Human Rights-based Approach to Disaster Management: A Study of Disaster Deaths in Kerala Flood of 2018

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ABSTRACT
Natural disasters cause the deaths of thousands of people and displace millions more every year across the world. It is also anticipated that more and more people will die due to natural disasters in future because of the climate change and other environmental degradation. Natural hazards are inevitable but what are not inevitable are the deaths of thousands because the cause of majority of deaths, though not all, is not due to natural hazards, but due to state’s failure to adopt disaster risk deduction policies and their timely and effective implementations. It is assumed in the paper that number of deaths in disaster can be reduced to a reasonable extent if ‘human rights-based approach’ is adopted in the whole circle of disaster management. In addition to this, disaster management has to work on a framework of avoidable deaths rejecting the traditional notion of inevitability of deaths during disaster.

In the above conceptual framework, this paper intends to make an in-depth analysis of the issue of state accountability and lack of administrative measures in mitigating flood and reducing flood-related deaths taking references from the Kerala flood of August 2018 which is considered to be the worst flood in Kerala in the last century claiming the life of more than 483 people in addition to major damage to the infrastructure, economy and livestock. Besides identifying the specific causes and circumstances leading to such a large number of deaths, this paper aims at exploring the administrative possibilities to avoid deaths.

1. Introduction
The importance of Disaster Management is constantly increasing all over the world because of the perceived threat of more and more devastating disasters in future due to the climatic changes and other human activities. It carries greater significance in India which, due to its geo-climatic condition, is attacked by various kinds of natural disasters such as earthquake, tsunami, cyclone, flood and drought in regular intervals. Brookings-Bern Report (2009) rightly described South Asia (the major component of which is India) as a ‘theatre of disaster’. Natural disasters, every year, not only take the life of thousands of people, but also deprive millions of their human rights to life, livelihood, food, shelter, health care, education, etc. Though the proposition of eliminating deaths in disaster is a distant dream, but the micro level ground realities suggest that disaster deaths can be reduced or certain deaths can be avoided (Ray-Bennett 2018). It is evident that most of the deaths in this situation occur, which could have been avoided, either because of non-existent of disaster risk reduction policies or non-implementation of such policies despite their availability in many cases due to administrative negligence or apathy.

Natural disasters in the last decade or so have raised an important moral and political question concerning the state-citizen relationship. The individual rights and the corresponding state obligations to protect them do not remain suspended in the humanitarian crisis borne out of natural disasters. However the manner in which disaster management machineries have acted in major disasters in the recent past, has exposed the states world over for their failure to discharge their constitutional and moral obligations towards their citizens. The onus lies with the state’s disaster management machineries or the whole administration for formulating and implementing above policies. However, on the contrary, state institutions dealing with disaster have exhibited major lapses on their part in discharging the above said responsibilities. This, as argued by many, happens because of administrative negligence and apathy and complete absence of legal and administrative accountabilities in this field; though the role of financial constraints and uncommitted political will cannot be completely ruled out. Therefore, the cause of majority of deaths though not all, is not due to natural hazards, but due to man-made disaster or a product of state’s failure to adopt disaster risk deduction policies and their timely and effective implementation.

Normatively, it can be argued that it is not the nature but the state machineries should be held responsible for the loss of life and property during disaster. It is assumed in the paper that number of deaths in disaster can be reduced to a reasonable extent if ‘human rights-based approach’ is adopted in the whole circle of disaster management. This approach besides advocating for the human rights of the disaster-affected people, establishes legal accountability of state and its machineries for their failure to protect the rights to life during natural hazards. In addition to this, disaster management has to work on a framework of avoidable deaths rejecting the traditional notion of inevitability of deaths during disaster.

In the above conceptual framework, this paper intends to make an in-depth analysis of the issue of state accountability and lack of administrative measures in mitigating flood and reducing flood-related deaths taking references from the Kerala flood of August 2018 which is considered to be the worst flood in Kerala in the last century claiming the life of more than 483 people in addition to major damage to the infrastructure,
economy and livestock. Besides identifying the specific causes and circumstances leading to such a high number of deaths, this paper aims at exploring the administrative and community level possibilities to avoid deaths.

2. Human Rights-based Approach to Disaster Management

Human rights-based approach to disaster prevention, response and recovery not only identify the rights that the disaster affected people are entitled to, but more importantly it specifies the obligations of the duty bearers (both state and humanitarian actors) and accountability mechanisms at every level of governance. It starts with the assumption that disaster affected and displaced people do not lose their human rights, rather they are entitled to all those basic rights that are guaranteed to the citizens of the state under the domestic law as well as international humanitarian law and conventions. Among all human rights, rights to life as highlighted in International Human Rights Law (Kalin, 2011; Stallworthy, 2009) and Kampala Convention which is based on UN Guiding Principles on Human Rights and Humanitarian Law (Kalin and Haenni, 2008). Though this paper deals with state obligation, it is necessary to mention here that besides state, international humanitarian community and NGOs who play a critical role in the disaster response and recovery process, also must integrate human rights standard and practices into their actions (Pyles, 201; Nickel and Eikenberry, 2007).

