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ENSURING ACCOUNTABILITY IN DISASTER RESPONSE: A CRITICAL ISSUE OF RESPONSIBLE GOVERNANCE

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Introduction

Two years after being ravaged by the devastating floods, the State of Uttarakhand was again back in the news when a notorious scam unfolded in context of disaster relief and rehabilitation programs. The multi-crore flood relief scam surfaced after Right to Information (RTI) activist Bhupendra Kumar produced documents showing massive financial irregularities in proceedings before State Information Commissioner Anil Sharma (TOI 2015a). Albeit the fact that the Uttarakhand Chief Minister Harish Rawat promptly ordered an inquiry into alleged inflated and forged bills submitted by state government officials during the relief works, it hardly inspire confidence in the outcome of the inquiry (TOI 2015b). The Uttarakhand flood scam is not the first-of-its-kind disaster related corruption in the country and it's not going to be the last. From New Orleans to Uttarakhand – we have witnessed such serious lack of accountability leading to colossal loss of funds meant for rebuilding the lives of thousands of victims devastated by disasters. Such irregularities prompt us to examine the concept of governance in the realm of disaster response. Accountability, at its simplest, means holding public officials responsible for their actions (World Bank 1992: 13). In addition to the public authorities, the private entities including the non-governmental organizations (NGOs) and civil society organizations (CSOs) also routinely get involved in disaster response. However, the challenge is to have control over their activities. Therefore, the accountability in this paper not only refers to the government's obligation to account for its activities and disclose the results in a transparent manner but also of the NGOs'.

It is also important to note that the accountability of the agencies to their citizens is a fundamental tenet of good governance. It helps the decision makers and the community

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leaders to realize the importance of the good policies and strategies designed for their benefit (UN/ISDR 2004: 7). Hence in this paper, the author does not only mean to suggest an internal accountability mechanism within the public or private agencies or even between the both but also takes into consideration the implication of the same on the rights of the affected population, who is the apparent beneficiary of all activities. The judiciary or any other judicial or quasi-judicial agencies has paid relatively scant attention to this matter. The Disaster Management Act, 2005, has also failed to produce desirable impact. Essentially, this paper seeks to understand the relationship among State, NGOs and disaster-affected population and attempts to provide a broad outline of a public policy ensuring better accountability in disaster response for all concerned stakeholders.

Significance of the Issue

1. Rising Number and Cost of the Natural Disasters

Despite technological advances and change in the approach of disaster management, the number of natural disasters has shown an upward trend. Centre for Research on the Epidemiology of Disasters (CRED), a non-profit organization in Belgium has been maintaining a worldwide database of disasters, i.e. EM-DAT: International Disasters.²

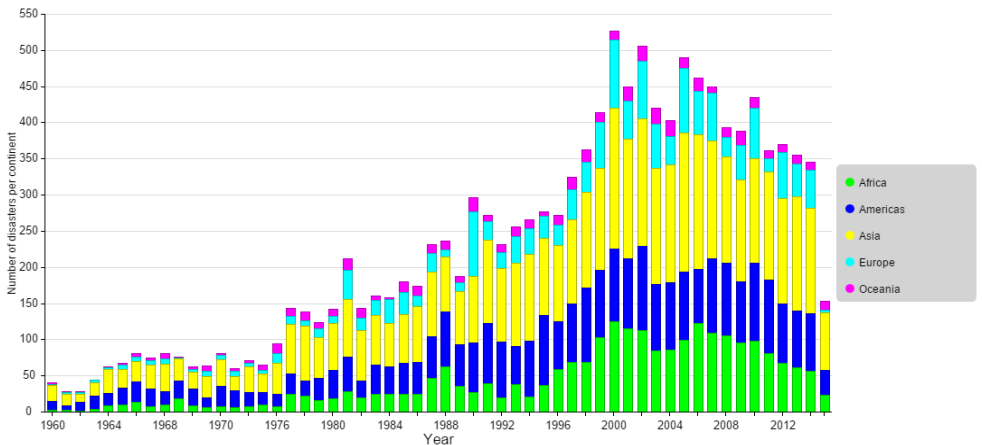


Figure 1

² www.emdat.be

From the data obtained, it is evident that number of natural disasters has grown from mere 44 in 1960 to reach the pinnacle of 527 in 2000 to 346 in 2014 (Figure 1). The cost of the disasters have also gone up significantly from US \$ 1.26 billion in 1960 to whopping US \$ 364 billion in 2011(Figure 2).

