

**Floods 2010**

**DISASTER RISK MANAGEMENT  
Legal Framework - Issues and  
Challenges**



## **FLOODS 2010: DRM Legal Framework - Issues and Challenges**

Effective DRM necessitates establishing a comprehensive legal framework that covers all aspects of disaster risk management, and specifies the responsibilities of agencies from the federal to the local governments. Pakistan, till 2005 had been following a traditional relief oriented approach for managing disasters. The devastating Earthquake in 2005 not only highlighted the inadequacies of the approach but also underscored the legal deficits in the existing legal framework.

In order to address the shortcomings and to be compliant with the international commitments including International Strategy for Disaster Reduction (ISDR) 1999 and Hyogo Framework for Action 2005-2015 National Disaster Management Ordinance 2006 was promulgated. On the lapse of the 2006 Ordinance the Parliament enacted National Disaster Management Act in 2010.

A review of the existing legal framework highlights that besides NDM Act 2010 a number of laws and institutions, with their own diverse set of strategies to address various stages of disasters and hazards are in place. The response to the Floods 2010 has highlighted a number of gaps in the existing legal framework, important of these are outlined in the following section.

### **Constitutional Basis of National Disaster Management Act 2010**

**Subject of Disaster Management:** Disaster Management is a subject under the exclusive jurisdiction of provinces as it is neither included in the Federal legislative list nor the defunct concurrent list as enumerated in the fourth schedule of the Constitution [*Fourth Schedule, Article 70 (4)*]. Besides, Article 142 (c) of the constitution clearly states that Parliament shall have no powers to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative List.

**National Disaster Management Ordinance 2006/ National Disaster Management Act 2010:** For the said reason the enactment was done by invoking the powers given to the Federal Legislature under Article 144 (Part V Chapter 1), which confers the power upon Federal Legislature to legislate for two or more Provinces, if two or more provincial legislatures pass resolutions to the effect that the Parliament may by law regulate any matter not enumerated in either legislative list in the fourth schedule of the constitution. Therefore National Disaster Management Law was promulgated after the Parliament was empowered by four provincial assemblies through their resolutions.

### **Key Issues in the DRM Legal Framework:**

1. The workability and effectiveness of the legal framework is impeded by overlapping laws and institutional jurisdictions. NDM Act 2010 itself prescribes no special measures for addressing the issues of establishing linkages and incorporating overlapping provisions. These include; West Pakistan National Calamities (Prevention and Relief) Act 1958, The Civil Defence Act 1952(As Amended In 1993), Local Government Ordinance 2001, and Punjab Emergency Service Act 2006.

2. Generally, most of the disaster related laws when drafted were never aimed at addressing the issue of disaster in a holistic manner and were responsive to specific

### **Legal Framework for DRM in Pakistan**

**National Disaster Management Act 2010(Act XXIV of 2010):** The NDM Act 2010 envisages working in nine priority areas, enshrined in Hyogo Framework for Action (HFA) 2005. The Act provides for administratively autonomous institutional arrangements at all tiers of governance, i.e. federal, provincial and district levels.

**The West Pakistan National Calamities (Prevention and Relief) Act 1958:** The Act provides for the maintenance and restoration of order in areas affected by certain calamities and for the prevention and control of and relief against such calamities. Or any other calamity which, in the opinion of the Government, warrants action under this Act, The Act was being adopted as mirror legislation in all the four provinces.

**The Civil Defence Act 1952/ Civil Defence (Amendment) Act 1993:** The Act originally mandated the envisaged civil defence department to “take measures not amounting to actual combat, for affording defence against any form of hostile attack by a foreign power or for depriving any form of hostile attack by a foreign power of its effect, wholly or in part, whether such measures are taken before, during or after the time of the attack”. In 1993 its mandate was expanded to peace time activities as well including; remedial measures against natural or man-made disasters, e.g. rescue, evacuation and relief measures, supplement anti-flood equipment of Army, provide personnel for flood training in rescue and relief work.

**Local Government Ordinance 2001:** The Local Government Ordinance (LGO2001) devolved the subject of disaster management to district level. It provides for context specific disaster management at District, Tehsil, Union Council and Village council levels.

**Punjab Emergency Service Act 2006:** The institution of Punjab Emergency Service was created in October 2004 (Rescue 1122) and the governing legislation was passed in June 2006. The service is mandated to, provide for time sensitive emergency response in SAR and emergency medical evacuation, coordinating emergency response, undertake capacity building of service providers and to monitor disaster and response trends to facilitate competent policy making.

needs arising out of necessity e.g. West Pakistan National Calamities Act 1958, Civil Defence Act 1952, Local Government Ordinance 2001 etc.

3. The disaster related laws do not cross refer or attempt to relate or incorporate the provisions of existing laws. A succinct comparison with Punjab National Calamities (Prevention & Relief) Act 1958 and Punjab Emergency Service Act 2006 can elicit this.
4. The defunct Local Government Ordinance (LGO) 2001 provided disaster management at District, Tehsil, Union Council and Village Council levels, however these institutions and processes were not aligned with the existing National disaster framework. Any future legislation on the subject needs to take account of this shortcoming.
5. The definition of disaster as given in National Disaster Management Act 2010<sup>1</sup> is limiting, and fails to qualify an event demanding a high quantum response. Moreover, in

---

<sup>1</sup> Section 2 (b) NDM Act 2010

regards to manmade causes, a disaster could be a result of disregard and neglect of what one was supposed to do. Therefore it is important to incorporate negligence in the definition.

