CHAPTER- VII

AN OVERVIEW OF CURRENT LEGAL FRAMEWORK TO INTERNATIONAL DISASTER RESPONSE LAWS AND JUDICIAL RESPONSE
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INTRODUCTION

Disasters are quick to strike, but their consequences can be long to remedy and can linger on for months and years. The disasters that overwhelm local response and capacity are seriously affects the social and economic rights of the citizen. Experience shows that the victims of disasters may have to face multiple human rights challenges. Traditionally, the challenges and problems arose after the disasters are dealt with humanitarian nature. However, increasingly, it has come to be recognized that human rights protection are also need to be provided in their context because human rights have to be the legal underpinning of all humanitarian work pertaining to natural disasters¹.

Table No. 7.1

**Difference Between Humanitarian Laws and Human Rights Laws**

<table>
<thead>
<tr>
<th>Sl No</th>
<th>International Humanitarian Law (IHL)</th>
<th>International Human Rights Law (IHRL)</th>
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<tbody>
<tr>
<td>1</td>
<td>IHL is a set of international rules established by treaty of customs which are specifically indented to solve humanitarian problems directly arising from international or non international armed conflicts. It protects persons and property that are or may be affected by an armed conflict to use methods and means of warfare of their choice.</td>
<td>IHRL is a set of international rule established by treaty or customs on the basis of which individuals and group can expect and or claim certain behavior of benefits from government. Human rights are inherent entitlements which belong to every person as a consequences of being human.</td>
</tr>
<tr>
<td>2</td>
<td>The main treaty sources applicable in international armed conflicts are the four Geneva Conventions of 1949 and their additional protocol I of 1977. The main treaty sources applicable in non international armed conflicts are three common Geneva Convention and its additional Protocol II of 1977.</td>
<td>IHRL main treaty sources are the ICCPR and ICESCR, 1966 as well as the conventions on Genocide of 1948, Racial Discrimination of 1965, Discrimination Against Women of 1979, Torture of 1984 and rights of the Child of 1989 and the main regional instruments like European Conventions, African Conventions etc.</td>
</tr>
<tr>
<td>3</td>
<td>IHL is applicable only in the time of armed conflicts, whether international or non international</td>
<td>IHRL applies at all times e both in peace time and in situations of armed conflict</td>
</tr>
<tr>
<td>4</td>
<td>IHL binds all actors of an armed conflicts</td>
<td>IHRL lays down rules binding governments in their relations with individuals</td>
</tr>
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</table>

**Human Rights Elements in Humanitarian Law**

Traditionally the humanitarian laws\(^2\) were limited only to the grave emergency situations like armed conflicts\(^3\) and the basic rules for providing relief and assistance to the civilian population are embodied in Geneva Conventions and its Protocols\(^4\). But the elements of human rights can be traced in these humanitarian laws. The relationship between humanitarian law and human rights are also be seen in optional protocol I of Geneva Convention and its Preamble of second optional protocol of the same. Ironically, with the increasing frequency of natural disasters raised fundamental questions about the adequacy of current international regimes dealing with the provisions of humanitarian assistance to the victims of natural disasters. Eventhough the humanitarian laws contains human values, it could not be applicable to the situations like natural disasters because the provisions of Geneva Conventions are not adequately satisfy for the protection of rights of the victims of natural disasters.

**Paradigm Shift - From Humanitarian to Human Rights**

Traditionally human rights and humanitarianism have been portrayed as two segments of analysis and practice. Because the two sets of rules differ in their substance. One
deals with the laws of war time and other with inherent nature. The other difference is that the humanitarianism has usually seen as the incarnation of a philanthropic impulse, and on the other hand human rights tradition related to the political principles of liberty and equality. Moreover the human rights laws comprises of rights and freedom enjoyed by the individuals. But there was little interaction between these two bodies one is that the great two instruments were adopted at around the same time i.e. UDHR, 1948 and the fourth Geneva Convention, 1949. Both these instruments contain human values. According to modern thinkers like Slim and Darcy these two principles charity and rights are linked together because both are universal in their application and both are for human needs. The humanitarian actions should themselves seen as one part of spectrum of human rights ie today the international human rights law can apply in armed conflicts and it can reflect in human rights treaties too. Likewise before the enactment of human rights charter, for the several centuries this body of law addressed only the rules regulating the conduct of warfare rather than justice or legality of waging of war. Likewise in certain situations, the humanitarian laws are not applied in armed conflicts, if there is no particular body to determine the existence of an armed conflicts, or the nature of conflicts is not determined as international or internal or whether the territory can be occupied or not. In these circumstances the humanitarian law does not apply until the existence of an armed conflict is essential. In other situations, the additional Protocol of Second Geneva Convention will not be applicable to many of internal armed conflicts because this protocol requires additional pre-requisites in the areas of armed conflicts. In those circumstances the international human rights law will be applicable in the armed conflicts; this law does apply until the state derogates from it and continues to apply subject to the limited extent of the derogation.