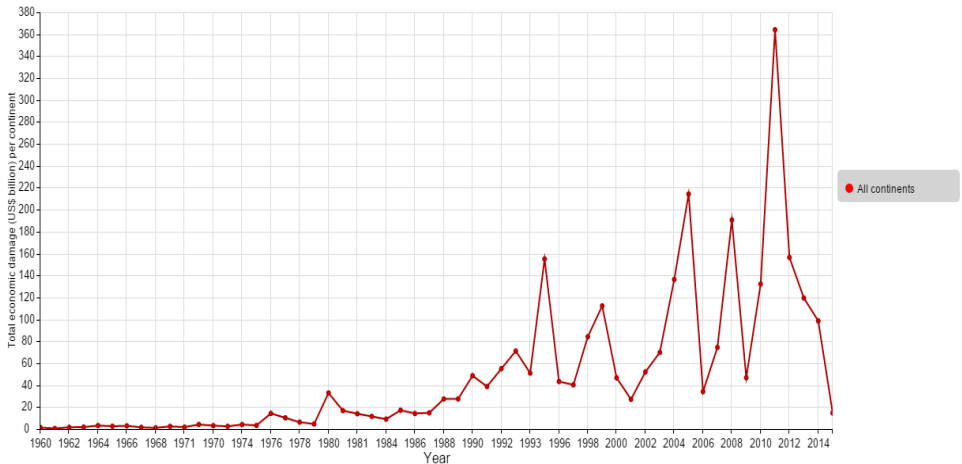


Figure 2

Data obtained from CERD reveal that disasters have not spared any regions in the world but it is a matter of grave concern that India features among top 5 countries that are hit by natural disasters over the last decade (Guha-Sapir et. al. 2015: 1). In 2013, India stands at 5th in terms of reported disasters, 2nd in disaster mortality, 3rd in number of victims and 8th in damages caused (Guha-Sapir et. al., at 15-17). The floods in the month of June, 2013, alone claimed 6054 lives (Guha-Sapir et. al., at 17). Thus, a country which is extremely vulnerable to various natural disasters, effective and accountable disaster response assumes greater importance.

2. The Uttarakhand Fiasco

In June 2013, cloudburst that resulted in devastating floods and landslides swept through the State of Uttarakhand causing massive death and destruction. It is one of the worst disasters in the recent history of the country. Though the actual figures of the deaths probably can never be ascertained, official figures put the toll beyond 5,700 (CBS News 2013). Naturally the response to the disaster was gigantic, as crores of rupees funds poured in for rebuilding the State. However, the information received by Bhupendra Kumar through various RTI queries seeking details of funds spent on relief work in the aftermath of the disaster was nothing sort of a revelation. The public

officials bled the exchequer submitting inflated bills – from Rs. 194 for half a litre of milk, to Rs. 7000 per day for accommodation in a hotel room, to Rs. 98 lakh for fuel purchase to a helicopter company – the list of financial irregularities is unending (The Hindu 2015). So much so, that record indicates that works had been completed even before they were initiated. The state information commissioner, Anil Kumar Sharma suggested a CBI inquiry into the scam while passing the order in the case (The Hindu 2015). Subsequently, he complained of threat to his life for his role in the scam (IBN Live 2015). In a stark reality, in July 2015, while undertaking a field research in few villages in the Dunda block in Uttarkashi district, the author found that victims were still struggling to rebuild their lives two years after the disaster.

3. Saga of Unaccountability in Gujarat

The revelations of the Uttarakhand scam are not the only instance. Financial irregularities have surfaced in the context of other disasters as well. In the post-Gujarat Earthquake in 2001, the Comptroller and Auditor General (CAG), in its reports, pointed out the pilferage of reconstruction funds by the Gujarat government. The reports, inter alia, revealed that the minister in charge of shelter superfluously wasted money buying expensive tarpaulin sheets without any justification. There were instances of non-maintenance of accounts and receipts regarding relief. While there were prolong delays in providing compensation to the victims, assistance money was paid in excess of Rs. 31 crore (Upadhyaya 2004).

