Chapter-1

INTRODUCTION

1.1 Statement of Problem

World media headlines abound with tragic stories of floods, drought, earthquake, bush fires and other natural disasters. We also read about technological disasters such as lethal leakages of chemicals from factories, toxic wastes in rivers and oceans, and excessive pollutants in the air.¹ As we look back on the years gone by, we can see a clear continuation of disaster trends. Climate-related disasters continued to wreak havoc on vulnerable communities, and the frequency and intensity of small- and medium-scale disasters showed no signs of abating.

While an extensive body of law has developed since the 1860s to regulate military conduct in war and provide for humanitarian assistance to its victims, remarkably we entered the 21st century with no similar body of law to help alleviate the effects of natural and technological disasters. True, there have been advances in recent decades in treaties related to environmental threats and some litigation has established that victims of such disasters may seek compensation. But outside of a narrow range of more technological or directly human enhanced disasters, there has been limited legal progress. Elements of law that aid our humanitarian response exist in other treaties – on civil aviation, customs regulations and ground

transportation. There are legal authorities specific to disaster relief, such as the Tampere Convention\textsuperscript{2} covering the use of radio communications in disasters.

There are United Nations (UN) resolutions and there is, of course, customary law. But these are all at the periphery of the issue. At the core is a yawning gap. There is no definitive, broadly accepted source of international law which spells out legal standards, procedures, rights and duties pertaining to disaster response and assistance. No systematic attempt has been made to pull together the disparate threads of existing law, to formalize customary law or to expand and develop the law in new ways.

Without a body of International Disaster Response Law (IDRL), there are no internationally agreed standards for donor and beneficiary government action, and no predictable mechanisms to facilitate effective response in times of natural or technological disaster. While an occasional newsworthy disaster may be flooded with relief, others go unreported and receive inadequate response, whether from the international community or from the affected state. In either situation, objective standards to measure humanitarian needs and action are lacking. Anecdotal pressure to respond should give way to systematic, swift and effective assistance to disaster victims anywhere in the world. In the absence of commonly agreed standards, the disaster victim is at the mercy of the vagaries of humanitarian response, political calculation, indifference or ignorance.

\textsuperscript{2} Convention on the Prevention of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, which is commonly called as the Tampere Telecommunication Convention.
The researcher in the present study reviews the potential development of international disaster response law against the backdrop of its nearest existing relative International Humanitarian Law (IHL). It does not seek to cover all potentially relevant law particularly that which is rapidly developing in the environmental field, but it does seek to provide a solid platform for future discussion and debate, a platform firmly based upon the needs of disaster victims.

Disaster response is still too often hampered by procedural confusion, and by policies that do not facilitate effective deployment of humanitarian personnel, equipment and supplies. In the wake of destruction dealt by earthquakes and floods, or contamination from a technological accident, bureaucratic obstacles can loom large as a multiplier of suffering. There are no universal rules that facilitate secure, effective international assistance, and many relief efforts have been hampered as a result. The role of international organizations such as International Federation of Red Cross and Red Crescent Societies (IFRC) and Non-Government Organizations (NGO) are very limited in terms of response towards the natural disasters.

Laws requiring and guiding swift and constructive cross-border relief could have saved lives. But law is never a panacea. No one benefits from rules unenforced and unimplemented as exemplified by the occasional unwillingness of States to facilitate customs waivers for relief goods destined for afflicted populations; or instances where mariners have failed to honor rules requiring rescue of shipwrecked passengers and sailors at sea. However, one cannot press for better compliance with rules before they even exist.
At the international level, there is no overreaching legal framework for disasters comparable to IHL which governs situations of armed conflict. There are a number of relevant instruments, including some multilateral treaties, a multitude of bilateral agreements between states (as well as between States and international organizations), and an important number of resolutions, declarations, guidelines, and models issued by various authoritative bodies. However, the effectiveness of this body of international law, increasingly known as “International Disaster Response Laws, Rules and Principles” or “IDRL”, is hampered by its dispersed nature; the lack of awareness and implementation of relevant instruments among the key stakeholders; and important gaps in its scope and coverage. The gaps are particularly evident in the areas of quality and accountability, which benefit mainly from “soft-law” regimes emphasizing voluntary compliance.

