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**Review Document**

**The Disaster Management Act, 2005**

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# **THE DISASTER MANAGEMENT ACT, 2005<sup>1</sup>**

ACT NO. 53 OF 2005

[23rd December 2005]

## **SIGNIFICANCE OF THE ACT**

The Disaster Management Act, 2005 (“DMA”) is the outcome of the Orissa super-cyclone of 1999; The Bhuj earthquake of 2001 and The Indian Ocean Tsunami of 2004. Post-independence, the Ministry of Agriculture assumed the role of a nodal ministry for the management of natural disasters. After the Orissa super-cyclone of 1999, the Orissa State Government felt the need of a management authority which led to the constitution of the first Disaster Management Authority Centre established in India, called the Orissa Disaster Management Authority (“ODMA”). After the Gujarat earthquake of 2001, a decision was taken to transfer the subject of disaster management from the Ministry of Agriculture (“MOA”) to the Ministry of Home Affairs (“MHA”). Following the Tsunami of the Indian Ocean in 2004, the Indian Parliament enacted the Disaster Management Act, 2005 on the same lines with the ODMA.

## **OBJECT OF THE ACT**

The Act received the assent of the President on 6<sup>th</sup> January, 2006, and is applicable to the whole of India. The changing nature and impact of disasters have led to the legal framework of DMA. The DMA was enacted to provide for the effective management of disasters with the primary objective to prepare, prevent and start early planning towards disasters in India. It lays down an action-plan and provides for the setting up of institutional structures at the national, state and district levels. Four important institutional structures are formed under the DMA, namely, the National Disaster Management Authority, the National Executive Committee, the National Institute of Disaster Management and the National Disaster Response Force and lays down their structures, roles, responsibilities and functions. The Act also lays down penalising provisions.

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<sup>1</sup>Disaster Management Act, 2005 (Act No.53 of 2005), accessed at <https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf>

## IMPORTANT PROVISIONS

Chapter II (Section 3-13) provides for the National Disaster Management Authority (“NDMA”). The main features of NDMA are:

1. The Prime Minister of India shall be the Chairperson of the National Authority and other member should not exceed nine and are to be nominated by the Chairperson of the National Authority.
2. The NDMA should have timely meetings and the Chairperson of the National Authority shall be the presiding officer. In cases the Chairperson is unable to attend any meeting of the National Authority, the Vice-Chairperson shall preside over the meeting.
3. National Authority is responsible for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective responses to disasters.

Under Section 6(2), the following are the powers and functions of NDMA:

- a. lay down policies on disaster management;
- b. approve the National Plan;
- c. approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;
- d. lay down guidelines to be followed by the State Authorities in drawing up the State Plan;
- e. lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;
- f. coordinate the enforcement and implementation of the policy and plan for disaster management;
- g. recommend the provision of funds for the purpose of mitigation;
- h. provide such support to other countries affected by major disasters as may be determined by the Central Government;
- i. take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;

- j. lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

4. Section 8 empowers the Central Government to constitute a National Executive Committee (NEC) to assist the National Authority in the performance of its functions under this Act, after issuing a notification under Section 3(1)<sup>2</sup> of the DMA, consisting of Secretary level officers of the Government of India in the Ministries of home, agriculture, atomic energy, defence, drinking water supply, environment and forests, finance (expenditure), health, power, rural development, science and technology, space, telecommunication, urban development, and water resources, with the Home Secretary serving as the Chairperson, ex officio, having the following powers and functions under Section 10(2) of the DMA:

- a. act as the coordinating and monitoring body for disaster management;
- b. prepare the National Plan to be approved by the National Authority and coordinate and monitor the implementation of the National Policy;
- c. lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities;
- d. provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Authority;
- e. monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India;
- f. monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects;
- g. monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government;

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<sup>2</sup> Section 3(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be established for the purposes of this Act, an authority to be known as the National Disaster Management Authority.