The relationship between humanitarian laws and human rights law are seen in Optional Protocol first of Geneva Convention, 1977 and the preamble of second Optional Protocol of the same. Accordingly, major International law and human rights bodies such as International Court of Justice, International Law Commission and the Human Rights Committee have confirmed the nexus between humanitarian law and human rights law.
Eventhough the international humanitarian law is concerned with regulation of armed conflicts but its basic concept is vested with human rights principles and thus it is closely related to human rights laws. Although these two laws come from different historical backgrounds, they have common values, respect for and dignity of the human persons.

A Human Right Approach

The UN and major international NGO’s identified significant human rights concerns early in the crisis. Therefore they maintain a human right culture in pre and post disaster situations for any relief and reconstruction phase to be just and sustainable. This existing instruments like international human rights treaties and conventions helps to achieve this goal in some extent. The link between human rights and disaster has not yet been generally reflected in the existing human rights law instruments. Eventhough, the right based approach in disasters contemplates those obligations as well. The following are the international documents which protects the rights of disaster victims at present. They are

- Universal Declaration of Human Rights (UDHR), 1948
- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1969
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 and
- Convention on Rights of Child (CRC), 1989

The victims of disasters have to face many difficulties and their human rights are potentially at risk in post disaster situations. From a human rights perspective, it is important to provide food, water, shelter, clothing and health services that are necessary for survival after a natural disaster. It is the primary duty of the State to provide these basic essentials to the deprived disaster victims.
Right to Life

Right to life is the most fundamental of all human rights. This right includes ‘security’. The international instruments like UDHR\(^{11}\) and ICCPR\(^{12}\) speaks about right to life. The state may not limit this right during emergencies and required to provide protection and safety to persons prone to disasters. The state may also obliged to give early warning to these people about the occurrence of disasters that are going to take place and take steps for the evacuation of these people in a secure place in a proper manner\(^{13}\).

Right to an Adequate Standard of Living

A life in dignity requires an adequate standard of living. This means everyone has the right to a standard of living adequate for the health and well being of human and his family including food, clothing, housing, medical care, livelihood etc. During and post disaster situations, the essential services should be provided to persons affected by disasters, who are in need of this goods and services. It should be provided in a non discretionary manner.

The right to an adequate standard of living is also closely linked to article 22 of UDHR. Which reads everyone is entitled to the realization of economic, social and cultural rights indispensable for their dignity and the free development of their personality, and guarantees a right to social security. Thus the victims of disasters have the right to enjoy these rights in a fully fledged manner\(^{14}\).

Article 25 of UDHR\(^{15}\) has been supplemented with further guarantees of an adequate standard of living including article 11 of ICESCR and article 27 of Convention on the rights of the child. None of these instruments precisely define the term adequate standard of living, but it can some extent be understand from the context.

Specific Rights

Right to Food

At the core of the right to an adequate standard of living is the right to food. Without food there is no life and access to an adequate food is very essential during post disaster period. The food distributed to the victims shall be reached to the vulnerable groups like
women and children, by ensuring they attain nutritional standard; the victims should be informed about the frequency and timing of food distribution and quantity of supply etc. Besides all these the distributed food is in an accessible method. UDHR, ICESCR and CRC speak about this right. But the right guaranteed under UDHR is a general right to adequate standard of living but the right under ICESCR has elaborated and guaranteed everyone’s right to food as fundamental right as the state parties responsibility. The committee of economic social and cultural rights recognizes this right by including accessibility and the committee of ICESCR says the states obligation to give this right under disaster situations.

**Right to Water and Sanitation**

An adequate standard of living requires access to adequate water. Water, a life sustaining element can become the source of major concern after a disaster. It is critical to have sufficient clean water in the immediate aftermath of disaster for human consumption and to maintain basic hygiene, support in search and rescue.

While right to water is not expressly mentioned in ICESCR but it is clearly implied that water is an essential component and it should also be an integral part of right to health. The Economic, Social and Cultural Rights Committee suggested for availability, quality and accessibility of water. Therefore it is the duty of the state to provide clean drinking water, adequate sanitation and garbage disposal facilities to affected communities. A clean environment should maintain by draining stagnant water in camps for controlling vector diseases and separate toilets and bathing facilities should be provided in an accessible manner especially to women, children, disabled and elderly groups.

**Right to Shelter / Housing**

The victims of disasters have to invoke this right during the rehabilitation phase due to lose of their house in severe catastrophe. Adequate standard of living requires place to live, provides security and privacy. Therefore the state should provide and protect the rights of the victims in a proper manner. The provision of UDHR and ICESCR has expressly referred to right to housing while instruments like ICERD, CRC, and CEDAW speaks about right to shelter.
The Committee of Economic Social and Cultural Rights have elaborated the right to housing\textsuperscript{29}. After disaster the state should take appropriate measures without any discrimination of any kind to take speedy measures for the evacuation and settlement of the disaster victims by providing temporary shelter or permanent housing by criteria of adequacy ie accessibility, affordability, habitability and security\textsuperscript{30}.

The state should take appropriate steps to avoid overcrowding in these temporary camps without compromising the privacy of disaster victims. The areas allocated for temporary as well as permanent housing schemes are located in easy access as possible to their employment opportunities. The state should give assistance to families, who can remain in or return to their damaged houses and repair them.

