CHAPTER IV

LAW AND POLICY ON DISASTER MANAGEMENT

4.1 INTRODUCTION

This chapter focuses on the role of judiciary and discusses the national laws and policies and the role of insurance policies against disasters and also discuss the relationship between disaster management and sustainable development.

The Indian subcontinent is susceptible to natural catastrophes and is one of the most disaster prone regions in the world. Close to 56 million Indians are hit by disasters (natural and manmade) each year. Floods, droughts, cyclones, earthquakes, landslides etc are the major natural disasters that are increasingly affecting India. Out of 35 states/union territories in the country, 25 are disaster prone and 135 districts have been identified as multiple hazards prone. Manmade disasters are another area that needs attention. Industrial/chemical disasters, fire, train; road accidents are common manmade disasters. It is a known fact that a lot of human suffering and misery due to disasters can be mitigated by taking timely action and preventive measures. It is now an accepted fact that natural disasters are acts of God but losses incidental to it are acts of men. Experience has shown that destruction from the disasters can be minimizing by a well functioning disaster management.\textsuperscript{134}

Towards a Disaster management system, it is necessary to look into disaster management system in India; handling of the different disasters in recent past is a testimony of the inadequate and ill equipped disaster management system in India. To suggest a solution for the present problems it is necessary to identify the various issues relating to disasters in India. For this purpose floods, cyclones, landslides, earthquakes, forest fires, pest infections, biological disasters have been briefly

\textsuperscript{134} Sinha P C Encyclopedia of Disaster Management, Vol-1, Anmol Publications 1998, p-1
studied. An understanding of the nature and issues arising from these disasters will help identify the broad issues those are confronted with. The study shows that at present starting from the pre disaster stage up to the rehabilitation scenario that the Indian disaster management system is not functioning properly.\textsuperscript{135}

4.2 DISASTER MANAGEMENT AND LAW

4.2.1 Existing Disaster management Mechanisms in India

Under the present scheme of disaster administration, natural disaster management is largely the responsibility if the State Government. The state government will have to undertake the responsibility of rescue, relief and rehabilitation. The disasters will manage under the direct supervision of the concerned nodal ministers or departments. However, the central government with its resources, physical and financial, does provide the needed help and assistance to relief efforts. The role of central government is supportive in terms of supplementation of physical and financial resources.\textsuperscript{136}

National Level

At the national there are different bodies of activities. They are;

- Natural disaster management division with Ministry of Home Affairs.
- The Institute of Disaster management, an autonomous institute. These are the nodal agencies for natural disaster management in India.
- Crisis management group, which was setup by the union government to advise, guide, supervise and coordinate relief measures in affected states.
- There is also an Inter Ministerial Co ordination Group.


\textsuperscript{136} Disaster Management Act2005, Chapter 1
• Depending upon the type of disasters, a nodal ministry is assigned the task of coordinating all activities of the state and district administration and other support departments.¹³⁷

**State Level**

The responsibility of disaster preparedness and response at the state level is usually delegated to the relief and rehabilitation wing of the department of revenue. The crisis management committee at the state level is headed by the chief secretary with the participation of all the related agencies. Most of the states have relief commissioners, who are in charge of relief measures. Of late, some states like Maharashtra and Uttaranchal have setup departments of disaster management.¹³⁸

**District Level**

The district level coordination and review committee is headed by the district collector. The District collector is responsible for the relief and rescue operations at the district level. The actual day to day work of administering relief or implementing contingency plan for disaster mitigation at the field level is the responsibility of the district collector. The existing mechanisms are not adequate to provide an effective and specialized leadership to disaster management activities in the country. The governmental approach on disaster policy, strengthening of administration and basic framework for management itself is faulty. The absence of an integrated national policy has led to overlooking some of the vital aspects of disaster management. For this, we need a system approach involving all concerned agencies. There is a need to develop a uniform and specialized scheme of administration, which is competent enough to give leadership for disaster management activities in our country.¹³⁹

¹³⁷ Disaster Management Act 2005, Chapter II
¹³⁸ Disaster Management Act 2005, Chapter III
¹³⁹ Disaster Management Act 2005, Chapter IV p.57
4.3 Disaster related concerns and Necessary changes in Disaster management System in India.

The disaster management system should be able to minimize, control and limit the effects of disaster. The administration should be equipped to lead the disaster management activities without being left handicapped. In this context, it is necessary to understand the different issues, which confront the Indian disaster management system. Understanding the different problems in the Indian context is essential to evolve a solution. A study about disasters and its management in India will prove the need for new amendments.  

4.3.1 Pre-disaster stage

Proper preparedness: The prevailing post disaster reaction should be changed into a pre disaster pro action.

- Developing a Disaster and Area Specific Approach: India is a multi disaster prone country. Causes and effects of various disasters are different. Each disaster needs to be addressed separately. The role of district administration needs to be increased and it should spearhead disaster management activities.

- Mapping of the whole country, especially the preparation of micro zone maps.

- To evolve construction codes and safety guidelines: The periodic review and updating of such codes and guidelines is essential. Building laws and rules should be formulated.

- Assessment of existing buildings / structures and their strengthening should be carried out within a timeframe.

140 Vinod. Sharma, Disaster Management, (New Delhi: National Centre for Disaster Management IIPA1994) p.79
• While constructing public structures like schools, halls, dharmashalas, hospitals etc. Evacuation of people and eventual accommodation in such building should be anticipated. For this purpose a contingency plan should be prepare.

• The integration of safety norms with all development and construction activities needs to be ensured.

• Creating specialized disaster management system for certain special type of disasters like nuclear disaster, mine burst etc.