6. The definition of “Disaster Management” in NDM Act 2010<sup>2</sup> does not include two key ingredients of disaster risk management namely; mitigation and capacity building. The definition needs to be broadened to make it inclusive of all steps, procedures and arrangements to ensure DRM.
7. Another obvious deficiency in NDM Act 2010 is its failure to define “declaration of disaster”, and to outline the procedures and processes for declaration of a disaster at National, provincial or local levels.
8. Minimum Standards of Relief as provided by NDM Act 2010 need further elaboration<sup>3</sup>. This is, particularly, important in the context of compensation to be provided to the disaster hit areas and people.
9. Disaster Management at district level is of vital importance and serves as the lynchpin of the whole framework, yet the law does not provide for a mandatory / legally enforceable mechanism for functionalizing DDMAAs.

The present legal framework faces duplication, complexity of coordination and communication issues. It also falls short of establishing enforceable linkages with relevant ministries, departments, or directorates. It is important to revisit the present DRM legal framework so as to add appropriate references and explanation where required, or to repeal, revoke or revise the provisions of multiple laws that create legal ambiguities.

---

<sup>2</sup> Section 2 (c) NDM Act 2010

<sup>3</sup> Section 11 NDM Act 2010

**A COMPARISON OF KEY DISASTER RELATED LAWS**

Issue	NDM Act 2010	West Pakistan National Calamities (Prevention And Relief) Act 1958	Punjab Emergency Service Act, 2006	Civil Defence Act 1952(As Amended up to 1993)	Local Government Ordinance, 2001
<b>Disaster</b>	“disaster” means a catastrophe, or a calamity in an affected area, arising from natural or manmade causes, or by accident which results in a substantial loss of life or human suffering or damage to, and destruction of, property.	Whenever the Province of ... or any part thereof is affected or threatened by flood, famine, locust or any other pest, hailstorm, fire, epidemic or any other calamity which, <i>in the opinion of the Government, warrants action</i>	"Emergency" means a serious and potentially dangerous situation requiring immediate action such as an accident, hazardous material incident, fire, explosion, natural or manmade disaster;	includes following in a situation warranting action: -any form of hostile attack by a foreign power --natural or manmade disaster in peace time.	defines disaster as including: famine, flood, cyclone, fire, earthquake, drought, and damage caused by force majeure.
<b>Disaster Management</b>	<b>Section 2. (c):</b> managing the complete disaster spectrum including:- (i) preparedness; (ii) response; (iii) recovery and rehabilitation; and (iv) reconstruction	maintenance and restoration of order in areas affected by certain calamities and for the prevention and control of and relief against flood, famine, locust or any other pest, hailstorm, fire, epidemic or any other calamity	Aims to provide: time sensitive emergency response in SAR and emergency Medical Evacuation. Coordination for disaster response and playing a lead role in Undertake capacity building of service providers; and monitor disaster and response trends to facilitate competent policy making.	defending the civilian population against enemy attack. In 1993 the scope of work was enhanced to include: • Assistance to civil administration • Training • Demonstrations • Recruitment of volunteers • Warden posts • Relief camps • Fire fighting arrangements • Floods • Earthquake • Bomb blasts • Enforcement of building Rules &	Provides for context-specific disaster management, organize and prepare for relief activities in disasters or natural calamities, managing Civil Defence department, fire services & relief at district and Tehsil tiers.

				Role of Civil Defence. Fire Order, 1987	
<b>Key Institution/s</b>	NDMA (Prime Minister Secretariat), PDMAs and DDMA's <b>(Section 8, 14, 18)</b>	Relief Commissioner (Senior Member Board of Revenue) <b>(Section 3A)</b>	Punjab Emergency Service, Home Department	Civil Defence Department, working under Home Department. At District level responsibility rests with the DCO	District Nazim, DCO <b>(Section 18k)</b>
<b>Governing Body</b>	National Disaster Management Council (NDMC)	Provincial Government/CS	Punjab Emergency Council (PEC) <b>(Section 6)</b>	Home Department	
<b>Field Org/Office</b>	District Disaster Management Authority	DCO	District Emergency Service/District Emergency Board <b>(Section 8)</b>	Civil Defence Department, under DCO	District Nazim/TMO/TO Planning & Coordination Union Administration <b>(Section 76 p)</b>
<b>DRM FRAMEWORK</b>	Provides a comprehensive DRM framework encompassing all key areas (Mitigation, preparedness, response, recovery, rehabilitation, and reconstruction) <b>(Section 2 c)</b>	Focus on Relief, Absence of multi hazard DM approach, Provides vertical configuration with little lateral coordination <b>(Section 4)</b>	Emergency Response in selected areas, coordination with only Police Department (Rescue 15) <b>(Section 5)</b>	Capacity building, first aid administration, fire fighting, and search and rescue. An operational disconnect in civil defence operations in the province and district.	context-specific disaster management, a number of provisions in conflict with National Calamities Act 1958
<b>Integration of Disaster Response</b>	Coordinated disaster response through its established inter-tier linkages	<i>Fail to integrate disaster response at any stage</i>			
<b>Declaration of Disaster</b>	NA	Declaration of Calamity is done by the Provincial Government <b>(Section 3)</b>	NA	NA	NA