**Right to Health Care**

‘Health’ is an essential element for attaining standard of living\textsuperscript{31}. Due to the catastrophic nature of disasters many people have to face injuries, loss of life, damages etc. Hence health care is very essential during and after disaster phase. Chances for vector borne diseases is very high during post disaster situations and it may cause even sickness and death of these evacuees ,therefore vaccination should be provided in the camps to control this\textsuperscript{32}.

Mental and psychological stability is very essential, because the victims of disaster losses this due to the shocking experiences like loss of their dearness, injuries of their own and parents, relatives etc. The women and children are more vulnerable to the disasters and therefore the state should provide care, protection and assistance\textsuperscript{33} in an available, accessible and non discretionary manner\textsuperscript{34}.

**Right to Livelihood / Employment**

For the sustainability of life, livelihood is very essential. Unemployment is crucial during post disaster situations. The state is responsible to give unemployment benefits like provision for low interest loans, accessories and equipments\textsuperscript{35} because the victims have the right to get adequate standard of living in the event of unemployment.

The international documents did not clearly speak about the right to employment but it says about right to work. UDHR\textsuperscript{36}, ICCPR\textsuperscript{37} and article 25 of ICESCR says everyone
has the right to standard of living, adequate standard for health, food, clothing, housing, medical care and security in the event of unemployment. Therefore even in disaster period, the victims have the right to enjoy this right.

Special Protection to Women and Children

Women

Women and children are more vulnerable to natural disasters. Especially the pregnant and lactating women have to face severe problems during the disasters. Due to their physical and emotional conditions they have to suffer more. The dependency nature of women (need support of husband and other family members) have limited mobility to access their basic needs. During emergencies, due to their family disruption they face marginalization, physical insecurity like rape, sexual and gender based violence, forced prostitution and trafficking.

Besides all, the overcrowding situations in camps and loses of their dear ones also leads women more vulnerable to psychological problems. Therefore special care and protection should be given to them. While in relief phase the women and children should not be discriminated and the benefits allowed for the victims shall be equally distributed.

In order to enjoy these rights, it is the duty of the state to ensure equality and non discrimination. Article 1(3) of the UN Charter makes it clear and numerous insuments like ICCPR, ICESCR, CEDAW, ICERD and CRC aimed at the realization of this.

Children

Childrens are also most vulnerable to disasters. The impact of disasters on children can be profound and long lasting. The psychological scares from surviving disasters have long term effects on children. The children may separated from their families due to death of their parents or guardian therefore they have to face great risks like physical and sexual abuse and exploitation, child labour, forced prostitution etc. Childrens health and education are more concern after a disaster. With regard to education their school buildings may be destroyed or cause damaged. In these situations during relief phase special consideration for children should be given like by granting free educational facilities including distribution of free study materials, uniforms, meals etc. Special care should be taken against the child sale.
Table No. 7.2

Important Human Rights Instruments for the Protection of Rights of Victims

<table>
<thead>
<tr>
<th>RIGHTS</th>
<th>UDHR</th>
<th>ICCPR</th>
<th>ICESCR</th>
<th>ICERD</th>
<th>CEDAW</th>
<th>CRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to life</td>
<td>Art 3</td>
<td>Art 6</td>
<td>____</td>
<td>____</td>
<td>____</td>
<td>____</td>
</tr>
<tr>
<td>Right to adequate standard of living includes</td>
<td>Art 25</td>
<td>____</td>
<td>Art 11</td>
<td>____</td>
<td>____</td>
<td>Art 27</td>
</tr>
<tr>
<td>Right to food</td>
<td>Art 25</td>
<td>Art 11,11 (1)&amp; 11 (2)</td>
<td>____</td>
<td>____</td>
<td>____</td>
<td>Art 24</td>
</tr>
<tr>
<td>Right to shelter/housing</td>
<td>Art 25</td>
<td>____</td>
<td>Art 11</td>
<td>Art 5 (e) (iii)</td>
<td>Art 14 (2)</td>
<td>Art 27</td>
</tr>
<tr>
<td>Right to health care</td>
<td>Art 25</td>
<td>____</td>
<td>Art 12 &amp; 12 (1)</td>
<td>Art 5 (e) (iv)</td>
<td>Art 12</td>
<td>____</td>
</tr>
<tr>
<td>Right to employment</td>
<td>Art 23</td>
<td>Art 6</td>
<td>Art 3 &amp; 6 (1)</td>
<td>____</td>
<td>Art 10</td>
<td>Art 28</td>
</tr>
<tr>
<td>Right to education</td>
<td>Art 26</td>
<td>____</td>
<td>Art 13 &amp; 14</td>
<td>____</td>
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<td>____</td>
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</table>

Role of State in Protection of Rights of Victims

The responsibility of international community is subsidiary in nature, they namely to encourage and assist states in implementing their obligation or If the state resources are too limited to fulfill their obligations under international human rights law.45 otherwise it is the duty of the state to provide means and resources for the satisfaction of basic needs of victims because during these periods the people doesn’t have direct means to access to satisfy their basic needs46. The obligation of the state varies greatly depending on the differences in the level of assistance needed by individuals, the resources at the disposal of the state and the different components of the right47. The state must respect48
the individual’s freedom to take necessary action and to use the necessary resources. Second the state has an obligation to protect⁴⁹ the individual’s freedom of action and use to secure their basic needs. Thirdly the state, as a last resort has an obligation to fulfill everyone’s right i.e. the function as a provider⁵⁰.