• There is a need for maximum utilization of science and information technology in disaster management. Besides, traditional wisdom/ knowledge should enrich the codes and disaster management planes.

• Preparation of disaster plans needs to be carried out immediately. The disaster management plans should serve as a blue print for all disaster management activities.

• Establishment of disaster management research and training institutes.

• Sufficient stock of relief material, equipment etc. needs to be ensured.

• Ensuring the presence of trained manpower to give leadership for disaster management activities. In crisis situations, army, police, fire fighters, civil defense personnel etc, need to play an increased role. The involvement of professionals and panchayat raj institutions should also be increased.

• Proper utilization of the services and organization: The role of NGO is very important in disaster situations. Their potential needs to be tapped.

• Various agencies involved in disaster management exercises needs to be well coordinated.

• International and regional co operation needs to be increased.
• Role of insurance agencies in disaster management needs to be given more importance. Compulsory insurance of people and buildings in highly vulnerable areas is an important option.

• Timely early warning disasters.

• Evolving a new culture of disaster management, that relates to preparedness, quick response, strategic thinking and prevention.\(^{141}\)

4.3.2 **During and After the Disasters**

Primary steps: collecting accurate information about the disasters and opening control rooms and initiation of effective search and rescue operations.

• Evacuation of people.

• Medical attention to the injured people.

• Emergency hospitals, communication and transportation.

• The authorities should ensure availability of:
  - Water and food
  - Sanitation and nutrition
  - Shelter and survival
  - Maintenance of law and order
  - Smooth administration
  - Re establishment of normal stage

• Relief distribution should be need based and discrimination free.

• Dissemination of information.

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- Relief centers with basic necessities need to be established in case of an emergency.
- There should be proper coordination of relief activities.
- Reduction of all immediate threat to life.
- Role players and people should be alerted.
- Disposal of corpses without the formality of postmortem should be considered.
- Removal of debris.
- Transparency and accountability in all transactions.
- Financial aid and assistance should be given only according to well defined parameters.
- Legal assistance and dispute redresses.
- Victims should be assisted in finding livelihoods.
- Rehabilitation should be treated as an integral part of disaster management.
- Protection of human rights inter alia, the state will have to facilitate therefore mentioned.

The existing system is not effective for delivering good results. Review the system is urgent concern. The disaster management authorities should be free from political consideration and administrative bottle necks. At the same time they should be empowered to give necessary orders direction and guidelines and act as link between a union government, state government and district administrations. Creation of impartial authorities similar to human rights commission or minority
commission will be a good option. Such authorities should be given powers to manage disasters.\textsuperscript{142}

4.3.3 Necessary to create the specialized agencies with adequate powers to manage disasters

1. National commission for disaster management
2. State commission for disaster management
3. District council for disaster management
4. Sub district forum for disaster management

The necessary changes in financial arrangements based on the recommendations of 11\textsuperscript{th} financial commission and the method of disaster related dispute settlement through creating the office. The study suggests changes in the management scheme of disasters. From preparedness to rehabilitation, the existing mechanism is not functioning efficiently. To incorporate afore mention suggestions the existing disaster management system needs to undergo major changes. One major step which is needed is the passing of disaster legislation. This will spell out legal standards, procedures, rights and duties, establishment of authorities for disaster management so as to institutionalize the disaster management system.

The role of law in disaster management concerned with the enforceable rights of disaster victim to rescue, relief, and rehabilitation. The existing government policies are not known to anyone, particularly the victims, till the disaster actually strikes. Even in its enforcement the attitude is one of the charities by the state and not entitled for victim.

\textsuperscript{142} Manual on Natural Disaster Management in India 2000. National Centre on Disaster Management, Indian Institute of Public Administration. P.31
4.3.4 Fundamental Right to rescue, relief and rehabilitation under constitution

The constitutional concern for social justice is to accord justice to all sections of society by providing facilities and opportunities to remove handicaps and disabilities from which the poor are suffering and to secure dignity of the person. The Indian constitution declares that India is a welfare state that is a state that promotes the general welfare of the people. After Maneka Gandhi’s case courts have explained the scope of ‘life’ and ‘personal liberty’ under Art 21. The Supreme Court also interpreted the words procedure established by law to include both the procedural and substantive legal requirements of fairness, justness and reasonableness. Art21 which guarantees the protection of life and personal liberty, are the important human rights. A collective reading of judgments will lead to logical conclusion that the right to rescue, relief and rehabilitation is a right guaranteed under Art21. Recently Gujarat High Court has taken such a view in B.J Diwan V State of Punjab (2001). 143

4.3.5 Obligation of the State under the Doctrine Parens Patriae

The concept of Parens Patriae is explained as the right of the sovereign and imposes a duty on the sovereign, in public interest, to protect persons under disability who have no rightful protector”. The doctrine is inherent power and authority of a legislature to provide protection to the person and property of persons and property non Sui jurist, such as minor, insane and incompetent persons. The doctrine ‘father of the country’ was applied originally to the king and is used to designate the state referring to the sovereign power of guardianship over persons under disability. The courts in India have applied this doctrine in several

143 AIR 2002,Guj 99
cases. Therefore state is obliged to render adequate relief and rehabilitation to victims of disasters.\textsuperscript{144}

4.3.6. Courts and rights of disaster victims

In B.J. Diwans case the Gujarat High Court rejected the government’s argument that the court does not have the jurisdiction to adjudicate upon the case which claims the enforcement of relief and rehabilitation. The court went on to hold that the right to relief and rehabilitation is a guaranteed right under Art21of the constitution and the state is duty bound to ensure the same.\textsuperscript{145}

4.4 ROLE OF LAW IN DISASTER MANAGEMENT

Supreme Court had intervened in a matter related to the allegation of death due to drought, famine and starvation in Orissa. The intervention of Bombay High Court in the after math of Lathur earthquake provided minimal relief. The Bombay High Court passed directions about temporary shelter, drinking water, sanitation facilities, health service, public distribution systems and compensation for the handicapped and dependents of the deceased in Lathur earthquake. The Delhi High Court also intervened and gave directions to the government in the wake of disaster management.

