

# ENVIRONMENT AND DISASTERS THEREOF

## *The Grievances over Mankind*

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**[Abstract:** *In this paper, we are focusing on the following areas of Environment Disaster and their preventive measures or intra vires legislative and judicial measures. An endeavour has been made to reconcile the following aspects- What would be the implied or explicit effect of disaster in India?; What is the legislative and equitable responsible role to mollify the Environment Disaster? The paper dwells into the aspect of impact of any man-made disaster and the necessary action that must be taken in this regard. It dwells into the postulates established by the courts and the protection of citizens against any hazard in India.]*

### INTRODUCTION

Environment disaster, as the word suggests, is any activity that hampers the entire ecosystem perpetually. These disasters envelop the development project, natural habitat of animals, and humans. These are grave, sudden, destructive, and hampers the lifestyle of humans and wildlife also in some cases. Furthermore, it disrupts the development programs and natural well-being of people on humanitarian grounds. Human nature, unfortunately, has ample of greed disparaging the Social Environment.

Manifestly, these devastating actions would be an amalgamation of natural as well as man-made impugned negligence. To reconcile such circumstances the National Disaster Management Authority was formed under Section 3 (1) of the Disaster Management Act, 2005.<sup>1</sup> It laid the provision to formulate policies, plans, suggestions, and guidance for disaster management. The Authority was formed alongside government set-up managing board for mitigating such disasters and to redress for its catastrophic effects.

### ENVIRONMENT DISASTERS AND ITS MANAGEMENT

Environment Management is a meticulous program or organization or sentinel for facing gruesome situations driven from natural and man-made activities to attenuate the impact on health and prosperity. Development projects such as water or thermal power plants and economic projects like chemical, fisheries business, leather industries appraise pollutants in troposphere and hydrosphere herein. To rectify the situation and responsibility confers central and national envoy duties under section 6 of this Disaster Management Act.<sup>2</sup>

Before discussing the various modalities of environmental and disaster management, it is pivotal to discuss the terms 'Disaster' and its management'.

#### **What is Disaster?**

Disaster is a sudden imbalance created by natural or man-made activities, by negligent or malignant act, by the people or group of people or through agent, knowingly or with the sense

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<sup>1</sup> Disaster Management Act, 2005 S.3(1).

<sup>2</sup> Disaster Management Act, 2005 S.6(1).

of knowledge, and likely to cause harm, to the health, safety and society in the whole or disturb its ecosystem thereof.

### **What is its Management?**

Management is wider concept. It encompasses various facets of human activities and its regulation thereof to achieve a certain pre-determined goal while making sure that utilization of resources is either minimal or optimal. In the context of disaster management, the responsibility is upon the respective Disaster Management Authorities to ensure responsible management, protection, timely response, and planning guidelines towards the disaster.

Disaster affects communities in various ways. According to the report of International Strategy for Disaster Reduction (ISDR), 478,100 people were killed and above 2.5 billion people affected and that bore a loss of US\$ 690 billion. The sporadic effects of disaster lead to higher number of deaths and injuries as well as economic losses.<sup>3</sup>

Components of the Disaster Hazard are as follows:

1. Natural and Man-Made occurrence
2. Risk Assessment
3. Effluence
4. Effects

### **EVOLUTION OF DISASTER MANAGEMENT LAW**

This paper clearly ridges various statutory provisions related to management of disasters. We acknowledge that these natural occurring disasters somehow either favoured the ecosystem management by way of earthquake, volcanic eruptions, tsunami, etc. In the Post independent era i.e. British Government reconstructed the laws according to “traditional systems of managing nature and natural resources” which supported their railway works.

Here, this paper will discuss about the system of sustainability in the post management herald ways. This risk assessment, economic impact or geological processes hereto affected. The Disaster working under the knowledge of companionship of human action with remote hazardous substance is known as anthropogenic hazards. These constitute technical or scientific hazards which occur on escape or spin-bashing of scientific rule along with human efforts. However, these substances may be mercury, chemical, chlorine or coal dust. Such substances when come to contact with, human interaction, or troposphere, or hydrosphere or lithosphere hinders the state of life. To prevent proviso are constitute under the constitution.