During the phase of disaster, the state must not only respect the rights of the victims but also take steps to protect their rights in a non- discretionary manner. The state should protect the socio- economic rights of victims by providing the accessories sufficient to satisfy the basic needs of victims.

The rights guaranteed under the international instruments are not directly linked to the protection of rights of natural disaster victims. The International Disaster Response Law (IDRL) was initiated by the International Federation of red Cross and Red Crescent societies in 2001 to facilitate humanitarian activities in response to both natural and technological disasters .IDRL is just only a programme which raise awareness about the existing norms and standard governing international disaster response and to strengthen the international, regional and national framework of laws, rules and principles that pertain to facilitation, coordination and regulation of international response to disaster. It contains guidelines for coping the disaster situation. It is practiced only by NGO’s and it is not bindable in nature. The Inter-Agency Standing Committee in 2006 addressed the operational guidelines that deal with the aftermath of natural disasters. These guidelines do not list the rights of persons as enshrined in international law. Rather, they focus on what humanitarian actors should do in order to implement a right based approach to humanitarian actors to look beyond their core mandate and to have a holistic vision of the needs of the people they have been asked to serve. Therefore there is a need for an International Disaster Management Response Law like International Humanitarian Law, International Human Rights Laws, and International Environmental Laws etc inorder to cope the situation successfully⁵¹.

Judiciary plays a vital role in protecting the rights of the people affected by disasters. Inorder to protect their rights, the judiciary often relied upon the backup of the constitutional provisions like 32 and 226. Often the court ascertained remedy and granted compensation to the victims of disasters.
In USA FEMA is the authority to deal with all kind of disasters. The president is vested with the power of granting remedy or compensation in national level and governor in state respectively. The immunity power of FEMA is ascertained by the court in Martin Robin v. United States of America.\(^{52}\) If the city had not suffered any injury or damage in natural disasters then the FEMA has the power to ineligible that state for granting assistance. In City of Laguna v. FEMA\(^{53}\) The court opined that

the city is ineligible to get federal assistance. The court. Here the city had suffered no injury by FEMA's denial of funds because the city had not expended any funds for Hazard Mitigation Grant Programme (here in after referred as HMGP) under their Laguna Niguel Project (here in after referred as LNP). Here the city had withdrawn by substituting its duty to private persons to directly bought the properties from the home owners. The city could not have possibly suffered injury in the amount of grant and hence they could not reapply for the funds granted under HMGP. Actually it is not a fair action from the part of the city and this remains a big question of doubt.

In Beatrice B.M Waters v. FEMA\(^{54}\) The court viewed that

the individuals should not be denied their housing assistance on the ground that they were not applied for Small Business Administration (here in after referred as SBA). Further the court asked FEMA to give all its assistance to the applicants of Temporary Housing Assistance (here in after referred as THA), without any discrimination, even though they were not filed an SBA loan application. FEMA has violated a mandatory duty through the mis-communication or in artful communication of the Protocol for receiving Temporary Housing Assistance by causing some applicants to believe that an SBI loan application is a necessary prerequisite to receiving Temporary Housing Assistance.

In Rita Marie Lockett v. FEMA\(^{57}\) the plaintiff challenged FEMA's action of granting the eligibility for temporary housing under Stafford Act had violated the constitutional provisions to the victims by discriminated them for allocation of grants\(^{58}\) and also FEMA failed to consider the due process\(^{59}\). But the court opined that they could not exercise
judicial review over FEMA’s discretionary power and therefore the motion of plaintiff to grant housing assistance was dismissed by the court.

In Association of Community Organizations for Reform Now v. FEMA the court opined

FEMA to give detailed explanation for the denial of evacuee’s eligibility for housing assistance benefits under Section 408, including the factual and statutory basis for the denial and more fulsome instructions as to how each evacuee may either cure their ineligibility problems or proceed with an appeal. In addition, FEMA is ordered in the meantime to immediately restore Sec 403 short term housing assistance benefits to all evacuees who are as of August 31, 2006, had been found ineligible for section 408 benefits until such time as they have received the more detailed explanation and have had requisite amount of time to pursue an administrative appeal thereof. Finally, FEMA is also ordered to pay to each of these evacuees the short term assistance benefits they would have otherwise received from September 1, 2006 through November 30, 2006.

In Diane Ridgeley v. FEMA the court opined FEMA to give additional payments to individuals who had been determined ineligible for continued rental assistance because FEMA act in an arbitrary manner. The court in Herbert Freeman v. USA opined FEMA to give assistance to victims of disaster in a timely manner and employment assistance in Vincent Maleche v. Helda Solis. In State of Hawaii v. FEMA the court ask the state of Hawaii to reimburse the amount that they have received from FEMA because the state had made duplicative benefits.