In addition, much attention has been devoted recently to the United Nations “humanitarian reform” and, in particular, to the development of coordination “clusters” for international humanitarian relief. This important initiative is designed to improve coordination and accountability among international humanitarian actors. However, these reform efforts have thus far remained mainly horizontal addressing relationships between international actors rather than the interaction between international actors and affected State governments and domestic civil society. Improving the implementation and effectiveness of disaster laws and regulation in order to better manage the vertical relationship between international and domestic actors should be seen as an important next step along the path to more effective relief collaboration at all levels. In order to start addressing these issues, the International Federation has been leading a process of formal consultations that has resulted in the development a set of draft Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and
Initial Recovery Assistance which has been presented to the 30th International Conference of the Red Cross and Red Crescent for adoption. Adoption and use of these draft Guidelines is the main recommendation of this study.

The effectiveness of legal, regulatory and normative frameworks that govern international disaster response at the international level also includes analyzing the coverage and implementation of existing “hard law” and “soft law” instruments. At the national level, it includes the examination of how successfully applicable legal and institutional regimes have facilitated and regulated international relief and recovery efforts in recent operations.

To implement such actions effectively, legislation is necessary. A legal framework establishes legal authority for programs and organizations that relate to hazards, risk, and risk management. These laws may dictate, or encourage policies, practices, processes and the assignment of authorities and responsibilities to individuals or institutions, and the creation of institutions or mechanisms for coordination or collaborative action among institutions, asserts that without a comprehensive and binding legal directive that obliges actors and agencies to take action, the natural inertia of bureaucracies means that non-specified essential tasks are unlikely to be undertaken. Law can be used to provide penalties and incentives by enforcing standards, to empower existing agencies or establish new bodies with new responsibilities, and to assign budget lines. In short, legislation enables and

---

3 J.C.Pant, “Adress on Disaster Management – A National Perspective” Chairman, High Powered Committee or Preparation of Disaster Management Plans.

4 Id.,

promotes sustainable engagement, helps to avoid disjuncted action at various levels and provides recourse for society when things go wrong.

1.2 Scope of the Study

The scope of the present study is limited to understanding of the phenomena of natural disasters, its management and also the legal framework of disasters at the national and international level. The endeavor has been to analyze the International legal regime of natural disasters, the management which includes disaster prevention, mitigation, preparedness and response. Since the concept of natural disaster is vast, the present study is limited only to the doctrinal research of the concept, the role of institutions, legal framework, international response which deals with International Conventions, treaties and agreements and also study regarding the management of natural disasters is restricted only to India included within it is the study of role played by various NGOs played in India.

The legal scope is limited in several respects. First, it examines regulatory issues related to international disaster response in respect of International Federation of Red cross and Red Crescent Societies. Second, it looks mainly at rules principles set by United Nations for relief and recovery rather than risk reduction. The mission of these topics is not a reflection of their importance. Indeed, progress in these areas is rightly considered a priority for the international disaster response law, with hopes of minimizing the need for international disaster assistance. Nevertheless, international assistance will, in all likelihood, remain a necessity in many situations and its associated legal issues have received comparatively little attention.
Third, with a few minor exceptions, this study also addresses the role of Non Government Organizations in terms of managing, mitigating and preparedness for disasters. However, a depth study is required beyond the scope of these introductory aspects and there is little prior research from which to draw conclusions in this area.

1.3 Objectives of the Study

Natural Disasters are becoming an increasingly regular phenomena the world over, affecting and impacting different nations and their people. Human efforts along with legal frameworks in the management of natural disasters increasingly occupy an important role in mitigating the human sufferings due to natural disasters. In this endeavour it is of crucial importance to analyze the International legal regime and to explore the coordination of various organizations and human agencies in natural disasters management. This being the general objective of the present research work, the researcher however is led by the following specific objectives for the present study:

i. To study and understand the concept of Natural Disasters and its Management

ii. To analyze the scope of International Legal Framework on natural disasters management.

iii. To study the United Nations Conventions pertaining to natural disaster management.
iv. To trace the origin of disaster management through the International Humanitarian Law rules and practices.

v. To study the structure, functioning and guidelines of United Nations Strategy for Disaster Reduction (UNSDR).

vi. To study the powers and authorities given to Institutions and Organizations in Preventing and Mitigating Natural Disasters with reference to India.

vii. To study the role of Non Governmental Organizations in the Management of Disasters in India.

viii. To draw conclusions based on the study through various reports and to suggest some measures to address core concerns that are identified in the research study towards better management of natural disasters.