4.4.1 Need for Legislations

The state is responsible for rendering adequate support and assistance to the victims of disasters. This includes the obligation of the state to make necessary preparation and planning to face a disaster situation. Cumulatively this warrants the need for legislation. Legislation will ensure the visibility of governmental institutions, their objectives, powers and functions will place the disaster management exercise on a more firm foundation. Visibility of the institution will create a climate of confidence in minds of people and will streamline the

\textsuperscript{144} AIR 2002,Guj 99
\textsuperscript{145} Id
management of disasters. In addition, legislation allocates responsibilities in legal form, ensures uniformity of approach and provides for the protection of the people’s rights.\textsuperscript{146}

\textbf{4.4.2 Comparative study of legislations in select country}

Various countries have framed their respective disaster laws according to the constitutional, political, economic, sociological and geological needs and nature of the disasters they suffer. A comparative study of legislations in different countries will provide an in depth understanding of the issue, especially in respect to those situations that are similar to India. Their experiences will enrich the framing process of an Indian law on a similar pattern. For this purpose, the following legislations were studied.

1. State counter Disaster organization Act 1978
2. Emergency powers ordinance
3. Hurricane safety Act 1973
4. Disaster counter measures Act 1980
5. Disaster Management Act 1985
6. Disaster measures Act 1978

After studying these legislations, the following conclusions have been arrived at:

- All the major disaster management legislations establish specialized bodies to manage disasters.
- A special focus on pre disaster preparedness is necessary.
- All most all legislations mandate for evolving ‘Disaster Management Plans’.

\textsuperscript{146} Dr. V.K. Sethi, Disaster Management, ford books Publications, 2006, p.288
• Disaster management is treated as collective effort. As such the involvement
and participation of various bodies is ensured. At the same time the military,
police, fire fighters and civil defense departments are given a major role in the
management of disasters.

• Most status in disaster management ensure the active participation of NGO,
civil society, community, people etc, by including certain provisions.

• Expressly or implicitly all legislations connected the management of disasters
with development activities. They ensure a disaster management oriented
development culture.

• There were provisions in all legislations for making the necessary financial
assistance to disaster management activities.

• Penal provisions for respective legislations make noncompliance punishable.

• Provisions are provided for the periodic review of the disaster management
mechanisms, plans, etc.

• Rehabilitation and insurance are other aspects which find prominent place in
much legislation.¹⁴⁷

4.5 JUDICIAL APPROACH TOWARDS DISASTER MANAGEMENT

4.5.1 Constitutional mandate for Right to Rehabilitation.

The role of law in disaster management is prima facie concerned with the
enforceable right of disaster victim to rescue, relief and rehabilitation. The
constitutional concern for social justice to all sections of the society, by providing
facilities and opportunities to remove disabilities from which the poor are suffering
and to secure dignity of their person. The constitution declares that India is a
welfare state, which is that state promotes the general welfare of the people.

¹⁴⁷ Dr. V.K. Sethi, Disaster Management, Ford Book Publications, 2006, p.288
Especially after Maneka Gandhi case, Courts have expanded the scope of Life and Personal liberty under Art 21. The Supreme Court also interpreted the words procedure established by law to include both the procedural and substantive level requirements of fairness, justness and reasonableness. Art21,\textsuperscript{148} which guarantees the protection of life and personal liberty, is the repository of all important human rights. From this the Supreme Court has deducted an affirmative obligation on the part of the state to preserve and protect Human life. Right to life being the most important of all human rights implies the right to live without the deleterious invasion of pollution, environmental degradation and ecological imbalances.\textsuperscript{149}

A collective reading of judgments will lead to the logical conclusion that the right to rescue, relief and rehabilitation is a fundamental right guaranteed under Art21. The doctrine of parens patriae is the inherent power and authority of a legislature to provide protection to the person and property, non sui juries, such as minor, insane, incompetent persons. The doctrine ‘father of the country’ was applied originally to the king and is used to designate the state referring to the sovereign power of guardianship over persons under disability. The concept of this doctrine explained as the right of the sovereign imposes a duty, in the public interest to protect persons under disability who have no rightful protector. The courts in India have applied this doctrine in several cases. Therefore it is construed that under the doctrine the state is obliged to render adequate relief and rehabilitation to the victims of disaster. Dispute redress and protection of human rights need to be treated as an integral part of the disaster management exercise, after a disaster the enforceable right of the people to get the relief and rehabilitation needs to be recognized.\textsuperscript{150}

\textsuperscript{148} Art21 of Constitution of India. \quad \textsuperscript{p.41}
\textsuperscript{149} AIR1978 SC597 [2] “No person shall be deprived of his life or personal liberty except according to procedure established by law.”
\textsuperscript{150} B.J.Diwan vs. State of Gujarat (2001)
4.5.2 A Human rights approach to Disaster Management: International Legal Framework

The International strategy for Disaster Reduction (ISDR), guided by the internationally agreed Hyogo Framework for Action, aims a build the resilience of communities and nations through building capacities to use proven tools for reducing disaster risk. The Hyogo Framework for Action has three strategic goals in disaster management, which is integration of disaster risk reduction into sustainable development policies and planning, development and strengthening of institutional mechanisms and capacities to build resilience to hazards, systematic incorporation of risk reduction approaches into the implementation of emergency preparedness response and recovery programmes. The concept of human rights protection is widely acknowledged as a crucial element of humanitarian strategies at times of emergency and disaster situations, the longer term aspects linked to the promotion and definition of a human right based approach in disaster prevention and reduction is still limited.151