Lesson from the Bhopal Disaster

The Bhopal Gas disaster is one of the world’s worst industrial disasters. Following the disaster, there was an international outcry for relief for the victims and punishment to those responsible for the gas leakage. In the initial stage the Indian government made a promising start by acting parens patrie for the victims of gas tragedy. It is reflected in Union Carbide Corporation v. Union of India the court opined that it is the duty of the state to take care of the basic human rights and to provide proper facilities for the
same. But in later the government settled for a sum of 470 million dollars that is very less amount to ameliorate the victim’s plight. In *Caranlal Sahu v. Union of India* 67 the court upheld the validity of Bhopal gas Disaster (Proceeding of Claims) Act, 1985. In *M.C Mehta v. Union of India* 68 (popularly known as Oleum Gas Leakage case) the court ascertained the company’s absolute liability and victims compensation right. In *State of Madhya Pradesh v. Warren Anderson* 69 the court opined

As far as the provisions of section 357 of Criminal Procedure Code concerned, Bhopal Gas leak Disaster (Processing of Claims) Act 1985. An act confer certain powers on the Central Government to secure that claims arising out of, or connected with, the Bhopal gas leak disaster are dealt with speedily, effectively, equitably and to the best advantage of the claimants and for matters incidental there to the compensation is awarded towards sufferers of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner, which may be granted in a civil suit 70.

For the past 25 years, excruciating years for the victims, the law had been circumvented and the delivery of justice delayed. When justice came in the end, it had been greatly diluted. The grossly disproportionate punishment of two years imprisonment that the judge handed out to the seven convicted persons jolted civil society out of its years of indifference to the victim’s plight.

The court upheld for claiming of compensation to the victims in *Lata Wadhawa v. State of Bihar* 71. The court in *Nilabati Behra v. State of Orissa* 72 and *Rudul Shah v. State of Bihar* 73 opined that while granting compensation to the victims it should be in legal and impartial manner.

In *Haresh Mafatalal v. State of Gujarat* 74 the court reinstated the statement of early cases and role of the state in granting compensation is ascertained by the court. Here the claim for compensation due to the destruction of flat was refused by the state government on the ground of non residents at the time of disaster. But the court declared
that if a person had more than one property and if all the properties were collapsed, then he is entitled to get compensation only for one property. Hence the petitioner in this case is entitled to get compensation for the destruction of his property.

The court held that it is not necessary that the person must be in occupation of the property in question as on 26th January 2001. The only thing which required to be considered is whether a person is the owner and/or in possession of the property in question or not.  

The SC of India has widened the scope of Art 21 by including right to environment and development with the concept of sustainable development to protect the environment from natural disasters. Eventhough the judiciary put self restrain in governmnets policy matters but it has pronounced its attitude to safe guard the life and livelihood of oustees in Narmada Bachao Andolan v. Union of India.

… the courts have the duty to see that in the undertaking of a decision, no law is violated and peoples fundamental rights are guarantee under the constitution are not transgressed upon except to the extent permissible under the constitution…

But the court gave a negative approach without considering the risk factors in Fertilizers and Chemical Travacore LTD. Employees Association v. Law Society of India case. Here the court has checked only the risk factors like environmental pollution, leakage of tanks and the location of airport and the court asked the company to continue with the present position and explained that such plants are for welfare of the society and therefore the society have to live up with such risk, otherwise no power plant, no reservoir, no nuclear reactor may exist in our country.

In N.D Jayal v. Union of India, the court opined that relief centric reactive approach after the disaster need to be changed into preparedness oriented proactive attitude. This view is reinstated in Travancore Devasom Board v. D. P Renu. In N.D Jayal case the court observed disaster as

means of all aspects of planning, coordinating and implementing all measures which are necessary or desirable to prevent, minimise, overcome
or to stop the spread of a disaster upon the people or any property and includes all stages of rescue and immediate relief. It is a cruel fact that a lot of human sufferings and misery from a large number of disasters can be mitigated by taking timely action, planning and preventive measures. It is possible only through well functioning disaster management framework. This will enable minimisation, control and limit the effects of disasters and will streamline the disaster management exercises. The present relief centered reactive approach after the striking of disaster need to be changed into preparedness-oriented proactive attitude. This is the aim of predisaster preparations. Disaster management plan have to play and integral role in this exercise. They are blueprints for the management of the disasters. The disaster management plans should contain all aspects of disaster prevention and of ways for its management in the untowards occurrence of a disaster. A proper plan will play the disaster management exercise on a more firm foundation. Disaster management activities should be integrated with developmental activities. Incidentally, this is also the resolve of the Yokohama strategy of the United Nations International Decade of Natural Disaster Reduction, to which India is a party. There is an affirmative obligation on the part of the state to preserve and protect human life and property. This obligation is an integral element of fulfilling developmental endeavours. Therefore, disaster management cannot be separated from sustainable development.