1.4 Relevance and utility of the study

At the outset it may be stated that the present research study has practical significance and relevance. As entire world is stunned with the effect of disasters, there is an urgent need of understanding disasters legally in order to establish a legal policy which can govern the natural disasters and can reduce its effect. It is important to study about wide range of law to regulate or guide international humanitarian action in the wake of natural and other disasters, although a modest number of rules and guidelines have developed over time. We thus have an
imbalance, with significant humanitarian response capacity on one side and sparse legal authority, guidance or standards on the other. Since the study also analyses the roles and responsibilities among agencies and the various levels of government and non-government organizations, it would establish proper funding and accountability mechanisms and also to regulate private behavior that might increase disaster risks. Cooperation between humanitarian agencies is essential in creating a body of common standards for disaster response, as there is a need to move towards an international disaster response law which requires cooperation between states as well. The study also helps in understanding the relevancy of international legislations and policies and also will help in finding out the lacunaes of existing laws and policies.

1.5 Working Hypothesis

A hypothesis helps the researcher to start the study in the right direction without wandering into unnecessary areas which are irrelevant for the purpose of the study. In this regard a good hypothesis acts as light house to prevent the researcher from straying away from the selected aims and objectives of the study. The researcher for the purpose of the present research has formulated the following hypothesis.

1. There is a considerable global concern over natural disaster management which is governing through various rules and policies.

2. At the international level there is a need to balance the various institutional mechanisms for management of natural disasters.
3. The historical origins of natural disaster response may be traced to the ancient rules and practices of the International Humanitarian Law.

4. The Convention and Resolutions of UN have some glimpses of Natural Disasters Management which are not adequate to meet the challenges of management of natural disasters.

5. The International Federation of Red Cross and Red Crescent Societies have adopted a number of resolutions relevant to International disaster relief.

6. The Disaster Management Act, 2005 marks the beginning of a new approach towards the disaster management in India with a conviction that development cannot be sustainable unless disaster mitigation is built into the development process.

7. Though there are many authorities, institutions, organizations, at both international and national level, yet there are no adequate legal provisions to coordinate the role of these authorities, institutions, organizations for the management of natural disasters in India.

8. The role of Non-Government Organizations in managing Natural Disasters is very limited in India.
1.6 Research Methodology

The methodology adopted by the researcher in the present study is purely doctrinal in nature. The research is explorative, analytical and critical in nature. The researcher has collected the literature by relying upon various sources, both primary and secondary, available in books of comparative nature and various journals on the topic of research. In this regard during the period of collection of materials the researcher visited library and information centers at various places including ILI library, New Delhi, NLSUI library, Bangalore, Library, Department of Environmental Studies, Bangalore University, Bangalore and University Law College, Bangalore University, Bangalore. Further, in order to get the latest relevant information the World Wide Web source has been extensively relied upon. The present study is only illustrative and not exhaustive. It critically analyze the legal implications and international legal framework for the study of management of natural disaster and also to prevent, mitigate the disasters which also includes national and international responses for disasters. A critical review has to be done for the legal framework applicable to International Disaster Response with the conventions of United Nations in Disasters Response and also the role of NGOs in the management of Natural Disasters.

1.7 Review of Literature

Though natural disasters are a pompous issue around the world, when it comes to the legal implications or legal framework to govern the natural disasters, there is not enough literature available on the topic of research. However, a few books, articles and some reports available on the subject are here in reviewed:
1. A book titled “Law and Legal Issues in International Disaster Response: a desk study” consists of the issues relating to international disaster response and the international legal framework of International disaster. The desk study compiles the findings of the International Federation of Red Cross and Red Crescent’s research about existing legal frameworks and regulatory problems in international disaster response and there are some discussions in a series of formal regional forums including high level representatives of governments such as, National Red Cross and Red Crescent Societies, UN agencies, NGOs and other organizations which has considered Natural disaster has a core issue.