4.5.3 Rights based approach: A core of Disaster Management Law

In this scenario it is imperative integrate human rights and other international legal tools laying an exclusive value framework for establishing conditions that restore the dignity of the victims and protect their rights. A rights based approach is not an add on in later stages of disaster management, but should constitute the very core of management practices. This will enable response planners to address systematic injustices that contribute to continuing poverty and social unrest. Disaster management programmes need to be informed of the international legal standards pertaining to key aspects of disaster response including human rights, the rights of vulnerable groups such as women, children

151 "Hyogo Framework for Action 2005-2015: Building the resilience of nations and communities to disasters p.6
etc. While existing human rights obligations already require nation, states to take measures to mitigate the risks of natural or manmade disasters, it is important to recognize that failing to take feasible measures that would have prevented and mitigated the consequences of foreseeable disasters amounts to a violation of the right to life and therefore incurs the responsibility of the state under international law. These human rights standards play a critical role in empowering actual as well as potential survivors of natural disasters to demand necessary measures to prevent deaths by the state. For humanitarian agencies they highlight the relevance of the rights based approach to disaster management.\footnote{Unequal Impacts of Environmental Damage 1998. Human Development Report, UNDP, Oxford University Press.}

The World Conference on Natural Disaster Reduction was held at Yokohama in Japan in May, 1994 adopted the Yokohama Strategy for Safer World. Guidelines for Natural Disaster Prevention, preparedness and mitigation, as pointed out in the session by the UN, under secretary general for Humanitarian Affairs, Earthquake and cyclones will happen. There is nothing we can do about that, but we can be prepared for them when they do strike. Disaster reduction can take place at any point in the process which we call disaster.\footnote{Supra note 54} It can comprise prevention and preparedness, relief and development as well as measures to reduce the effects of such disasters. The outcome of the conference affirms that the impact of natural disasters in terms of human and economic losses has risen and society has become more vulnerable to such disasters over the past two decades. Earthquakes, volcanoes, landslides, tidal waves, droughts and other natural events had killed some million people and inflicted injury, displacement and misery on countless more. It was pointed out that environment protection as a component of sustainable development which is a feature of human rights of individuals is imperative in the prevention and mitigation of natural disasters.
The Hyogo Framework for Action, although not a binding international instrument, does affirm the duty of states to try to reduce the risk of disasters. In the modern days, a long sighted policy of the United Nations followed by the local government to manage the disaster at the expense of fund only can substantively reduce damage to the natural biodiversity of the globe. Global policy Forum founded in 1993 is an organization having a consultative status at the United Nations is seeking accountability of international organization such as the United Nations and strengthens International Law.\textsuperscript{154}

4.5 LAW COMMISSION, CALAMITY RELIEF AND NATIONAL HUMAN RIGHTS COMISSION

The idea of Human Rights is an old as the state itself. After Second World War the emergence of League of Nations and UNO thereafter, the world manifested its deep concern of Human Rights. The Paris principles of 1991, Vienna Declaration and Programme of Action and UN general assembly of 1993, all endorsed the need of independent, accountable and accessible NHRIs.\textsuperscript{155}

With in home also government of India was facing severe criticisms for alleged violations of Human Rights in Jammu and Kashmir, Punjab and for alleged Violations of internal and international pressure it became obligatory for Indian Government to constitute a specialized agency to deal with the issue of protection and promotion of human rights. President of India promulgated an ordinance on 28\textsuperscript{th} Sep 1993 which after some amendments became the act and NHRC was constituted under this Act on 12\textsuperscript{th} Oct 1993.\textsuperscript{156}

Human rights are not abstract or ideal concept but it is very much a pragmatic concept about those rights which are considered to be obviously

\textsuperscript{154} Supra note51  
\textsuperscript{155} Experience, Journal of the National Human Rights Commission, India,Vol.4,2005, p.62  
\textsuperscript{156} Id p.62
essentials for the survival dignified life and development of all human beings. In fact state was created for the sake of maintenance of rights of man that are endowed to him by the nature. Different scholars and philosophers have assigned different duties to the state. For ex: kouilya and Arthashastra as advised that the protection of the life, property and dignity of citizens is the prime duty of the king.157

According to Locke state existed only to protect natural rights of individuals that is right to life, property and liberty. Besides them Rousseau, Montesquieu, Kant, Thomas, Mill, Bentham, Kari Marx and John Rawls have been the protagonists of the rights that a state has to protect and maintain. To Harold J Laski a state known by the rights it maintains. According to him the very purpose of the existence of state is to recognize and protect the rights of individuals.

Thus it can be concluding that man created state for the Protection and manifests that any system if not able to protect the rights of the citizens, was rejected and changed. In modern times Human Rights have become a movement. International organization governments and non governmental agencies have continuously been exploring the dynamics of human rights and have been working to evolve such mechanisms which could safeguard the rights of human beings.158

4.6.1 Constitution of NHRC

Because of Internal and International pressure government of India introduced the human rights commission bill in the Loksabha on 14th May, 1992 on 28th sep 1993 president of India promulgated an ordinance namely protection of Human rights ordinance. This ordinance was replaced by the protection of human rights Act 1993 which was passed by both the houses of Parliament.