The Government is equally to be blamed for letting the NGOs to have a free hand. They often tend to wash off their responsibilities in favour of the NGOs. E.g. in the aftermath of 2001 Gujarat Earthquake, immediately in the first week after the disaster, then Chief Minister, Keshavbhai Patel gave a call to the NGOs to come forward and ‘adopt’ villages for rehabilitation. The term ‘NGO’ for the State Government meant all organizations other than the Government, to include charity organizations, religious organizations, non-resident Gujaratis’ associations, professional development organizations, voluntary organizations and private/corporate sector. Rescue and relief aid poured in on a massive scale immediately after the earthquake. Even before the Government could organize relief, all the above-mentioned organizations had become actively engaged in the relief activities and hence, many of those organizations immediately responded to the appeal for adopting villages. Subsequently, due to the opposition of some of the NGOs in the State, the Government renamed the concept as ‘public-private partnership’. Whatever might be the name, the entire concept never

yielded desired results, but led to wide spread corruption as the adopters worked according to their whims and fancies (Darshini 2001: 3670-3673).

4. Tsunami of Corruption

Following the Indian Ocean Tsunami of 2004, the National People's Tribunal on Post-tsunami Rehabilitation: Housing, Land, Resources and Livelihoods constituted of several eminent persons from different walks of life, in course of a 'public inquiry' in Chennai brought out startling revelations regarding financial irregularities and lack of transparency in the implementation of the Tsunami-related schemes in the affected States and Union Territories. In course of action, it referred to the findings of the Public Accounts Committee of Parliament, which inter alia recorded in its report for 2007-2008, that funds allotted to the States and Union Territories for tsunami-related schemes were diverted for other purposes in the tune of Rs. 280 crore. According to the Tribunal, the Performance Audit Report (2006) of the Comptroller and Auditor General of India reiterates similar facts. In spite of such gigantic scale of corruption, there has been no reported case of action taken – either departmental or legal (Viswanathan 2009: 45-48). In such state of affairs, without proper remedial measure in place, in every disaster the Government would keep pouring money but to no effect.

Dubious practice of public-private partnership was also repeated in Tamil Nadu after the tsunami through the GO Ms. No. 25. Accordingly, any NGO/voluntary organization ready with a project proposal of minimum Rs. 75 lakh for 50 families are eligible for the partnership. Moreover, they were given the freedom 'to choose a habitation of any suitable size accommodating 50 families'. Without proper supervision from the Government, the housing in the tsunami affected areas was in shambles. The author had experiences in visiting houses built by the NGOs that had developed giant cracks on the walls within 6 months of construction, in Nagapattinam district. In fact, the inhabitants of those houses were forced to live in a precarious condition with the shadow of another disaster looming large above them.

S. Anand (2005: 28-30) further narrates the unfortunate tale of extreme unaccountability among NGOs in Tamil Nadu. They reportedly received over Rs 4,000 crore of NGO money for disaster management, out of which Rs. 3,000 crore went to Nagapattinam district alone. Yet there were no direction regarding the manner in which the money was to be spent. A huge chunk of the shelters built or boats provided by many of those NGOs were simply dreadful. In fact, the District Collectors of the two worst-hit districts – Nagapattinam and Cuddalore admitted the fact that the NGOs were

virtually competing among themselves and pressurizing the district administration for bigger building jobs under the State's public-private partnership ventures. They expressed their dismay over the fact that there existed no legal way of checking or stopping NGOs from working.

Concept of Accountability in Disaster Governance

Kuldeep Mathur (2013: 200 – 201) asserts that until later 1980s, the term 'governance' was not very common within the development community; it gradually started to get prominence in India only after the economic reforms in the country were introduced in 1991. Disaster governance as a part of good governance is an emerging concept that is closely related to risk governance and environmental governance (Tierney 2012: 341). However, before delving into the issue of accountability in disaster governance, it is important to understand the concept of good governance.

1. Good Governance and its Impact on Accountability

The World Bank (1992: 3) defines governance as the 'manner in which power is exercised in the management of a country's economic and social resources for development'. Pramod K. Mishra (2006: 372) refers to a World Bank report which identifies four major aspects of governance: (i) public sector management, (ii) accountability, (iii) legal framework for development, and (iv) information and transparency. It may be noted that governance is not equivalent to government rather beyond. It recognizes that power exists in both inside and outside the formal authority and institutions of government. Moreover, it also refers to a decision making process through reconciliation of various competing priorities of various actors having complex relationships (IRP 2009). Thus, the core idea of governance lays stress on the network relationships among three actors – the State, the market and the civil society. In the web of many meanings of governance, there is a baseline agreement that governance refers to the development of governing styles in which the boundaries between the public and private sectors are blurred (Mathur 2013: 201). The World Bank (1992: 1) considers good governance synonymous with sound development management. In fact, the Bank (World Bank 1992:11-12) has summed up the essence of good governance in the following words:

“Governance is a continuum, and not necessarily unidirectional: it does not automatically improve over time. It is a plant that needs constant tending. Citizens need to demand good governance. . . . Governments need to prove responsive to those demands. Change occurs sometimes in response to external or internal threats. . . . Although lenders and aid agendas and other outsiders

can contribute resources and ideas to improve governance, for change to be effective, it must be rooted firmly in the societies concerned and cannot be imposed from outside.”