The primary responsibility of protection of the rights to life of the disaster affected people lies with the state. The legal obligation of the state to protect the above right is well grounded in its own constitutional law as well as international humanitarian laws, treaties and conventions (Stallworthy, 2009; Kalin and Haenni, 2008). Though this paper deals with state obligation, it is necessary to mention here that besides state, international humanitarian community and NGOs who play a critical role in the disaster response and recovery process, also must integrate human rights standard and practices into their actions (Pyles, 201; Nickel and Eikenberry, 2007).

The actions of all state in this context needs to be guided by the spirit of the judgments of European Court of Human Rights (Kalin, 2011 and Stallworthy, 2009) and Kampala Convention. The Court, in Budayevavs Russia Case in 2008, established that state, not the nature, is responsible for the death of 8 people in a mudslide. The judgment identified the cause of death is not due to natural hazard, but due to the failure of state authorities to plan and implement required preventive measures to avert the foreseeable hazard. The African Union, in 2009, on the foundation of UN’ guiding principles, adopted the Kampala Convention which is legally binding on the states. It contains provisions for the protections of the natural and man-made disaster affected/displaced people in Africa. It imposes legal obligations on the member states to protect and assist such people (Cohen and Bradley, 2010).

The individual’s right to life and the corresponding responsibility of the state to protect it imposes certain obligations (Kalin 2011) on the state administration to:

- Enact and implement laws dealing with all relevant aspects of disaster risk mitigation and establish the necessary mechanisms procedures;
- Take the necessary administrative measures, including supervising potentially dangerous situations;
- Inform the population about possible dangers and risks and set up systems to alarm them when the danger becomes imminent;
- Evacuate potentially affected populations;
- Conduct criminal investigations and prosecute those responsible for having neglected their duties in case of deaths caused by a disaster; and
- Compensate surviving relatives of victims killed as a consequence of such neglect.

3. Disaster of Flood in India: A Case of Kerala Flood of 2018

India is one of the few countries most vulnerable to floods having 45.64 million hectares of flood-prone land out of its total geographical areas of 329 million hectares. India accounts one fifth of total deaths due to flood in the world. The total number of people died due to heavy rain and flood in India in the last 64 years is 107,487. Number of deaths due to flood in present year has touched to 993 (till 27th August 2018) with Kerala reporting the highest number of deaths.

Kerala, a southern coastal state of India, has experienced in the month of August, 2018, the worst disaster of flood and land slide in the last one century. It received from 1st to 20th August, 2018 a total of 771 mm of rainfall which is 255 % more than normal. The torrential rain since 10th May followed by continuous and heavy rain in the 1st week of August accumulated huge amount of water in all dams of Kerala. In order to control the situation, authorities of Kerala Government on 10th August released water from 35 dams out of its total 54 dams, which happened for the first time in the history of Kerala. The opening of the floodgates of the dams following week long heavy rainfall triggered landslides in many mountainous regions collapsing many houses. The above unprecedented incident flooded almost all 14 districts but 7 districts-Idukki, Palakkad, Wayanad, Kannur, Ernakulam, Kottayam and Pathanamthitta are worst affected (Sphere India, 2018). According to the statistics given by the Kerala Government one sixth of the total population have been adversely affected by this flood. The government of India declared this as a ‘Level 3 Calamity’ or ‘calamity of severe nature’.

Disaster Deaths

More than 483 (2018 Kerala Flood), as reported in Wikipedia, people died in this devastating flood. The official count of death toll is more than 400 but NGOs working in the field claim that the number is much higher. The number of post-disaster deaths mainly due to various diseases is yet to be accounted. Though landslides amounted to majority of deaths but there are some specific micro level factors responsible for many deaths during the flood. Other causes of death are falling of debris, house collapse, drowning and lack of food and water. People of flood affected areas were neither expecting nor were prepared to such a heavy flood and landslides. Despite warning from the government, many people who had no past experiences of flood of this nature died while trying to maneuver the situation. In addition to the above widely accepted reasons of deaths, there exist many other case specific factors that can be revealed only after a field investigation. There are a lots of trivial reasons for which
people have sacrificed their life which could have avoided with adequate preventive measures. For example; one 19 year old boy committed suicide after realizing that his school certificates have been destroyed in the flood and a 68 year old man took his life after seeing the state of his damaged house after flood at Kothad in Ernakulam district, the police reported (The Express Tribune, 2018).