158 Id p 78
Finally, the National Human Rights Commission (NHRC) was constituted under this act on 12th, Oct, 1993. This act drew its inspiration mostly from international covenants like the international covenants on the civil and political rights and the International covenant on the economic, social and cultural rights adopted by the general assembly of the United Nations on the 16th Dec, 1966. Even defining human rights the act has mentioned above this covenants frequently.159

4.6.2 Independent status of National Human Rights Commission

Protection of human rights act 1993 provides the commission functional autonomy as enshrined in Paris Principles. Composition of the commission, qualifications of the members and method of appointment of the members as the enshrined in the act are that ensures an independent functioning of the commission. For ex: selection committee to appoint the members the commission consists of,

- Prime Minister of India
- Speaker of Lok Sabha
- Minister and Ministry of Home Affairs Government Of India
- Leader of Opposition in Lok Sabha
- Leader of Opposition in Rajya Sabha and
- Deputy Chairman of the Council of States.

The very composition of the selection committee shows that the members of the commission must have the confidence of not only the ruling party but also the opposition. Also the presence of speaker of Lok Sabha Deputy Chair person of Rajya sabha ensures the support of legislature to these members. In addition to this, presence of three members from Judiciary also provides further legitimacy and

independence to the commission. Security of the tenure of the members, removal of the members by the president of the India on the ground of proved miss conduct or incapacity and budget of the commission which is passed by the parliament [sec 32 (1) and (2)] are certain other features of the act to provide independence to the commission.\textsuperscript{160}

4.6.3 Functions of the Commissions

The commission performs following functions (sec 12 of the Act),

- Inquires, Sue – Moto or on a petition presented to it by a victim or any person
- On his behalf, on the violation of human rights or abetment thereof and
- On his behalf, on the violation of human right or abetment thereof and
- negligence by a public servant in the prevention of such violation,
- intervenes in any proceeding involving any allegation of violation of human\textsuperscript{161}
- rights pending before a court with the approval of such court;
- visits, under intimation to the state government, where persons are
- detained or log for purposes of treatment, reformation or protection to study
- the living conditions of the inmates and make recommendations thereon;
- reviews the safeguards provided by are under the constitution or any law for
- the time being in force for the protection of human rights
- reviews the factors including acts of terrorism that inhabit the enjoyment of
- human rights and recommended appropriate remedial measures

\textsuperscript{160} Id p.45
\textsuperscript{161} Sec12 Human Rights Act 1993
• studies treaties and other international instruments on human rights and make recommendations for their effective implementations;

• spreads human rights literacy among various sections of society and

• promotes awareness of the safeguards available for the protection of these rights

• through publications media seminars and other available means;

• encourages the efforts of non-governmental organizations and institutions

• working in the field of human rights,

• Such other functions as it may consider necessary for the protection of human rights.

4.6.4 UN Human Rights Council (HRC)

The HRC – 2006 monitors the implementations of Human Rights through Universal Periodic Reviews. These are four-yearly self-assessments by every country on the fulfillment of its overall obligations. Periodic National reports are also submitted for each core international human rights treaty. Together with information from other sources, these are scrutinized by committees of experts, known as Human Rights treaty bodies, whose findings are made public.

The HRC also engages independent experts, known as a Special Reporters or special representatives to investigate specific topics or countries. Known as special procedures, there are currently 45 of these assignments in place. Each of these UN enforcement mechanisms is supported administratively by the office of the UN High Commissioner for Human Rights. The HRC has no powers of enforcement, its influence lying more in disclosure of its forensic work. Global action against an individual country can be authorized only by the UN Security Council. Bilateral and regional responses are more common place.
The Universal declaration itself bears some responsibility for the shortcomings of human rights as the driver for social progress. It acknowledged that social and economic rights are dependent on the resources of each state, implying that these rights in poorer countries might be achieved only by progressive realization over time. The 1993 world conference on Human Rights attempted to consign progressive realization to history.

These governments would not attempt to deny their obligations under International Human Rights Laws. But they feel threatened that the association of rights with sustainable development may undermine the ease with which it has been possible to walk away from promises of aid and other support for poor countries.

The controversial relationship between rights and development will come to a head at the UN conference on sustainable development, known as RIO+20. The UN human rights establishment has launched a concerted fight back, appealing to governments to respect the universality of their obligations to human rights in the drafting of the agreement.162

4.7 LAW COMMISSION OF INDIA

It is an executive body established by an order of the government of India. Its major function is to work for legal reform. Its membership primarily comprises legal experts, who are entrusted a mandate by the government. The commission is established for a fixed tenure and works as an advisory body to ministry of Law and Justice.

The first Law Commission was established during the British regime in 1835 by the Charter Act of 1883. The origin of first Law commission of India lies in the diverse and often conflicting laws prevailing in the local regions and those

162 Available at http://habitat.igc.org/agenda21/rio-dec.htm visited on 03.11.2012, at 04.05 p.m
administered by the East India Company, which was granted royal charters and also conferred powers by various Indian rulers to administer and oversee the conduct of the inhabitants in the local areas where the company exercised control. During this period of administration by the company, two sets of laws operated in the areas, one which applied to and in relation to British citizens and the second which applied to the local inhabitants and aliens. This was considered as a major stumbling block for proper administration by the British Government during the times which is now known as the British Raj. In order to improve the law and order situation and also to ensure uniformity of legal administration, various options for looked for. Until then the British government had been passing various enactments to deal with particular situations. However it was for the first time in 1833 that the idea to establish a law commission for a comprehensive examination of the existing legal system prevailing in the British administered areas was instituted.\footnote{Available at "Early beginnings", lawcommissionofindia.nic.in. visited on 21.02 2013, at 03.45p.m}

4.7.1 Role of Law Commission in Legal Reform in India

Law Commission of India, though an ad hoc body, has been a key instrumentality in the process of law reform in India. Its role has not only been advisory but also critical of the government policies and has been recognized by the Supreme Court of India and also the academia as pioneering and prospective. In a number of decisions the Supreme Court has referred to the work done by the Law Commission is generally a retired judge of the Supreme Court has only helped the prominence of the Commission.