Rumki Basu (2004: 52) asserts that from its lending experiences in many developing countries, the Bank came to realize that despite sound policy designs, programs and projects have floundered due to institutional failures. The Third World governments are poor in policy implementation. Absence of proper accounting resulting in widespread corruption coupled with general lack of participation, public apathy and misinformation have led to the derailment of several developmental projects. Rumki Basu (2004: 56) enumerates several parameters for the concept of good governance. They include economic liberalism, political pluralism, social development, administrative accountability, and private sector reforms. Here, administrative accountability refers to transparency, less corruption, efficiency and effectiveness.

2. Importance of Accountability in Disaster Response

Hazards and disasters are closely related phenomenon. A hazard is an extreme geophysical event capable of resulting in a disaster (Alexander 2000: 7). However, the impact of the disasters is dependent on the extent of risk that the population and physical infrastructure are susceptible to. Such susceptibility determines the vulnerability of the population. (UN/ISDR 2004: 9). Supportive governance structure is essential to enhance and ensure coping capacities in societies and thus reduce their vulnerability. Governance influences the way in which the stakeholders i.e. the State, the private sector, and civil society organizations are willing and able to coordinate their actions to manage and reduce disaster-related risk (UNDP 2010: 1). Needless to say that shrinking public trust in the disaster response leaves the affected population more vulnerable compared to a responsible one. Owen Main Podger (2015: 1) points out that building and sustaining public trust is critical during and after a crisis caused by a disaster. It becomes more critical because often: (i) institutions themselves are at times devastated by the disaster, (ii) resource providers for relief and recovery are frequently far removed from the crisis, and (iii) political interest disappears before recovery is complete.

It has been observed that governments could do more to strengthen their overall monitoring and evaluation function than what they are doing at present. Now, it is largely mandated by external financing agencies and project-specific (World Bank 1992: 19). This has led to poor projects with reduced efficacy and repetition of similar

kind of works year after year. Disasters are essentially local in nature. Hence, disaster management is expected to be a bottom-up approach where the primary responsibility lies with the local government supported by state and central government. The approach is helpful because of being the closest to the affected community, it has the first-hand experience of the nature and extent of the disaster, understands the need of the affected community and is in a position to undertake appropriate remedial actions suitable for the community. Moreover, the central government ought to come to the forefront only when the local authorities are overwhelmed by the disaster (Sylves 2008: 134-35). In effect, such decentralization reduces the overloading of the state and central government leading to efficient and effective disaster response and encourages access to decision-making and public participation at lower levels of government. E.g. the affected community can be engaged in discussing the designs and details of the relief and rehabilitation projects. Of course, unless carefully handled, national goals can be seriously distorted by local governments resulting in waste of resources leading to corruption (World Bank 1992: 21).

Furthermore, dissemination of appropriate and adequate information to the beneficiaries about services can bring about greater accountability among the service providers. Periodic evaluation of services can be useful for exerting pressure. This is possible through gathering of data from both beneficiaries and service providers either through referendum or through elaborate participation arrangements. When there is no or little scope of such practices being observed, procedures for making complaints and institutional mechanisms such as having an ombudsman are ways of encouraging seeking the affected community to seek for redressal (World Bank 1992: 21). E.g. in many cases, the list of the beneficiaries are prepared by the patwaris and forwarded to the district authorities for action. Rarely, the community is consulted in this matter. In some case, NGOs do consult with the communities for preparing the beneficiary lists and also discuss with them e.g. the kind of shelters they will built for them. The affected community has lesser bargaining capacity and in most of the situations, the service providers' will prevails over the beneficiaries. The author noted such anomalies while carrying the field study in Uttarkashi district in Uttarakhand.

Therefore, accountability in disaster governance would preferably mean to include not only accounting of the public funds but also monitoring of the spending and activities of the private agencies, the quality of the relief and rehabilitation programs in the affected areas by both public and private entities and also the involvement of the affected population. Disaster response would only then become meaningful.