2. The report on World Disaster titled “Focus on early warning; early action” focuses on two key issues, disaster risk reduction: early warning and early action.

3. A book released by IFRC titled “International disaster response laws, principles and practice: reflections, prospects and challenges”, provides and also examines the key international treaties related to International Disaster response to identify the scope of the law, as well as any patterns in their rules including commonalities, differences and lacunae. Another chapter in the same book titled “International Natural Disaster response and the United Nations” gives a call to strengthen disaster response,

---

6 Published by “International Federation of Red Cross and Red Crescent Societies”, 2007  
7 World Disaster Report, 2009  
8 Published by “International Federation of Red Cross and Red Crescent Societies”, Geneva, 2003  
9 Extract from “International Disaster response laws, principles and practice: reflections prospects and challenges” published by the International Federation of Red Cross and Red Crescent Societies, Geneva, 2003, pp 47-56
includes the suggestions given by General Assembly for undertaking some good practical measures. It also provides summary of the important issues on which it passed resolutions asking for necessary actions. It also calls upon the Secretary General to provide sufficient staff, equipment and facilities to strengthen the capacity of the Office of the United Nations Disaster Relief Coordinator to provide an efficient and effective worldwide service of mobilizing and coordinating disaster relief.

4. Further, another book titled “Disaster Management and the Law”\textsuperscript{10} covers the aspects of Disaster management and its International perspectives emphasizing on participation of the civil society, governmental and semi governmental organizations, and also pointed that there is a need of ethical decision making and implementation of those decisions after understanding the culture and social life of victims. In addition to all these, researcher also consulted some reports and also some articles which also includes text books related to the present study which has been listed in bibliography

All of the above literatures reviewed have limitations in its scope and analysis of response towards disaster management. None of the above literature analyzes in a methodical manner the natural disasters management. Therefore, the present research is an attempt at presenting the international legal regime on natural disasters management with specific reference to India.

\textsuperscript{10}K.N.Chandrasekharan Pillai, “Disaster management law” Indian Law Institute, Delhi (2006).
1.8. Plan of Study

The research study is presented in seven chapters in this thesis. Excluding the present chapter which is titled as “Introduction”, the following is the division of the thesis:

**Chapter-2 titled “A Critical Review of the Legal Framework applicable to International Disaster Response”**

In this chapter an attempt is made to study the legal binding of the legislations which becomes relevant at all levels from international to local community to prevent, mitigate, regulate, rehabilitate and guide the efforts of managing disasters. An attempt has been made to study the history of International Disaster response and International Red Cross and Red Crescent Movement, the world’s largest humanitarian network in disaster relief, and also there is a brief study on the growth of international Disaster Response community and also tried to recognize the International Coordination efforts, particularly among and between the UN. This chapter studies the common regulatory problems and the applicable international law for relief in armed conflicts and non-conflict disasters. It will argue that many of the problems are similar. These include both regulatory barriers, such as bureaucratic delays in the entry of personnel, goods and equipment, as well as regulatory gaps, for instance, with regard to mechanisms speedily to provide domestic legal recognition of international relief organizations. In both disasters and conflicts, the ability and willingness of domestic authorities to address these problems are impacted by factors including the distraction and reduced administrative capacity stemming from their own efforts to respond to the emergency, the unique need for speed inherent in humanitarian operations and, in
particularly high-visibility emergencies, the increasingly large and diverse community of international actors who seek to intervene.

Though they cannot be examined here in any depth, a number of global institutions have legal mandates relevant to international disaster relief and recovery and these form part of the fabric of existing IDRL. Article 1 of the United Nations Charter lists fostering international cooperation in solving humanitarian problems among the organization’s primary purposes, and several individual entities within the UN secretariat and among the specialized agencies have particular mandates in this area, either through resolutions of the General Assembly or separate treaty.