The Commission reviews judicial administration to ensure that it is responsive so that delays are eliminated, arrears are cleared and disposal of cases is quick and fair. The Commission seeks to simplify procedure to curb delays and improve standards of justice. It also strives to promote an accountable and citizen-
friendly government which is transparent and ensures the people’s right to information.

There is no binding value of the recommendations of the Commission, for “they are recommendations. They may be accepted or rejected. Action on the said recommendations depends on the ministries/departments, which are concerned which the subject matter of the recommendations.” This has resulted in a number of important and critical recommendations not being implemented. However the Commission has continued to work upon its assigned tasks.

The power vested in the Commission to suo moto take up matters for discussion and submit recommendations has also worked well to the advantage of the legal system in the country. The history of the Commission is replete with such recommendations which have been made in the wake of the hour and where the law has needed change. Further, the Commission has been often returned to review its earlier reports in the wake of changed scenarios and the aptness of law in such situations. Euthanasia and related issues, in particular, has been one such area where the Commission has been relook the situation at least three times, with the latest being its 196th report on the topic. Besides the Law Ministry, the Commission has also been requested to work upon specific issues and submit its views by the Supreme Court on various occasions. The latest in regard has been the 205th Report of the Commission which has been prepared in view of the Supreme Court’s request for assistance in determination of “certain legal issues relating to child marriage, and the different ages at which a person is defined as a child in different laws.” The Report stirred a public debate in India for recommending inter alia, a reduction in marriage age of boys to be at par with girls at 18, instead of the long continuing 21 and respectively.

With its entire past and present works being continuously provided on the internet, the Commission has also provided a firm assistance to legal research in the
country. The fact that a number of its reports have been taken receptively by the various Ministries and have been worked upon to change the legal scenario is itself an indicator sufficient enough of the role of the Commission in furtherance of law reform in India.\textsuperscript{164}

4.8 INSURANCE POLICY AGAINST NATURAL DISASTERS

4.8.1 How you can insure against natural disasters

The World Bank has estimated the damage from Japan’s earthquake and tsunami to be around $235 billion and says that it could take the country five years to rebuild itself. The degree of devastation in Japan has left other nations in shock. India too has had experiences of earthquake, tsunami and floods, but there is still limited awareness about the need for catastrophe insurance. For those of us who have been watching the television footage of the massive wreckage of homes, property, vehicles and assets wrought by Japan’s twin calamities, one question that comes to mind is – How can I protect my assets from natural disasters?.

The answer – ‘through insurance’ – is not as straightforward as it seems. General insurers as a rule do not offer blanket policies that cover all risks. Through the risk of damage of a house and its contents following flood, earthquake, tsunami, and fire as also terrorist activities are insurable risk, specific policies may choose to exclude it.

So, before buying a policy do check if it covers the specific risks you are looking to insure against one general exclusion, however, is destruction (to life/property) caused by radioactive, toxic and nuclear explosives. Here, we take a comprehensive look at the common features you ought to look out for while buying

\textsuperscript{164} Available at “Law Commissions of India”. lawcommissionofindia.nic.in. visited on 12.07,2013, at 04.50 p.m
insurance, to financially protect the future of your assets (or your dependants) from natural disasters.  

4.8.2 Protecting property

A home insurance policy, offered by general insurers such as HDFC, Future General India, ICICI Lombard General Insurance, secures the structure and contents of a building used for residential purposes. It covers risks that follow fire, earthquake, flood, storms and landslide (a cover for earthquake and flood automatically includes risk from a tsunami).

Terrorism cover is usually an ‘add-on feature’ for a little extra premium. However, damages due to a war in the country or damage due to radioactive toxics are excluded from the ambit of such policies. General insurance policies are normally issued for a year and have to be renewed at the end of every year. So, if the construction cost of the building rises, you need to get the sum insured revised cautions Mr. K.G. Krishnamurthy Rao, MD & CEO, Future General India.

Premium rates are almost standardized in a home insurance policy (high risk zones from a seismic or flood point of view do not require significantly higher premium payments). The premium will, however, depend on the average rate is Rs 70-100 per lakh currently. But remember, if you buy the flood cover in a rainy season, you may be charged some premium.

The bottom-line of an insurance policy is to cover unforeseen risks, so, you can’t rush to insure after a flood warning has already been issued! What is the sum you are likely to receive if your house is damaged by a disaster? The sum insured for the structure of the house is based on the ‘reinstatement value’, says Mr Karan Chopra, Head- Retail business, HDFC, ERGO General Insurance. Reinstatement value is the reconstruction cost of the building i.e. the construction cost of the


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building in that specific locality multiplied by the built-up area of the house. The contents of the house are insured based on their market value. Market value is the price of replacing each asset with a deduction for depreciation charge on the old product.

4.8.3 Protecting life

When a family loses its key earning member through death or disability that could throw the entire family into crisis, especially when there is no external financial support. A term policy is a pure risk cover product that supports a family that has lost its key income-earning members by providing a lump sum amount. Death, be it following any reason (there is a waiting period of few years for claim on suicidal death) is covered under term policies. The premium for pure term covers is usually nominal as no maturity benefits are attached. With term policies now available online, term insurance policy premium rates have come down even further.

