clothes, medicines, construction items, for erecting homes, rescue machines etc. have landed by ship, airplanes and other modes of transport. All kinds of relief material is throughout pouring in from different parts of the world. In the background of the above scenario of devastation and destruction causing tremendous loss of life and property of the people, five prominent citizens, representing different walks of life (retired Chief Justice of this Court, eminent lawyers, industrialists, artists, social activists) have brought this petition in public interest seeking intervention of this Court to ensure speedy and effective relief to quake victims. The petition is founded on newspapers and media reports that the Government has failed to meet the situation arising from the calamity and has no adequate infrastructure to satisfactorily perform the stupendous task of providing relief and rehabilitation to the quake victims<sup>2</sup>. On behalf of the Central Government and the State Government learned Additional Solicitor General and Advocate General have raised preliminary objections. They have strongly opposed the allegations made in the petition and the reliefs claimed. It is submitted that neither the Constitution nor any law permits Judiciary to take over the work of the Executive which is being carried on with the help of elected representatives of the people. It is submitted that the legitimate duty and work of the Executive cannot

<sup>1</sup>AIR 2002 Guj 99 (2000) 2 GLR 1394.

<sup>2</sup> <https://indiankanoon.org/doc/880910/>



be directed to be handed over to a commission or committee set up by the Court. It is contended that the allegations of slackness and inefficiency leveled against the Government in the petition are baseless and are an outcome of unfounded prejudice and distrust in Government machinery. It is submitted that the contributions received in cash and kind constitute the Government Fund and the two Governments through duly formed committees for management of quake relief are committed to utilize them for quake victims. The receipt and expenditure in relation to the relief to the quake victims and towards their rehabilitation would be subject to statutory audit. It is claimed that the Government machinery is fully geared to effectively undertake the relief and rehabilitation operations in which help and assistance of technical experts in Geology, Seismic Science, Structural Engineers, Building Experts, Medical men. Psychologists would be obtained. In the work of the Government, help of other various governmental and non-governmental organizations in various fields like science, technology of social science will be obtained. The Government would involve them in a systematic manner. It is emphatically stated that this Court should refrain from supplanting the Government machinery by any regulatory commission or super committee. The submission made is that grant of any such direction or relief to the petitioners in this so-called public interest litigation would indirectly harm public interest by demoralizing the Government officials and members of staff in the Government who are actively and sincerely engaged in relief and rehabilitation operations. The first and foremost question that has been raised on behalf of the two Government is regarding jurisdiction of this Court to intervene in a matter like the present one, seeking directions for effective steps for disaster management. We are conscious of our limitations as a constitutional Court. Our power to issue writs under Art. 226 of the Constitution of India for enforcement of constitutional or legal rights or for any other allied purpose are not uncanalised. The duties of the Government or the Court on occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. In fact, there is complete lack of any legislation in this field. Article 21 of the Constitution of India which guarantees to every citizen protection of his life and personal liberty, is repository of all important human rights which are essential for a person or a citizen. When there is a natural calamity like earthquakes, floods, fire, cyclones and similar natural hazards the State as guardian of the people is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives. From Art. 21 of the Constitution the Supreme Court has deduced an affirmative obligation to preserve human life. There is no parallel to the present colossal natural calamity as in India. In order to protect human rights as part of right flowing from Art. 21, the Supreme Court has enforced obligations of the Government, such as providing medical staff to the Hospital (Bhim Singh, M.L.A. v. State of Jammu and Kashmir, AIR 1986 SC 494) and awarding compensation for illegal detention of the prisoner for long period after his acquittal (Rudul Sah v. State of Bihar and Anr., AIR 1983 SC 1086). The obligation of the State to protect life is reorganised by directing providing of proper medical attention to every citizen, (See Pt. Parmanand Katara v. Union of India and Ors., AIR 1989 SC 2039 Paragraphs 8, 9 to 17). In Joint Women's Programme v. State of Rajasthan & Ors., AIR 1987 SC 2060, the Court directed setting up of "Special Dowry Cell" to investigate into dowry deaths. In President, Association of Allottees of Requisition Premises, Bombay v. State of Maharashtra, 1986 Supp. SCC 567, the Supreme Court required the Government to prepare a scheme for construction of houses for Government servants who were sought to be displaced as a result of the Government policy of requisition of requisitioned premises. For the same purpose of protection of human rights in Rakesh Chand Narain v. State of Bihar, 1986 Supp. SCC 576 the State Government was directed to raise the daily diet allocation to supply adequate drinking water, mattresses and blankets and medical services etc. to patients in the Government Mental Hospital. In fact, Supreme Court has been, case after case, enforcing economic, social and cultural rights as recognized in international covenant of 1996. In this, the Supreme Court is prompted by the philosophy of social justice or social rights. In doing so, the Supreme Court has been even enforcing directive principles of State policy. This was so done because with the amendment of the preamble of the Constitution "social justice" is an objective for the Government to achieve. Whatever may be the precise content of "social justice", it is held to include recognition of the needs of weaker section of the community as "human being". This need is more urgent where large sections of people have been seriously affected by natural calamity like earthquake and their homes and life is totally shattered