### **Primary law**

There is always a dilemma while weighing matters of economic growth and ecological balancing. Our Constitution confers the “Socialist approach of economy” that fosters occupational freedom to individual but not at the cost of environmental degradation. Furthermore, we are parting the primary role inter alia on the state to devise ways of co-existing both occupational freedom and ecological balance that may cohort the term sustainable development interstate.

The approach of the environmental jurisprudence is to keenly contemplate over the plight of established balanced ecosystem. Furthermore, it keeps the pace with the socio-economic norms and with proliferate changes brought in the context of environment. Being in the

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<sup>3</sup> K.O. Zentel & T. Glade, *International Strategies for Disaster Reduction (IDNDR and ISDR)*, in ENCYCLOPAEDIA OF NATURAL HAZARDS (P.T. Bobrowsky, eds., 2013).

constitutional ambient areas if one disturbs it, it would have to be compensated accordingly. While working within the limits is permissible, sometimes action can be taken by group of people against any violation of established norms or against the violation of norms. Therefore, if violation is acknowledged, any social group can file an action under the Article 32 and 226 of the Indian constitution through the mode of Writ Petition. Henceforth we concluded that the power of the court is not even injunctive but also preventive in nature. The scope of court is to provide remedial solutions to the individual or a group whose rights are violated. Generally, fundamental writs such as Mandamus, Certiorari, and Prohibition are used in environmental matters. For instance, a Mandamus enshrined when public authority not acted accordingly or restrain from doing it such as issued against a municipality that fails to construct sewers and drains, clean street and clear garbage.<sup>4</sup>

### Constitutional provisions

The interpretation of the Indian constitution *a posteriori* accedes the right to pollution free environment as the integral part of the life which poses duty on the government to propel the level of the health of citizen's delving in the state. Manifestly such rights perpetuate under Article 21 of Indian constitution and protect the life expectancy of citizen.<sup>5</sup>

Indian Constitution, by way of interpretation, has conferred the following rights, among others on a broader interpretation of the provisions thereof –

1. Right to Wholesome Environment
2. Right to Livelihood of People
3. Right to pollution free Environment

In the famous case of *M. C. Mehta v. Union of India*, it was had held that while interpreting Article 21 in Ganga Pollution Case as discussed before, such tanneries should remain closed or shifted and proclaimed that: *we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology have greater importance to the people.*<sup>6</sup>

### *Indian Council for Enviro-Legal Actions v. Union of India*<sup>7</sup>

The supreme court held that if privately owned body infringes the fundamental rights conferred to individual, the court would not take into consideration that body is not “state” within the interpretation of Article 12. Aftermath of the disaster huge invading was made over the Right of individuals henceforth respondent is solely responsible inter alia for damage cause to air, soil, underground wells and village. The Court accepted and applied the *Polluter pays Principle* which counter the influx of responsibilities plugged for repairing damages by any offending industry.

### Directive Principles of State Policy

Consequently, as we all know that the state governments are under an obligation to protect or to preserve the environment within the context of Article 48-A<sup>8</sup> of constitution. Seemingly, this provision is the outcome of amendment introduced in the year 1976. Thereafter, Constitution had posed *in mandatum* to state for protection or improvement in the

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<sup>4</sup> *Rampal v. State of Rajasthan*, AIR 1981 Raj 121.

<sup>5</sup> *Intellectual forum Tirupati v. State of A.P.*, AIR 2006 SC 1350.

<sup>6</sup> *M.C Mehta v. Union of India*, 1988 AIR 1115

<sup>7</sup> *Indian Council for Enviro-Legal Actions v. Union of India*, 1996 AIR 1446

<sup>8</sup> Article 48-A of constitution which provides protection and improvement of environment and safeguarding of forest and wildlife.

environment against the degradation of forests and wildlife of the countries. Henceforth, duty was imposed on the state or to act like ward or legal patriae of the Ecology.