Someone who wants to save on the premium outgo for a life policy, however, can take an accelerated rider for accident cover, says Mr Yateesh Srivastava, Chief Marketing Officer, AEGON Religare Life Insurance, where the total sum assured on the policy reduces. Suppose a term policy has a sum assured of Rs 5 lakh and allows an accident rider for Rs 3 lakh. If one opts for an accelerated rider here, the total sum assured on the policy will only be Rs 5 lakh. For a claim on the rider at any time Rs 3 lakh will be paid, but from that point, only the remaining amount of Rs 2 lakh will be paid as death as death benefit.¹⁶⁶

There are bouquets of products from different insurers, both to cover life and personal accidents. Risks covered and benefits offered increase with the premium (there are policies that give twice the sum assured on an accident cover if the claim follows accident on mass transport). While supplemental disaster coverage is usually

available to at-risk property owners, buying a policy isn’t always a no-brainer. The high premiums and deductibles, and low chance of a disaster actually striking your home, give reason for pause. Before calling your agent consider your risk-tolerance, and conduct your own personal cost-benefit analysis.

4.8.4 Disaster response

India is a disaster prone country. During the past two decades, India has witnessed several natural disasters. The geographical location, land characteristics, multiplicity of rivers and monsoon climate render India exposed to different kinds of natural hazards. It is ranked 11th position in the disaster index as a country facing multiple natural hazards. Out of the 35 states and union territories, as many as 27 are disaster prone states. Nearly 59% of India’s land area is prone to earthquakes of moderate to high hazard. 12% of the land is flood prone and 8% is high cyclone prone areas. The long coastline is exposed to Tsunami, tidal waves and storm surges. 2% of the lands are landslide prone areas. Drought affects nearly as much as 68% of India’s land areas. Climate change poses a new threat and increases risk and vulnerability of communities. Although the magnitude of these changes may not be seen openly or their indicators may not be significant they could substantially increase the frequency and intensity of existing climatic events such as floods, droughts, cyclones etc.¹⁶⁷

4.8.5 Impact on Shelter

The occurrence and gravity of natural disaster and complex emergencies are increasing and thereby causing adverse impact on the shelter, likelihood and human lives lost etc. Disasters destroy decades of human efforts and investments there by placing new demands on society for rehabilitation and reconstruction. Disasters affect the rich and the poor alike, but, the impact of the disaster is more on the poor

¹⁶⁷Vinod K. Sharma, Disaster Management ( New Delhi: national centre for Disaster Management, IIPA, 2000) , p.79
as they struggle to recover from the loss and need absolute support to start a new lease of life. When the shelter is destroyed people are displaced from their homes and eventually their livelihood is also affected.

4.8.6 HFH India’s response to Disaster

Habitat for Humanity is recognized as a leader in provision of safe housing and shelter assistance to those lacking the resources to obtain adequate housing on their own. Habitat, because of its skill, experience and reputation, is a position where it can make a significant contribution in pre and post-disaster situations. Habitat for Humanity through its Disaster Response initiatives can assist communities and families in building their capacities to reduce their vulnerabilities to minimize the impact of hazards and provide housing solutions to help families to construct disaster-resilient houses. Disaster Response is an integral part of the Mission of Habitat and will respond whenever and wherever disaster strikes.

4.8.7 Disaster Resilience Communities and Construction Practices through Disaster Risk Reduction Initiatives:

HFH India community based disaster risk reduction and mitigation initiatives will assist communities to gain knowledge and identify their resources and develop an active Disaster Response and risk reduction plan for their community members. General awareness will be created on disaster resilience construction practices – promoting safe houses.

4.8.8 National Flood Insurance Program, USA

United States has comprehensive flood insurance program called national Flood Insurance Program. The program was created in 1968 to make federal backed flood insurance scheme available to individual households. Flood insurance was then virtually unavailable from the private insurance industry. Some of the key features of the program are:
• It is a voluntary scheme and mandatory only if home loan is taken from federally regulated lending institutions.

• There is a waiting period of 30 days.

• It is compulsory for all those who receive disaster assistance to buy insurance from next time to be eligible to get financial assistance.

• Coverage is available for both structures and contents. Available to business, home owners and tenants.

• Insurance is available only to those structures which adhere to the norms set up by the government.

• Insurance is not available in some designated areas so as to discourage development in those areas. For example, in some of the Coastal Barrier resource systems areas the scheme is not available.

• It covers all types of floods including floods causes by hurricanes and landslides.

• Differential premiums are charged based on the zone. The Flood Insurance rate maps are used to create risk zones and these are updated at least once in five years.

• The average flood insurance policy costs a little more than $400 a year for a cover of about $100,000. (0.4% of the sum insured)

• The risk is entirely borne by the government and sold through the insurance companies who also settle claims.

The above diagram depicts the structure of the Japanese insurance system. Some of the key features of the earthquake insurance system are-

• The coverage for policies is limited to residential building and movables for living.
The risks covered are losses to object insured due to fire, destruction, burial or flood directly or indirectly caused by earthquake, tsunami or volcanic eruption.

The claims are paid on an indemnity basis. Three kinds of losses are considered-total, half and partial.

4.9 SUSTAINABLE DEVELOPMENT, ROLE OF NGOs PROFESSIONAL SOCIETIES

Non-Governmental Organizations and Private Voluntary Organizations (PVOs) are by definition non-profit making organizations. Some are religious, others secular, some are national, others of foreign origin. However, they all have one thing in common—their aim—alleviation of human sufferings and development. It must be borne in mind that NGOs/PVOs do not mean either large private foundations or private firms, which are in search of profit, though they too are clearly both private and non-governmental organizations. NGOs and PVOs mobilize the enthusiasm and commitment of volunteers for disaster mitigation on one hand and for developmental activities on the other.\(^\text{168}\)

Natural disaster such as famine, earthquake, drought and floods and man-made disasters such as riots and fires, move them into action. They also swing into action through educational efforts to draw the attention of the public to the crying needs of the society such as arresting population explosion, disaster preparedness, environmental protection etc. these organizations are, however, best known for their relief and rescue activities. As against this, it is observed that the government finds it very difficult to manage and mitigate disasters; as it tends to take upon itself many responsibilities that could have been better left to agencies like NGOs and PVOs, who could handle the job. In addition to NGOs, which can be treated as an organized

sector, there is an unorganized sector of the local level individual experts that could also help in the cause of disaster management and sustainable development.