(See *Sadhuram Bansal v. Pulin Behari Sarkar & Ors.*, AIR 1984 SC 1471, Paras 29-30, 68, 70 and 73). We have, therefore, support from host of case-law of the Supreme Court for taking a view that to humans affected by calamity the State is obliged to provide help, assistance and support, so that they may be able to save their lives. This right of assistance in calamity has to be treated as an enforceable right. Such affected persons, as a result of the calamity, are rendered helpless and handicapped. Help and corrective action sought for them through service-spirited organization or section of people cannot be thwarted, but the same deserves to be encouraged<sup>3</sup>.

### STARVATION DEATHS IN KORAPUT AND KALAHANDI

*Kishen Pattanayak and Anr. vs. State of Orissa*<sup>4</sup>

Two social workers addressed a letter to this Court bringing to its notice the miserable conditions of the people of the district of Kalahandi in the State of Orissa on account of extreme poverty. The said letter was treated as a writ petition. The petitioners in this petition alleged that in the district of Kalahandi on account of extreme poverty, there are starvation deaths and in order to save themselves from starvation deaths, people are compelled to subject themselves to distress sale of labour and paddy resulting in exploitation of landless labourers, deprivation of legitimate price of paddy to small peasants. It was also alleged that on account of 'chill penury' people of Kalahandi district are even forced to sell their children.

In the other writ petition, Indian Peoples' Front alleged miserable conditions of the people of Koraput district in addition to the Kalahandi district. It was alleged that the starvation deaths, drought diseases and famine have been the continuing phenomenon in the said two districts. With a view to ascertaining the correct state of affairs and to know whether the State has implemented the social welfare measures, and the adequacy of such measures to meet the needs of the people, the Court directed the District Judge of Kalahandi to submit a report. The learned District Judge in its report submitted that the State Government has implemented social welfare measures and there was hardly any case of starvation death.

The correctness of the facts found by the District Judge in his report was challenged by the petitioners, particularly the question of starvation deaths. The petitioners suggested that for the purpose of supervising relief work, a Committee of 11 member should be constituted comprising members of well-known social organisations. It is not disputed that the people of Kalahandi and Koraput are very poor and most of them have been living below the poverty line. Though the report of the District Judge is against the starvation deaths the happening of one or two cases of starvation deaths cannot altogether be ruled out<sup>5</sup>. The State Government shall nominate at least 5 persons belonging to the recognised voluntary social organisation like Sarvodaya Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies as contained in the State approved list of voluntary agencies as members of the said existing district level Natural Calamities Committees of the Districts of Kalahandi and Koraput. The said Committees shall hold one meeting every two months and shall be responsible for looking into the starvation deaths and the welfare of the people of these districts. These committees shall also keep a watch over the working of the social welfare measures taken and which are likely to be taken by the State Government<sup>6</sup>.

### PROTECTION OF WETLANDS IN INDIA

*Wetland Protection Laws And Government Initiatives:* Wetlands do face the tragedy of commons, as is evident from present quality and steep decline in their numbers. The prime reason for this state is mainly due to lack of coordination among many agencies involved in the management and appropriate legal measures to protect these ecosystems. As on today, Wetlands are not delineated under any specific administrative jurisdiction. Some

<sup>3</sup><https://indiankanoon.org/doc/880910/>, para 7-12.

<sup>4</sup>AIR 1989 SC 677.