Case: *L.K. Koolwal v. State of Rajasthan*<sup>9</sup>

The Court held that it is duty of state and its agencies to clean the locality within time lapse of six months and dismissing plea of unavailability of funds and staff.

## Secondary Law

### 1. Law of torts

Under the law of torts liability of an enterprise engaged in an activity, when a negligent or malignant activity takes place can be alleged and further that enterprise maybe called upon to compensate. Any such liability arises from occurrence of accident and is based upon the principle of restoring the balance in the environment.

### 2. Strict liability

The principle of strict liability is dependent on the fact of liability arising when any hazardous or dangerous substance (or thing) is involved and which if escapes is bound to cause harm. The court has held that in such cases there is a strict liability and no plea of negligence can be taken. It is the profit that one makes out of such hazardous enterprise and therefore, any subsequent accident must also be strictly borne by the entrepreneur.<sup>10</sup>

As explanation of case that when some poisonous substance escape to premises of other and cause harm to other, then the defendant is held to be liable.<sup>11</sup>

## Recommendations

1. That there should be intellect use of technology and expertise, and full-time enviro-economic expert bodies. Forthwith such effect may pamper the rate of easy control and managerial of such illegal mining.
2. That the green tribunal or courts might be conducted through a speedy trail hence looking into actual court of justice.
3. That the constitution of adroit Environment Reconstruction Fund to insured the losses and indemnified them.
4. Compensatory Apprehension: double the compensation on the revenue lands make without the beneficial environmental work
5. That the Independent environmental regulator might to constituted to regulate the preventive or protective measure for managing the disaster.
6. That these disasters, propelling in the region, may hampered the life of heritage of flora and fauna realm. To render the protection of such areas a under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is brought up which is pending in the Rajya Sabha.

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<sup>9</sup> *L.K. Koolwal v. State of Rajasthan*, AIR 1988 Raj 2; [1987] (1) WLN 134.

<sup>10</sup> *Rylands v. Fletcher*, [1868] LR 3 HL 330.

<sup>11</sup> *Reads v. Lyons & Co*, [1947] AC 156.

## **CONCLUSION**

The Environment perils, Environment hazards and ecological imbalance all comply with subject study of Environment Management law. In furtherance these threats may be due to man-made or natural significance but its effect pave with the Human and natural resource suffering. Meantime these laws may what contradict with the laissez faire or principle of goodwill but the court considered with the absolute responsibilities of the citizen and state to trench out the boundaries. Indian constitution if conferred the duty on the state to protect and preserve the Environmental class of life as per the Article 47 & 48A. The duties are so lying upon the citizen of the state to protect the same as Article 51A(g) dated accordingly. This paper drives us back to the essence of Environment disaster role and its management requisites. The world was devastated with the incident of Chernobyl in the Soviet Union with the casualties that causes affect around the decades in curtain region. The UNSCEAR report of 2008 suggests that such also took the medical emergencies in the region as to propel the thyroids, cancer etc disease that cost incurable. The rule of Law is supreme in India provided that the assign role of regulation was conferred to the legislative body. The procedural was bifurcated into the two parts civil and criminal whereas the Environment disaster also sometimes deals with the Criminal liabilities. Apart from its jurisdiction when it conduces the society at large it inculcates the criminal one. Furthermore, these disputes can be resolve with the help of the power of Court of law. As these disasters appalled the Fundamental rights of individual as they nearby affect the Right to Life, Right to Healthy Environment etc. as guaranteed by the Indian Constitution. As the miniature of this research, try to remove the bamboozle in the eyes of individual in matter of Environment Management. This paper enshrined with all the law pertains with the management of the government along-with the liabilities and duties of citizen to protect the Ecosystem. The prima facie of the Reports as recommended in this research also taught us about the various lacunas of the Government. But still the Indian Government easily cope-up with the lacuna and abide the constitutional role to adjust with Individual interest.