The court in *Kranti v. Union of India* ascertained the rights of the citizen to be rehabilitated in a disaster. The court check out the role of the state and opined to reinstate the livelihood of fisher men flock by providing occupational equipments like fishing net, boats, motors etc and also give employment opportunities to member of agricultural families, whose land remain submerged in disaster. The state should also rehabilitate the victim’s by constructing houses to homeless and to make accessibility of their basic necessity. In *Mullaperiyar Environmental Protection Forum v. UOI* the court in this case opined that

Under the aforesaid circumstances, we permit State of Tamil Nadu to carry out further strengthening measures as suggested by CWC and hope that
State of Kerala would cooperate in the matter. The State of Kerala and its officers are restrained from causing any obstruction. After the strengthening work is complete to the satisfaction of the Central Water Commission, independent experts would examine the safety angle before the water level is permitted to be raised to 152 ft. The writ petition and the connected matters are disposed of by permitting the water level of the Mullaperiyar dam being raised to 142 ft. and by permitting the further strengthening of the dam as aforesaid.

Conclusion

Human rights are the legal underpinning of all humanitarian work pertaining to natural disasters. There is no other legal framework to guide such activities, especially in areas where there is no armed conflict. If humanitarian assistance is not based on a human rights framework, it risks having too narrow a focus, and cannot integrate all the basic needs of the victims into a holistic planning process. There is also the risk that factors important for recovery and reconstruction later on will be overlooked. Furthermore, neglecting the human rights of those affected by natural disasters effectively means no account will be taken of the fact that such people do not live in a legal vacuum. They live in countries with laws, rules and institutions that should protect their rights. Most of their fundamental rights are violated during the post disaster period. Here comes the role of the court by granting ex-gratia payments, speedy relief and compensation to the victims of disasters.

End Notes


2. By the 19th century a new body of international law emerged, binding the states in the conduct of war called International Humanitarian Law (IHL). This law encompasses both humanitarian principles and international treaties that seek to save lives and alleviate sufferings of both combatants and non combatants during armed conflicts. The IHL is comprised of treaties like Geneva Convention and its Protocols. The cardinal principle of humanitarian law is those of distinction and unnecessary sufferings. The principle of distinction provides
that combatants should be distinguished from civilians and civil objects should be
distinguished from military objectives. The principle of unnecessary suffering prohibits the
use of means (weapons) and methods (tactics) of warfare that are of required for military
purpose.

3. Henry Dunet, after the battle between the French and Austrian in 1859, witnessed that the
departing army left the littered dying man, wounded and imputed in the battle field. This
inspired his valiant efforts to mobilize aid for the soldiers. In his book *A Memory of Solferino*
he proposed for the protection of volunteer relief groups, who take care of the wounded in
the battle field. A group known as International Red Cross formed in Geneva in 1863 and
they proposed for the 1st Geneva Convention.

4. Geneva Convention establishes the slandered of International Law for the humanitarian
treatment of the victims of war. It comprises of four treaties and three additional protocols.
The articles of the fourth Geneva Convention extensively defined the basic rights of prisoners
during war, establish protection for the wounded and civilians in and around the war zone


Court of Justice states that the protection offered by the human rights Conventions does
not cease incase of armed conflicts, save through the effect of provisions for derogation of
the kind to be found in Art 4 of ICCPR.

law relating to the protection of fundamental human rights during international armed conflicts”
also *See www.greendevils.p/combat_course/ency* accessed on 14th Nov 2010 at 4pm.

instruments relating to human rights offer a basic protection of human persons…” also see

10. *See* Reports of the study Group of International Law Commission. *Fragmentation of
International Law Difficulties Arising from the Diversification and Expansion of*
11. See Article 3 of UDHR.

12. See Article 6 of ICCPR.


15. Article 25 of UDHR indirectly reads: “the enjoyment of these rights in circumstances beyond his control that means during emergency”.

16. Article 25 (2) of UDHR.

17. Article 25 of UDHR.

18. Article 11 of ICESCR.

19. Article 24 of CRC.

20. Article 11 (1) and 11(2) of ICESCR.

21. General Comment Para 12 of Economic Social and Cultural Rights Committee 6 reads: ‘the right to adequate food is realized when every men, women and children, alone or in community with others, has physical and economic access at all times to adequate food or means of its procurement.


23. See Para 12 of GC 15.

24. Article 25 of UDHR.

25. Article 11 of ICESCR.

26. Article 5(e)(iii) of ICEDR.
Article 27 of CRC.

Article 14(2) of CEDAW.

See General comment 4 of ESCR committee.

Accessibility means the victims of disasters should get their shelter / housing in early as possible; affordability means the house rent which allocated for them should be reasonable with their livelihood; habitability means security aimed at reducing damages in cases of future disasters.

Ibid 14.


See Article 12 of CEDAW, Article 5(e)(iv) of ICEDR, Article 24 of CRC.

General Comment 14 of ESCR committee.

During post disaster situation in tsunami, the state provided equipments like nets and boats for the victims of disaster.

Article 23 of UDHR.

Article 6 of ICCPR.

The basic principle of the UN Charter is the promotion of the equal guarantee of human rights for all without any distinction. see Article 1 (3) of UN Charter.