Any government, however well-equipped it might be, cannot all alone handle the problems of disaster management and economic development. Its efforts have to be supplemented by social, educational, professional and voluntary organizations, which possess tremendous potential and therefore can help in large scale people’s involvement. Exploitation of full potential of these organizations has, however, remained untapped so far, mainly on account of lack of coordination and inspiration. Role of civil society and professional societies have gained paramount importance in the present decade.

4.9.1 History of voluntary efforts in India

Origin of voluntary efforts in India, as elsewhere, can be traced back to social service with its antecedents in charity and, therefore, has close links with social reform and missionary activity aimed at spreading enlightenment and alleviating sufferings. In the earlier era, education, medical care and concern for the physically and socially disabled people were among the preferred fields of service.

With the passage of time, the emphasis shifted from individual suffering to community suffering, though the accent continued to be on welfare with moral responsibility as the driving force. Even the Government of India’s first essay in community development was oriented to welfare rather than to development. The activities and anxieties of voluntary agencies turned to relief measures during two successive drought years in India in the mid-sixties. Flood, famine and cyclone relief programmes had been undertaken even earlier too, but nothing was as large and sustained as effort mounted to fight the famine in Bihar and elsewhere. This was also a landmark in the scale of foreign funding, entry of foreign NGOs and other forms of international support. Contributions in the form of food grains, milk-powder, clothes,
medical supplies, drilling rigs, etc., started pouring in large quantities. Eventually, the Government decided to channelize these donations through an official “Freedom from Hunger” campaign office in the Ministry of Food and Agriculture. This later on became the “People’s Action for Development in India (PADI) an official agency with non official representation, for allocating the rupee counterpart of foreign donations in kind – food grain and other food supplies, to Indian field agencies on the basis of approved programme”.

During the British period such activities were discussed and sponsored through clubs, as a legacy of which even today we see Lions Club and Rotary International pursuing such activities. These Clubs, where the government officers and well to do people in the society, met in the evening, provided a forum for discussion for the ills of the society and what could be done to remove them. Several schemes were taken up as a follow up on these discussions both by the government departments and by the voluntary organizations through contribution. Side by side with these clubs, came up, professional societies like the Institution of Engineers, Indian Medical Association, etc., whose aims are limited to bringing together the people belonging to the particular profession and to arrange discussions about developments related to their profession.

4.9.2 Classifications of NGOs

NGOs can, be broadly classified as under:

a) Educational institutions

b) Multi-disciplinary societies

c) Professional societies

d) Micro-specialized societies

169 Singh R.B, Disaster Management in India, Rawath Publishers 2000  p.43
4.9.3 Commitment to Sustainability

Sustainable development should be regarded as a fundamental component of social responsibility, sound business practice and natural resource management. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Sustainable development requires the integration of the three components – economic development, social development and environmental protection – as interdependent, mutually reinforcing pillars. Eradicating poverty, changing unsustainable patterns of production and consumption, protecting and managing the natural resource base underpinning economic and social development are overarching objectives of, and essential requirements for sustainable development. Sustainable development is the collective responsibility of government, business, civil society, consumers and individuals. It is committed to working cooperatively with these sectors in achieving sustainable outcomes. We should care for the values of eco-efficiency and a precautionary approach to environmental management.¹⁷¹

We should support the opportunities to create more value with less environmental impact through the concept of eco-efficiency. Eco-efficiency is founded on the idea that becoming more efficient makes good business sense and is concerned with three broad objectives:

- Reducing the consumption of resources
- Reducing the impact on nature
- Increasing product or service value

¹⁷¹ Supra note 123
4.10 CONCLUSION

As we discuss earlier thousands of youngsters with high qualification with professional knowledge working in the NGO’s and other institutions and organizations should involve in disaster management plans and policy making. Qualification and experience should be fix for the authorities for the better management.

We must remember that India has to support more than 1/6\textsuperscript{th} of the world’s population and 1/6\textsuperscript{th} world’s cattle, on just 1/50\textsuperscript{th} of global land; with meager 1/25\textsuperscript{th} of the world’s water resources. In India, 80% of all diseases and over 1/3\textsuperscript{rd} of deaths are caused due to contaminated water. World Bank has estimated that water pollution accounts for about 60% of the major annual environmental costs in India.

Some non-credible NGOs and self styled non-professional environmentalists leave no stone unturned to oppose almost each water storage dam, hide plant and continue fighting tooth and nail against vitally needed inter-linking of rivers projects, perhaps through foreign funding and to garner awards, fame and monopoly even though they are totally ignorant of even basic facts and intricate ‘dose response functions’ of complicated environmental processes and techniques of water resources and hydro power development, since they have no scientific or technical background.

We should promote greater consideration of environmental, social and economic aspects in the sustainability assessment of new infrastructural projects and the management and operation of existing schemes. Through sustainability assessments should ensure that detrimental social and environmental impacts are avoided, mitigated or compensated and positive outcomes are maximized. Of necessity, the principles are generic since each particular development project will have its own unique set of circumstances influenced by scale, geographic location, social, legal and political constraints.