Role of the Judiciary – Flash in the Pan

It is regrettable that the natural disaster management, on a whole, has received a step-motherly behaviour from our judiciary. Yet the case of *Bipin Chandra Diwan v. State of Gujarat* (2002) (hereafter Bipin Chandra case, 2002), arising out of the disastrous situation following the Gujarat earthquake, is arguably the most important one in the area of disaster management. A Public Interest Litigation (PIL) filed before the High Court of Gujarat by five prominent citizens based on the media reports of Government's failure in providing adequate relief and rehabilitation to the quake victims. Apprehensions were also raised regarding proper management of colossal quantity of relief material and money received as contribution from different bodies, organizations and persons for the quake victims (Bipin Chandra case 2002: para. 4-5).

Hence, the petitioners prayed for the issuance of directions to Government to set up independent Committee or Commission manned by experts in different fields who might be found competent in quake relief management operations and entrusting the Committee or Commission with the relief materials and the relief fund to ensure their proper utilization for the victims, avoiding misappropriation and loss (Bipin Chandra case 2002: para. 6).

While the State objected to the Court's authority to intervene in giving direction in disaster management which is primarily an executive action, the Court invoked the doctrine of '*Parens Patriae*' which refers to the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations (Bipin Chandra case 2002: para. 13).

Further, the Court held that the contributions and donations in cash and kind were with the Government in trust with it for their use for the victims. All those donors and contributors, as well as the quake victims in a representative capacity had an enforceable right to seek directions to the Government to ensure proper utilization of the fund for the relief and rehabilitation operations (Bipin Chandra case 2002: para. 19). In this regard, the Court referred to the concept of 'Ombudsman' meaning 'tribune of the people' and opined that participation of people representing donors and contributors and quake victims could best be achieved by it (Bipin Chandra case 2002: para. 24-25).

The Court directed the Chairman of District Legal Services Authority constituted under the Legal Services Authorities Act, 1987, to act as an Ombudsman in the respective district. His primary focus would be on receiving complaints and addressing grievances

raised by the quake victims rather than supervising relief and rehabilitation efforts. If required, after necessary investigation with the assistance of Legal Services Authorities and NGOs, he would bring the matter to the notice of the appropriate Government authorities (Bipin Chandra case 2002: para. 33).

The Court also directed for the creation of a separate fund for receiving contributions from various sources and the same may be managed by the Authority specially constituted for Disaster Management Operations. The account of the receipt and expenditure from the fund should be subjected to periodical inspection and audit by nominee of the CAG. Additionally, the account so maintained and duly audited would be open to inspection by public in accordance with the procedure to be laid down for the purpose by the CAG (Bipin Chandra case 2002: para. 23 & 33).

Recalling that improper disaster response could lead to the human rights violation of the quake-affected victims, the Court gave direction to the Government send a copy of the order to be sent to the National Human Rights Commission (NHRC) for necessary action and intervention, if necessary, in redressing the complaints of such violation in accordance with the provisions of Section 12(b)³ of the Protection of Human Rights Act, 1993 (Bipin Chandra case 2002: para. 33).

In an era of legislative vacuum in disaster management, this judgment is actually a masterpiece of judicial activism advocating for accountability in disaster response. Unfortunately, the judgment has failed to get its due recognition and remained as a one-off instance of jurisprudential brilliance.

Law Commission and Calamity Relief – Gone With The Wind

In *Anand Narayan Rao Poharkar v. Lokmat Newspaper Charitable Trust, Nagpur* (2001), a writ petition was filed before the Bombay High Court alleging that the funds collected by the trust from the public for the victims of the Kargil conflict in 1999 was misused or misappropriated. Social activist Anna Hazare alleged that a State Minister

³ Protection of Human Rights Act, 1993, No. 10 of 1994, Sec. 12. Functions of the Commission reads thus:

“The Commission shall perform all or any of the following functions, namely:- . . . (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court; . . .”

from Maharashtra collected money in the name of Kargil and Gujarat earthquake and diverted the funds for reviving a sinking sugar factory. Such irregularity led to the constitution of Justice Sawant Commission of Enquiry to probe into the charges. Then, there was the case of *Bipin Chandra Diwan*. Those disturbing instances of misappropriation and mismanagement of the funds collected for victims of disaster and conflict propelled the Government of India (GOI) to report the matter to the Law Commission of India (LCI) for recommending appropriate legislation to regulate and monitor such funds. Consequently, the Law Commission proposed law on regulating the funds collected for calamity relief (LCI 2004: para 1.6). It was of the view that the contributions or donations collected or received by the Government or its agencies had sufficient checks and balances regarding accounting and auditing of the utilization of such funds. Therefore, the proposed law should be made applicable to private entities, such as, private individuals, bodies, organizations, trust or NGOs (LCI 2004: chap. IV).

