Floods 2010

DISASTER RISK MANAGEMENT
Legal Framework - Issues and Challenges

ACTION AID | INSTITUTE OF SOCIAL AND POLICY SCIENCES (I-SAPS)
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.

**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 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\(^1\) is limiting, and fails to qualify an event demanding a high quantum response. Moreover, in

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\(^1\) Section 2 (b) NDM Act 2010

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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\(^2\) 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\(^3\). 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 DDMAs.

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.

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\(^2\) Section 2 (c) NDM Act 2010
\(^3\) Section 11 NDM Act 2010
# A COMPARISON OF KEY DISASTER RELATED LAWS

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<td><strong>Disaster</strong></td>
<td>“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.</td>
<td>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, in the opinion of the Government, warrants action.</td>
<td>&quot;Emergency&quot; 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.</td>
<td>defines disaster as including: famine, flood, cyclone, fire, earthquake, drought, and damage caused by force majeure.</td>
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<td><strong>Disaster Management</strong></td>
<td><strong>Section 2. (c):</strong> managing the complete disaster spectrum including:- (i) preparedness; (ii) response; (iii) recovery and rehabilitation; and (iv) reconstruction</td>
<td>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</td>
<td>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.</td>
<td>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 &amp;</td>
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*Source:* Institute of Social and Policy Sciences (I-SAPS) and ActionAid

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**Footnote:**

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.
### Key Institution/s

| Role of Civil Defence. Fire Order, 1987 | NDMA (Prime Minister Secretariat), PDMAs and DDMAs (Section 8, 14, 18) | Relief Commissioner (Senior Member Board of Revenue) (Section 3A) | Punjab Emergency Service, Home Department | Civil Defence Department, working under Home Department. At District level responsibility rests with the DCO | District Nazim, DCO (Section 18k) |

### Governing Body

| | National Disaster Management Council (NDMC) | Provincial Government/CS | Punjab Emergency Council (PEC) (Section 6) | Home Department |

### Field Org/Office

| | District Disaster Management Authority | DCO | District Emergency Service/District Emergency Board (Section 8) | Civil Defence Department, under DCO | District Nazim/TMO/TO Planning & Coordination Union Administration (Section 76p) |

### DRM FRAMEWORK

| | Provides a comprehensive DRM framework encompassing all key areas (Mitigation, preparedness, response, recovery, rehabilitation, and reconstruction (Section 2c) | Focus on Relief, Absence of multi hazard DM approach, Provides vertical configuration with little lateral coordination (Section 4) | Emergency Response in selected areas, coordination with only Police Department (Rescue 15) (Section 5) | 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 |

### Integration of Disaster Response

| | Coordinated disaster response through its established inter-tier linkages | | | Fail to integrate disaster response at any stage |

### Declaration of Disaster

| | NA | Declaration of Calamity is done by the Provincial Government (Section 3) | NA | NA | NA |