Article 2,3 and 26 of ICCPR.

Article 2(2) of ICESCR.

Article 2 of CEDAW.

Article 2 and 51 of ICEDR.

Article 2 of ICRC.

See the international instruments like UDHR under , Article ICESCR, CEDAW, CRC.

The state should respect rights of its citizen and give assistance to them in a satisfactory manner. For eg the state must respect the rights of collective groups i.e. women and children. The rights of these people must be respected and satisfy their needs in access to adequate standard of living in post disaster situations.

The state may be required to provide protection to the victims against fraud in the camps, misconduct against women and children, dumping of hazardous waste after the disaster etc. This is probably the most important aspect of the rights. This function is similar to the obligation of states to protect civil and political rights such as the right to life.

State as a provider facilitates people’s access to and utilization of resources or the state may have to directly provide means and resources for the satisfaction of their basic needs.

2006 WL 2038169 (E.D.La) Ivan L.R Lemell J, Facts- Governor of Louisiana declared state emergency due to the tropical storm, Isadora in 2002. The defendant was a special agent for the US’s Wildlife and Fisheries (USWF), engaged in search and rescue team as part of emergency activity. The plaintiff Martin Robin was struck by the defendant vehicle, while he was walking and cause damages to the plaintiff.

2009 WL 3122490 David O.Carter J due to El Nino storm in 1998, the president declared HMGP in the state of California. On Sep 18, 1998 plaintiff city (City of Laguna Niguel) submitted its application for HMGP funds for (LNP) to the office of Emergency service (OES) in California. The FEMA approved the city’s application on Nov, 1998. But later the city withdrew from the LNP. The OES requested FEMA to de-obligate the funds allocated for the project. By March 2000 FEMA send a letter confirming the withdrawal and partial de-obligation of the fund. Later by 2001, the city again requested FEMA to
give support of fund to the same project but FEMA denied its request on the ground of duplication of benefits. Plaintiff raised the issue for the withdrawal of funds.

2006 237 F.R.D. 155 Duval J- the hurricane Katrina left thousands of people homeless and the victims of disaster sued against FEMA for violating the relief provided for them. One of the main issue raised by the plaintiff was that whether an individual denied THA, if they were not received any loan or other financial assistance from SBA or any other federal agency.

In *Olim v. Wakinekona* the court opined that eventhough the agency has discretionary power regarding provisions of THA, while processing an application they shall be accomplished in an equitable and impartial manner withpout any discrimination. see sec 5151(a) of Stafford Act.

The court found that FEMA had violated a mandatory duty by mis-communicating the protocol that for receiving THA no need to apply for SBA loan. But some applicant believed that SBA loan application is necessary prerequisite to receiving THA.

1993(836 F.Supp.847) 1993 (836 F.Supp.847) Atkins J, hurricane Andrew swept the southern tip of Florida on Aug 24, 1992 causing many destructions by leaving thousands of people homeless. President declared this region as disaster affected area by invoking the provisions of Disaster Relief Act. This decision allowed the victims of hurricane to receive all such relief under the Act including temporary housing assistance under Sec 5174 of Stafford Act. The plaintiffs home was destroyed by the hurricane and defendant failed to provide relief to the victim. But FEMA’s contention was that they failed to give housing assistance to the plaintiff on the basis that another person in the household had received pre disaster insurance. The main issue in this case was that whether court had jurisdiction over FEMA’s discretionary power under the Stafford Act.

FEMA failed to provide temporary housing assistance to the plaintiff on finding that another person in the household had received pre disaster housing unit assistance. This seems to be inequitable and had the effect of discriminating person against their economic status. Consequently the court had jurisdiction to hear the claim based upon the constitutionality over lack of FEMA’s action. But here the court dismissed the case by saying they could not exercise judicial review over FEMA’s discretionary power.
FEMA had violated plaintiff's due process right under the Constitution. Under this act each person who applies for assistance shall be notified regarding the type and amount of any assistance they qualified. Notice is mandatory under this provision but here the defendant failed to give notice to plaintiff. This violates their right.

The court had no jurisdiction to review claims of the victims in the light of use of word “may” in regulation providing that temporary housing assistance “may” be provided only when conditions are met. This action of FEMA was discretionary and it prohibits judicial review. See Sec 5148 and 5171 (a)(1)(A) of Stafford Act.

436F Supp.2d.26 (2006) Leon J Hurricane Katrina and Rita left thousands of evacuees and pursuant to a presidential declaration, these evacuees were qualified for short term housing rental assistance under Sec 403 of the Stafford Act. However, FEMA attempted to transfer those evacuees to its longer term assistance under Sec 408 of the same act (which provides 18 months housing assistance). But later without informing the evacuees FEMA terminate thousands of applications under Sec 408 and benefits under Sec 403 of the Stafford act. The plaintiff questioned the violation of due process rights of hurricane victims.