The proposed law advocated for the constitution of a regulatory authority, known as 'Contribution Regulatory Authority' (CRA) comprising of both public officials and private individuals, by the Central Government, for the purpose of regulating the collection and distribution of the funds or other items received in kind (LCI 2004: para. 5.2.6). The private entity should have minimum three years of experience in social service and compulsorily be registered to receive the contributions. The District, as the Registering Authority (LCI 2004: para. 5.3.4), should have the power of cancelling the registration for the violation of law (LCI 2004: para 5.3.7). No collections should be made without issuing proper receipts (LCI 2004: para 5.4.4) and proper accounts to be maintained proper accounts of all contributions collected and about their utilization. The details of such accounts shall be furnished to the Collector and CRA (LCI 2004: para 5.5.5). The CRA and the Collector, in-charge of the overall supervision of distribution and management of the contributions, were empowered to initiate civil or criminal proceedings against any person or agency. It recommended for setting up a 'Designated Court' with unlimited pecuniary jurisdiction for dealing with civil disputes (LCI 2004:para. 5.5). The Collector or the CRA, could also act as a quasi-judicial authority and impose fine (LCI 2004: para. 5.9).

This effort also went unnoticed and no development in the desired direction ever took place. The allegations of misappropriation and mismanagement of the funds by non-governmental entities continue in the context of every disaster, ranging from recurrent floods to mega-disasters like the Tsunami. And regrettably, the State, willingly or unwillingly, reduce itself to the role of a mute spectator. The instances discussed under

Part II only reassert such claim. For the NGOs, accountability lies only with their respective donor agencies. Thus, it is easier for such NGOs to raise passions among their donors by narrating harrowing tales of a disaster and collect contributions relatively easily. Disasters are easier bets for those NGOs to raise enormous funds compared to the normal development programs or long term issues haunting the people in general (Mishra 2001: 2760). Given the high number of NGOs catering to the needs, there is replication of articles distributed and dumping of the goods apart from provisioning the needful (Chandi 2007: 102).

The NHRC – Bystander at the Best

Disasters naturally indicate serious violation of human rights of the disaster victims. It may be emphasized that a state party's unwillingness to realize their human rights is distinct from its inability to do so. In this sense, human rights may promote accountability and empower the civil society in monitoring the government's progress in the disaster situations (Murthy 2013: 110). However, the role of the National Human Rights Commission has not been consistent in the mega disasters. After the cyclone wreaked havoc in the coastal districts of Orissa in 1999, the NHRC considered it imperative to take suo motu cognizance of the situation and monitored the situation. The Special Rapporteur, Chaman Lal, visited the affected areas for damage assessment, interacted with the officials at various levels and submitted a detailed report to the NHRC. Based on this report, the NHRC made specific directions/recommendations to the State Government including construction of cyclone shelters, preparation of an action plan for each district to undertake the rehabilitation work and establishment of appropriate machinery for monitoring long-term rehabilitation measures (NHRC 2001: para. 6.5).

In case of Gujarat earthquake, many of the directions were similar to that of Orissa. In particular, the Commission urged the State Government to hasten the work for the rehabilitation of the affected population and to ensure that temporary shelters were provided to all quake-affected people before the onset of the monsoon. In his report, the Special Rapporteur indicated various inadequacies in the rehabilitation process (NHRC 2006: 152-154). For example many of the houses constructed by agencies outside the original settlement of the beneficiaries remained unoccupied as they were not willing to accept relocation. It resulted in a colossal waste of scarce funds. The victims, who had been tenants, were facing lot of difficulties since they had lost their documents, either due to passage of time or in the quake. They had no proof to establish their tenancy rights. There were 1,000 such families who were awaiting decision of the Government

for allotment of land. Regarding updating the building bye-laws, while some progress was made, a lot remained undone. There was no qualification required to become a builder. The structural engineers hardly verify whether the structures were properly put up. They did not have the time to check the quality and adequacy of the materials used.

Although the NHRC made a commendable beginning during the Orissa Super Cyclone, the task remained undone due to lack of sustained commitment in monitoring and reporting of the relief and rehabilitation works carried out after the disasters.

Accountability under Disaster Management Law

Mounting losses in recurrent disasters forced the GOI to look beyond this traditional approach and take a holistic view towards the issue. In 1999, a High Powered Committee (HPC) was constituted under the chairmanship of Mr. J.C. Pant, former Secretary to the GOI, for suggesting institutional reforms and preparation of Disaster Management Plans at the National, State and District levels (GOI 2001: 27). As a part of its report, the HPC also prepared a draft national legislation called as the National Calamity Management Act, 2000 (GOI 2001: at annex 5).