- h. evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness;
- i. plan and coordinate specialised training programme for disaster management for different levels of officers, employees and voluntary rescue workers;
- j. coordinate response in the event of any threatening disaster situation or disaster;
- k. lay down guidelines for or to give directions to the concerned Ministries or Departments of the Government of India, the State Governments, and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disasters.
- l. require any department or agency of the Government to make available to the National Authority or State Authorities such men or material resources as are available with it for the purposes of emergency response, rescue and relief;
- m. advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management;
- n. provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act;
- o. promote general education and awareness in relation to disaster management; and
- p. perform functions as the National Authority may require it to perform.

5. Under Section 11(3), the National Plan includes—

- (a) measures to be taken for the prevention of disasters, or the mitigation of their effects;
- (b) measures to be taken for the integration of mitigation measures in the development plans;
- (c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster;

- (d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c)

Chapter III (Section 14-24) provides for the State Disaster Management Authority (SDMA) The main features of SDMA are:

1. SDMA consists of the Chief Minister of the State, who is the Chairperson, and no more than eight members appointed by the Chief Minister.
2. SDMA is responsible for laying down the policies, plans and guidelines for disaster management in the State and under Section 18(2), has the following powers and functions similar to that of NDMA, but on the state level.
3. Section 20 empowers the State Government to constitute a State Executive Committee (SEC) having responsibility under Section 22 to draw the state disaster management plan and implementing the National Plan and is mandated under section 28 to ensure that all the departments of the State prepare disaster management plans as prescribed by the concerned authorities.
4. Under Section 24, the SEC has the following powers and functions:
  - a. control and restrict, vehicular traffic to, from or within, the vulnerable or affected area;
  - b. control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;
  - c. remove debris, conduct search and carry out rescue operations;
  - d. provide shelter, food, drinking water, essential provisions, healthcare and services in accordance with the standards laid down by the National Authority and State Authority;
  - e. give direction to the concerned Department of the Government of the State, any District Authority or other authority, within the local limits of the State to take such measure or steps for rescue, evacuation or providing immediate relief saving lives or property, as necessary in its opinion.
  - f. require any department of the Government of the State or any other body or authority or person in charge of any relevant resources to make available the resources for the purposes of emergency response, rescue and relief;

- g. require experts and consultants in the field of disasters to provide advice and assistance for rescue and relief;
- h. procure exclusive or preferential use of amenities from any authority or person as and when required;
- i. construct temporary bridges or other necessary structures and demolish unsafe structures which may be hazardous to the public;
- j. ensure that non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;
- k. disseminate information to the public to deal with any threatening disaster, or any disaster situation
- l. take such steps as the Central Government or the State Government may direct in this regard or take such other steps as are required or warranted by the form of any threatening disaster situation or disaster.

Similarly, Chapter IV (Section 25-34) provides for the District Disaster Management Authority (DDMA) with the Chairman being the Collector or District Magistrate or Deputy Commissioner of the district. The elected representative of the area is member of the DDMA as an ex officio co-Chairperson. The DDMA also has to prepare district plans and has powers and functions specified under Section 30 for prevention, mitigation of disaster and effective implementation of the plan.

CHAPTER VIII (Section 44–45) provides for constituting a National Disaster Response Force (NDRF) for the purpose of specialist response to a threatening disaster situation or disaster under a Director General to be appointed by the Central Government.

CHAPTER IX (Section 46-50) provides for disaster funds. Under Section 46, National Disaster Response Fund has to be created for meeting any threatening disaster situation or disaster and Section 48 provides for the constitution of

- (a) the fund to be called the State Disaster Response Fund;
- (b) the fund to be called the District Disaster Response Fund;
- (c) the fund to be called the State Disaster Mitigation Fund;
- (d) the fund to be called the District Disaster Mitigation Fund.

CHAPTER X (Section 51-60) provides for penalising provisions and provides for civil and criminal liabilities including punishment for a wrongful claim of relief, assistance or any other benefit in consequence of any disaster; misappropriation of money/materials allocated for providing relief in disaster-struck regions, and raising false alarms in relation to the severity of any disaster and causing panic.