Chapter-3 titled “United Nations Conventions on Disaster Management – A Critical Appraisal”

The focus in this chapter is on the UN’s attention to the issue of disasters even though it is limited and sporadic. In 1964, ECOSOC requested the Secretary-General to report on issues of coordination in disaster relief. Initially, these resolutions focused mainly on encouraging donor States to increase the amount and rapidity of emergency assistance they made available, but as the UN’s direct participation in disaster assistance grew over time, they turned increasingly to developing the UN’s role and its coordination with states, the International Red Cross and Red Crescent Movement and other actors.

Other important themes included state sovereignty, the facilitation and quality of assistance, and more recently, major statements of commitment. An attempt is been made to study the UN’s role and its coordination with states, the International Red Cross and Red Crescent Movement and other actors. Other
important themes included state sovereignty, the facilitation and quality of assistance, and more recently, major statements of commitment.

The chapter also highlights the United Nation Conventions and General Assembly resolutions passed in order to reduce Natural disasters, its effect which also includes the management of natural disaster, the role of authorities played based on the outcome of the Conferences, an attempt has made to study the existing legal framework of humanitarian assistance in the UN system with some list of UN Conventions and Resolutions which has been passed in respect of natural disasters.

Finally in this chapter review of implementation of convention has been discussed especially Hyogo Framework for Action 2005-2015, other focusing issue is decentralization of responsibility and resources to promote community-level disaster reduction activities has been compared with other international legislations which deals with decentralization of resources in respect of disasters.

Chapter-4 titled “The International Federation of Red Cross and Red Crescent Societies and International Disaster Response”

It explains the resolutions adopted by IFRC relevant to international disaster relief, the chapter then discusses how the international federation has been able to achieve the explicit recognition of its international legal personality and application of a regime of privileges and immunities for international disaster relief operations through the conclusion of agreements.

Further in this chapter a study has also been made to examine the key of international treaties related to international disaster response and to identify the
scope of law, as well as patterns in their rules including commonalities and lacunae and differences. The main emphasis in this part is on the role of International Federation of Red Cross and Red Crescent societies its legal implications and a study on the trends of international disaster Response Law Treaties which includes bilateral and multilateral treaties, and the role of treaties concerning organizations in global and regional level.

**Chapter-5 titled “Legal framework for Disaster Management in India”**

In this chapter the study of the management of natural disasters in India, which also deals with Constitutional provisions related to natural disasters. The chapter also emphasizes on the existing institutional arrangements in order to manage the natural disasters. The steps being taken by Governments has also been outlined in the study and also national disaster framework covering institutional mechanisms, disaster prevention strategy, early warning system, disaster mitigation, preparedness and response and human resource development. The expected inputs, areas of intervention and agencies to be involved at the national, state and district levels have been identified and listed in the study.

A brief study of paradigm shift in the approach to disaster management which results with a new approach proceeds from the conviction that development cannot be sustainable unless disaster mitigation is built into the development process. The new policy also emanates from the belief that investments in mitigation are much more cost effective than expenditure on relief and rehabilitation.

**Chapter-6 titled “Role of Non-Government Organizations in Disaster Management”**
This chapter elucidates, firstly the meaning of NGOs, their connection with the natural disasters, then the role of NGO in disaster response and mitigation in India. There has been a paradigm shift in our approach to disaster management during the last decade. The shift is from a relief-centric approach to a multi-dimensional endeavor involving diverse scientific, engineering financial and social processes to adopt a multi-disciplinary, multi-sectoral approach with stress on building up capabilities of community to enable them to work towards their own risk reduction. The role of NGOs in this context therefore assumes added significance.

The study has also stressed about key challenges and opportunities in disaster management and suggested some steps to be taken by Government and Non-Government Organizations in which both have equal role to play in managing disasters. This chapter also discussed about contribution of high power committee towards the management of natural disasters management. It also been identified that the NGOs play a key role in the immediate aftermath of disasters by extending assistance in rescue and first aid, sanitation and hygiene and assistance to external agencies bringing relief materials. Since NGO movements across the country are already working with the marginalized and excluded sections of society.

Chapter -7 titled “Conclusions and Suggestions”
This is the final chapter in which the research work draws conclusions and offers suggestions based upon the summary of discussions of all the chapters.
1.8 Method of Citation

The researcher has followed uniform method of citation by adopting the ILI rules of footnoting as mentioned in the website www.ilidelhi.org.