The law proposed an imprisonment for a term not exceeding six months or with fine which may extend Rs. 5000 or with both for willful violation of any duty imposed by, contravention of any provision of the law (Calamity Act 2000: secs. 12 and 13). It made the head of the department responsible for any offence committed by the respective department of the government (Calamity Act 2000: Sec. 14). Furthermore, any official or functionary entrusted with or engaged in any relief and/or rescue operation, if found responsible, directly or indirectly, for loss of public money or damage to public property shall be liable for recovery of funds which shall be to the tune of 150 per cent of the total loss or damage caused. A penalty on such official or functionary shall be imposed without any prejudice to any other legal proceedings or criminal prosecution that may be launched against him (Calamity Act 2000: Sec. 15). There is little doubt that such endeavour of the HPC paved the way for incorporating the element of accountability in the future legislation – the Disaster Management Act, 2005.

The Disaster Management Act, 2005, has laid down few provisions with an objective in ensuring accountability of the actors involved in the disaster management. Accordingly, if any person entrusted with money or materials, meant for providing relief in any threatening disaster situation or disaster, misappropriates or appropriates or disposes the same for any other purpose or induces others to do so shall be punishable with

imprisonment for a term which may extend to two years and also with fine (DM Act 2005: Sec. 53). So far the public authorities are concerned, the head of the departments shall be deemed to be guilty of the offences committed by the department under this Act and shall be liable to be proceeded against accordingly, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence (DM Act 2005: Sec. 55). Any officer who fails in or refuses to do his duty shall be punishable with imprisonment for a term which may extend to one year or with fine (DM Act 2005: Sec. 56). However, they have been given a lee way. No prosecution for those offences shall be instituted except with the previous sanction of the Central Government or the State Government, as the case may be (DM Act 2005: Sec. 59). Of course, such sanction is not required in case of misappropriation of money or materials meant for providing relief. Another significant aspect of the Act is that the actions of the National, State and District Authorities as well as the Central and State Governments cannot be challenged except in the Supreme Court or the High Courts having respective jurisdictions (DM Act 2005: Sec. 71). They enjoy complete immunity from legal proceeding with regard to any warning in respect of any impending disaster (DM Act 2005: Sec. 74). Granting the officials, members or employees such a high degree of immunity encourages them to indulge into such activities which may go against the objective of the Act (Sarkar & Sarma 2006: 3762). It affects people's right to seek justice. Conversely, it imposes punishment for false claim (DM Act 2005: Sec. 52). Under any circumstances, no court shall take cognizance of an offence under this Act except on a complaint made by the Government or any authorities or any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to any authorities or Government (DM Act 2005: Sec. 60). Such provision leaves on doubt that the legislators have done their best to ensure that the public officials or any person in charge of dispensing with any duty under this Act walk out scot-free even if he is responsible for colossal damages in terms of life and property. And this might be one of the major reasons behind indiscernible impact of these legal provisions.

It may also be mentioned that in Gujarat, in order to ensure financial discipline, a professional accounting system was put in place. Various financial statements were prepared and scrutinized by audit agencies. Statutory audit certificates were obtained as prescribed. In the reconstruction phase, there were sporadic cases of irregularities which were dealt with firmly. Some employees were suspended. Criminal cases were initiated against few officials and non-officials at the local level. These cases were,

however, not significant given the size of the projects, their spreads and complexities (Mishra 2006: 376-77).

Accountability towards the People – The Missing Link

Although the affected community is at the heart of the disaster response, it has often been witnessed that all the activities apparently taken up for their welfare excludes their involvement from the process. Consequently, equity suffers; as it happened when the Government of Gujarat assisted the earthquake victims with a compensation package for building their own houses. However, it did not trickle down to poorer sections of the society. The more influential members of the communities took away the lion's share for their own benefit. On many occasions the economically vulnerable communities were left out of the enumeration process conducted by the government. Without any financial assistance, they continue to live in deplorable condition in temporary shelters (Jigyasu 2001: 1).

There was gradual improvement in the process in the context of Tsunami. An effort was made in involving the beneficiaries in actual building of their homes. Yet the mission remained far from being accomplished. It was reported that only 2.22 per cent of the people employed in the post-Tsunami construction work were from the affected villages, even though they desperately needed the work (TISS 2005: 9).