<sup>5</sup><https://indiankanoon.org/doc/1286340/>

<sup>6</sup><https://indiankanoon.org/doc/1286340/>



wetlands are protected after the formulation of the Wildlife Protection Act. However, it is ineffective and most are in grave danger of extinction. Effective coordination between the different ministries, energy, industry, fisheries revenue, agriculture, transport and water resources, is essential for the protection of these ecosystems. Prevailing laws are ineffective as far as the protection or conservation of aquatic ecosystems are concerned as most of them indirectly touch wetland protection (fragmented approach);

- The Indian Fisheries Act - 1857
- The Indian Forest Act - 1927
- Wildlife (Protection) Act - 1972
- Water (Prevention and Control of Pollution) Act - 1974
- Territorial Water, Continental Shelf, Exclusive Economic Zone and other Marine Zones Act - 1976
- Water (Prevention and Control of Pollution) Act - 1977
- Maritime Zone of India (Regulation and fishing by foreign vessels) Act - 1980
- Forest (Conservation) Act - 1980
- Environmental (Protection) Act - 1986
- Coastal Zone Regulation Notification - 1991
- Wildlife (Protection) Amendment Act - 1991
- National Conservation Strategy and Policy Statement on Environment and Development – 1992

India, inspite of being a signatory to the Ramsar Convention on Wetlands and the Convention of Biological Diversity, there is no significant development towards sustaining these ecosystems, either due to lack of coordination among agencies involved or lack of awareness of the values of wetlands among the policy makers and implementation agencies. The effective management of these wetlands requires a thorough appraisal of the existing laws, institutions and practices. The involvement of various people from different sectors is essential in the sustainable management of these wetlands. Apart from government regulation, better monitoring mechanisms are needed to increase the knowledge of the physical, chemical and biological characteristics of wetland resources, their values and a better understanding of wetland dynamics. Management based on accurate knowledge and increased awareness of wetland issues involving all stakeholders and all components of ecosystem help in long term sustenance involving restoration and conservation. This would enhance the function and value of the system in terms of natural and socioeconomic factors to satisfy critical resource needs of the human population<sup>7</sup>.

In *M.K. Balakrishnan (2) And Others vs . Union Of India And Others (2009 5 SCC 511)* the Hon'ble Supreme Court while suo motu expanding the scope of writ petition originally filed for protection of wetlands in the country for preservation of the environment and maintaining the ecology underlined the terrible water shortage faced by people in India. Court held that acute shortage of clean drinking water was one of the stark realities today which threaten the guaranteed fundamental right to get water as a part of right to life under Art.21 of the constitution of India<sup>8</sup>.

#### INDIA AND THE WORLD

About 60% of the landmass is prone to earthquakes of various intensities; over 40 million hectares is prone to floods; about 8% of the total area is prone to cyclones and 68% of the area is susceptible to drought. In the decade 1990-2000, an average of about 4344 people lost their lives and about 30 million people were affected by disasters every year. The loss in terms of private, community and public assets has been astronomical. At the global level, there has been considerable concern over natural disasters. Even as substantial scientific and material progress is made, the loss of lives and property due to disasters has not decreased. In fact, the human toll and economic losses have mounted. It was in this background that the United Nations General Assembly, in 1989, declared the decade 1990-2000 as the International Decade for Natural Disaster Reduction with the

<sup>7</sup> [http://wgbis.ces.iisc.ernet.in/energy/water/paper/wetlands\\_restoration\\_conservation/protection.htm](http://wgbis.ces.iisc.ernet.in/energy/water/paper/wetlands_restoration_conservation/protection.htm),

<sup>8</sup> <http://ndma.gov.in/images/pdf/COMPENDIUM-OF-LAWS-ON-DISASTER-MANAGEMENT.pdf>, p. 12-13.



objective to reduce loss of lives and property and restrict socio-economic damage through concerted international action, especially in developing countries.

#### CONCLUSION

In India one third population is living in village, having lack of knowledge, employment, and opportunity. B. P.L. (person below poverty line) is the economically deprived section of the society. In disaster situation their situation becomes more miserable. So there should be some authority to which they can approach in disaster situation. The contingent fund, consolidated fund, is under the control of the state officer so it becomes necessary to provide duties and responsibility of the state officer, consequently the Disaster Management Act, the come into existence. It provides the power, functioning, procedure relating to disaster management. India has been traditionally vulnerable to natural disasters on account of its unique geo-climatic conditions. Floods, droughts, cyclones, earthquakes and landslides have been recurrent phenomena. As above discussed that the disaster situation is beyond the control of human being and it require the cooperation of all including the Government, NGO, public and private authority. Special force is required to deal with the disaster situation; it may includes the technical expert, medical officer, researcher.