## **DRAWBACKS AND SUGGESTIONS**

Unlike every legislation and statute, the DMA also has its own lows. Firstly, the act fails to classify disasters on the basis of its magnitude, severity and geographical locations. India's geography has many disaster-prone areas, such as earthquakes, floods, drought, landslide, hail-storm, cyclone, and many other natural as well as man-made disasters. Thus, this becomes important to classify disasters on the basis of their severity and geographical location, declare disaster-prone zones and make preventing and mitigating plans accordingly.

Secondly, the overlapping of powers and functions of the Centre, State and District Acts as a hindrance in the effective implementation of the provisions of the DMA. Sometimes, this causes delay as well.

Thirdly, for quick implementation of the disaster-management plans, it becomes important to vest more powers with the local authorities than the Centre as they are the ones on high alert whenever a disaster approaches and plays a vital role in prevention and mitigation.

## **RECENT PROPOSALS**

Since the commencement of the DMA, it has not been amended even once though amendment bills have been drafted and introduced in the Parliament, many times. As per the latest news in January 2020, on the wake of the Uttarakhand disaster in 2013, the Narendra Modi led government has proposed to amend the 2005 DMA. In lieu of the suggestions and recommendations made by a task force headed by former IAS Officer, P K Mishra in 2013<sup>3</sup>, a proposal to amend 2005 Disaster Management Act will be taken up by the Union cabinet ahead of the upcoming Parliament session.

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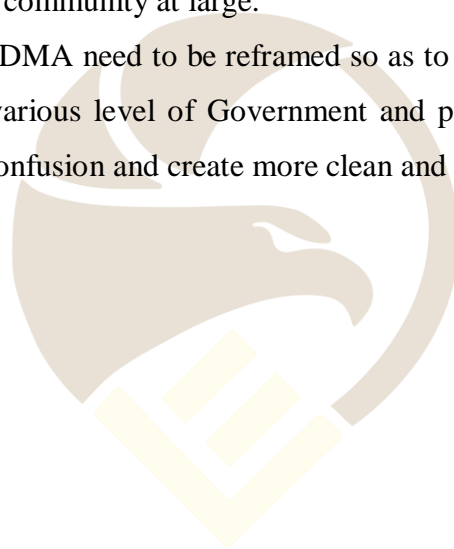
<sup>3</sup> Ministry of Home Affairs, Government of India, *Report of the Task Force- A review of the Disaster Management Act, 2005*, (March 2013) <[https://www.ndmindia.nic.in/images/TaskForce\\_report\\_DMact.pdf](https://www.ndmindia.nic.in/images/TaskForce_report_DMact.pdf)>



## CONCLUSION

In India, the DMA is the supreme legislation in the field of disaster management and thus, it becomes important that the DMA is up to date. The alarming situation of climate change and unfavourable weather conditions in India calls for the need for amendments and reforms. The involvement of DMA and its inefficiency to curtail the spread of coronavirus disease (Covid-19) is a proper example of the ineffectiveness of the DMA and is a wakeup call for the Government of India to implement new policies which are able to tackle today's problems. Also, the acts need more relief and recovery provisions to restore the loss suffered by individuals as well as the state. The focus should not just be on physical vulnerabilities, but equal emphasis should also be given to intangible losses such as psychosocial needs of the victim, their families and the community at large.

Lastly, the provisions of the DMA need to be reframed so as to avoid overlapping of powers and functions between the various level of Government and policies and plans need to be consolidated so as to avoid confusion and create more clean and emphasizing plans.



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## **About the Author**



Ria Garg is a final year law student at Alliance University, Bangalore, pursuing BBA LL.B with honors in Finance and International Law. Her interest in law peaked at a very young age. Always been eager to learn new tasks, she has interned at a few law firms and with different practicing Advocates in the Bombay High Court where she was mainly engaged in legal research and drafting. She has developed reasonable skills in this position and aspires to develop her research experience and enhance knowledge. She believes that life is a learning journey and is always looking for more opportunities to take in.