Albeit the allegations of massive corruption against the public officials, it is encouraging to note that after the Uttarakhand floods, to ensure community participation, the Government with funds from the World Bank proposed to the affected people whose houses got completely destroyed, to choose between prefabricated houses and 'owner-driven' constructed houses. To build their houses, the State of Uttarakhand issued a Government Order (G.O. No. 1024) for providing Rs 5 lakh per unit in four installments after completion of certain phases of the work. All the houses are required to be earthquake-resistant and built as per specifications mentioned therein. The names of all 2,497 beneficiaries along with the names of their respective villages, financial details, date of payment of the last installments and even their mobile numbers are uploaded on the website. Moreover, while visiting the Didsari village in the Uttarkashi district, the author encountered couple of instances where houses were built without compliance with the earthquake-resistant norms. As a result, Society for Uttaranchal Development & Himalayan Action (SUDHA), a NGO, is the monitoring partner for the project found and reported such the non-compliance. This resulted in withholding of the subsequent installments. The beneficiaries were able to receive the remaining

installments only after carrying out the retrofitting work. Such practices augur well for transparent governance.

Conclusion

After every disaster, aids pour in both in cash and kind but appropriate management of such resources and channelizing those to appropriate projects is sine-qua-non for effective disaster response. It's a fact that the State cannot manage everything alone and require assistance from the private entities. However, it is essential for the State to assume overall control and supervise the situation in the interest of responsible disaster governance. To that effect, it is desirable for the State to draw an accountability policy with regard to disaster response which is expected to include the following aspects:

First, while the contribution of the NGOs in disaster response cannot be ignored, they need to be made accountable for their work by subjecting them to regular auditing. It is essential to make the NGOs accountable to the general public with regard to activities. Of course, they are not 'public authorities' which are obliged to furnish information under the Right to Information Act. The NGOs can only be brought under the purview of the Act to furnish information if they are "substantially financed, directly or indirectly by funds provided by appropriate government" (RTI Act 2005: Sec. 2(h)(d)(ii)). An amendment is required to include all those non-governmental bodies which undertake various activities in the name of 'public purpose' or 'public welfare'. As the NGOs receive money from various sources for those public activities, they should be made accountable to the society at large. Under such circumstances, an enactment of a law on the lines proposed by the Law Commission is also the need of the hour. In fact, the District Disaster Management Authorities constituted under the Disaster Management Act, 2005, can act as the Registering Authority and Contribution Regulatory Authority as contemplated under the proposed law.

Secondly, the working of the NGOs and the public authorities may be monitored and accounts may be scrutinized by an impartial body or co-ordination committee comprising of public officials and responsible citizens. The records should be made available for the inspection of the general public as well. In case of any grievance, the aggrieved persons can approach an ombudsman set up in this regard. The Gujarat High Court judgment would be a good referral point. The judgment deserves more publicity and to be followed with renewed vigor.

Thirdly, the World Bank sponsored housing project is a good model of transparency and accountability in the realm of public-private partnership. Such practices may be replicated for all disaster related projects in other places. Nevertheless, instead of an NGO, being the monitoring agency, it would be better if experts from reputed institutes, like the IITs/NITs are engaged for certification.

Fourthly, no disaster response can be truly accountable without community participation. It shall be imperative for any disaster program to be designed in consultation with the affected-community. Only then the fruits of the program can reach to the actual beneficiaries. In the process, the problems and concerns will get a voice and the community members themselves may be involved for rebuilding their lives. On a whole, the community will be well-aware of the nuances of response and make it more effective.

Fifthly, the penal provisions in the Disaster Management Act are commendable. However, granting high degree of immunity for the officials is undesirable. In any case, those provisions have little impact on the ground. Sustained efforts in giving more prominence to the Act is the need of the hour. There were instances of initiating actions against the corrupt officials charged with irregularities in Gujarat, but such actions should become the norm rather than exceptions.

Finally, the NHRC should appoint a Special Rapporteur on the protection of human rights of the disaster-victims who would visit the disaster-affected areas and report to the Commission. The Commission may consider the reports and ask the government concerned for replies or action taken reports, as the situation demands. Such steps would make the State's response to disasters more accountable. Alternatively, the National Disaster Management Authority may follow a similar procedure. All reports should be placed on public domain. Such an approach will ensure in establishing a human rights framework empowering the disaster victims. Consequently, as rights-holders they would be in a position in seeking redressal against the State to ensure that resources meant for the disaster victims are used in an efficient, fair and transparent manner. This is concomitant to good governance and anticorruption efforts.

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