512 F.3d727 (2008) King, J, Facts-Owing to the massive devastation caused by hurricane Katrina and Rita, thousands left homeless. Under Sec408 the plaintiff received ward of assistance from FEMA, but later found ineligible for continued rental assistance and notice issued by FEMA contained only confusing codes, instead of understandable explanation. Therefore plaintiff filed petition against FEMA for violation of due process.

556 F.3d 326 (US court of Appeal 5th circuit) 2009, King, J. Facts- The present case plaintiffs were the victims of hurricane Katrina and they were shifted to New Orleans convention centre. Here the three persons named Ethel Freeman, John J DeLuca and Clementia Elaby were died due to the squalid conditions existed at the convention centre. Moreover the centre was not equipped with food, water, medical assistance, triage or transportation. (Mr. Freeman died due to negligence of medical care, Mr. Eleby due to lack of food, water and medical care and Mr. De Luca died due to lack of transportation facility). The plaintiffs in this case alleged that these death were caused due to federal governments violation of various provisions of Stafford Act and the inapplicability of relief services under the National response Plan.
2010 (692F.Supp 2d 679 ) Sim Lake, J.Facts- On Sep 2008, hurricane Ike struck Texas. The president declared this area as disaster affected area. Plaintiff, Vincent worked this area for more than ten years and therefore he applied for DUA. But Texas work force commission (TWC) denied his application on the ground that he had concluded his project work before the hurricane had struck. Therefore he filed a petition for seeking judicial review for the denial of his application.

(249.3d1152)2002 Barzun ,J. Facts- Hurricane Inky caused huge destruction on 1992. As a result president declared the state of Hawaii as disaster area and authorized FEMA to provide disaster relief. When Inky struck, Hawaii had insurance policies. While conducting an audit, FEMA came to know about the duplicative benefits of Hawaii. Therefore FEMA asked the state to reimburse the amount that the state had received from them.

AIR 1990 SC 273.

AIR 1990 SC 1480.

AIR 1987 SC 1086.

Cr.Case No.8460/1996 , Mohan P. Tiwari J.

See Para 223 and Dilip S. Dhanukar v. Kotak Mahindra Ltd 2007 All MR (Cri) 1775 SC.

(2001) 8 SCC 141.


(1983) 4 SCC 141 The dispute to this case arose between State of Gujarat and its neighbouring states like Madhya Pradesh, Rajasthan, and Maharashtra in the matters of distribution and control of waters of the interstate river Narmada, According to section 4 of interstate Water Disputes Act, a tribunal constituted for its adjudication and a Narmada Control Authority(NCA) was constituted for the purpose of securing compliance with the implementation of the directions of the tribunal and by 1987,Ministry of Environment and Forest(here in after referred as MoEF), GOI gave environmental clearance to the project. Hence construction of the dam has commenced in the same year. By 1994, Ministry of Water decided to closure of ten sluices for the construction of dam. This insisted the
petitioner to file a writ petition in April 1994 seeking the UOI and others as respondents to be restrained from proceeding with the construction of the dam and to be directed to open the said sluices. The petitioner also urged with the general issues regarding environment, relief and rehabilitation of the ousters.

AIR 2005 Guj 162, M.R.Shah J, Facts - The petitioners flat was completely collapsed in Gujarat earthquake on 26th January 2001 and he had been challenged the legality and validity of the order passed by the district collector, because the order rejected the application for getting necessary compensation. But the government resolution of 2001 was contrary to the impugned order. The resolution submitted that it was not necessary for an owner to be an occupier of the flat at the time of disaster.

See para 6 of the case.


In Vellore case and in M.C Mehta v. Union of India (2002) 4 SCC 356 the court observed the balance between environmental protection and developmental activities could be maintained by the principle of sustainable development.

(2000) 10 SCC 664B.N. Kirpal, J.

(2004) 4 SCC 434, S.H.Kapadia, J Facts - Fertilizers and Chemical company is a public sector undertaking company, manufacturing fertilizers like urea, ammonium sulphate and ammonium chloride. For the purpose of manufacturing these fertilizers ammonia was imported in specific refrigerated ship and stored in the storage tank located in Willington Island, Cochin. This store ammonia is transferred into the railway wagons to the Cochin division of the company where it stored in a bigger ammonia storage tank before it is pumped to various consuming plants. Here the petitioner complied that due to the existence of this tank there may cause environmental pollution and also opined that if there was an event of major leak then it will exterminate the large population of Willington island. In
addition there is an airport in the vicinity of the tank and this may cause a chance to air crash. Therefore the petitioner wanted to shift the tank from there.


82  2011 (3) KLT 865.

83 ( 2007) 6 SCC 744, Altamas Kabir, J Facts- A special leave petition was filed against the judgment delivered by the divisional bench of HC at Port Blair in 2006. The petitioner urged that, the tsunami caused extensive damage to shelter and livelihood of the islanders. Some of the major problems that they face after the disaster include scarcity of potable water, lack of medical facilities, food and shelter, livelihood etc. There were also pending cases before the Lok Adalat and the victims of disasters were unable to get their compensation at proper time. The petitioner prayed before the court for relief and the court considered all matters and deliver an interim order in favour of the petitioner.

84 AIR2006SC1428Y.K. Sabharwal, C.J.