The central questions that the paper tries to answer are why such systemic/institutional failure took place in Kerala while India has developed a well-articulated disaster policy and advanced disasters management institutions based on Disaster Management Act of 2005, which otherwise work effectively in some parts of India? Why so many people died in Kerala while number of deaths is substantially less in disasters of similar nature and magnitude in other states in India such as Odisha and Bihar? The case of Kerala questions the efficiency of disaster management. It is, therefore, one of the best examples of systemic failure and provides an opportunity to the world to learn a valuable lesson in the field of disaster management.

**A Man-made Disaster**

A team of experts from Central Water Commission which made a post-disaster study admitted that flood of this magnitude is an inevitable outcome of such heavy rainfall, but what may not have been inevitable is such a large number of deaths and scale of devastation (The Times of India (a), 2018). Every disaster and its related deaths, as commonly perceived, are caused by two broad sets of factors—natural and man-made. In the case of Kerala flood, it is apparent that unprecedented rain and sudden release of water simultaneously in all dams caused this devastating disaster of flood. Taking the state perspective into accounts, it might be argued that heavy and continuous rain might be the natural cause of this hazard, but what needs to be highlighted here is the manner of flood management and particularly the management of dams which is also responsible in exacerbating the situation. On the contrary, it is also scientifically established that many natural hazards such as heavy rain and flood in this case are not purely natural rather they are product of irresponsible human activities. Thus, it might be argued on the basis of the evidences from various sources that it is not the nature but the unsustainable developmental activities, the apathetic attitude and negligence by the state administration with respect to the implementation of flood mitigation measures are the major human-related causes of this disaster. More than nature, it is man and more specifically state disaster management authorities or state administration as a whole are responsible for this devastation and loss of human beings.

One of the major reasons behind the death of so many people and devastation of such a magnitude is the faulty management of water and dams. This fact was ascertained by officials working in the field. The dams held back water for a long period until it reached critical levels when authorities are left with no choice but to release water from all dams at a time. At least 33 dams, including major ones like Idukki and Idamalayar, were forced to release its water when the torrential rainfall continued (Cheong, 2018). Government officials and disaster experts unanimously agree that this flood would not have been so devastating if authorities managing dams had gradually released water from dams. "This (disaster of flood) could have been avoided if the dam operators had started releasing water in advance rather than waiting for dams to be filled up, when they have no alternative but to release water," said Himanshu Thakkar, a water expert at the South Asia Network on Dams, Rivers and People. He added that dam operators had sufficient time to release water when it was relatively dry, which could have helped prevent some of the damage (BBC News, 2018).

It is inferred from the Report of the Comptroller and Auditor General (CAG), that the failure of Kerala Government is the major cause of this devastating disaster and its related loss of human being. The report accused the Kerala Government for its failure to prepare emergency action plans for most of the dams except few, to mitigate the disaster in the eventuality of a dam break. It is also revealed in the report that the non-implementation of National Flood Commission’s recommendations along with delay in completion of many projects under Flood Management Programme and River Management Activities are major cause of this disaster. The above, as argued in the report, has happened because of untimely funding, delay in approval of detail project reports and lack of integrated approach in flood management works. Recommendations of the RashtriyaBarhAyog (National Flood Commission) regarding the identification of area affected by flood in the country remain unfulfilled, the report noted. At last the report identified that the scientific assessment of flood-prone areas and buildings, maintaining and renovating embankments to mitigate and control catastrophes caused by floods, were not completed by the Kerala government (CAG Repor, 2017).

Most of the directions and recommendations of the Gadgil Committee (the Western Ghats Ecology Expert Panel) report, 2011, which had already declared majority of areas affected by this flood as ‘Ecologically-sensitive Zones (ESZs)’ and predicted the flood in Kerala, were either rejected or neglected by the Kerala government. Ironically, all the governments including Kerala rejected the report claiming it is “too environment-friendly” (Ghosh, 2018). The chairman of the committee MadhavGadgil who described this as a ‘man-made calamity’ holds the state government and its irresponsible environmental policy accountable for this flood and landslide and its related deaths. The administration of the state is accused of not having taken the required flood risk reduction measures despite the observation of the central government in the beginning of 2018 that Kerala is most vulnerable to flooding (BBC News, 2018).

Lack of preparedness, due to the non-occurrence of disaster of such a magnitude for decades, was one of the major reasons for this devastation. James Wilson, an adviser on water issues for the Kerala state government, told the BBC: “It is a calamity that has happened after 100 years and no one had predicted this amount of rain. That’s why there was no preparation for this level of disaster. We have been managing floods every year, but this time it was extraordinarily extreme and that is why they were forced to release the waters of the dams” (BBC News, 2018). One of the reasons for the poor or no preparation for this flood is the non-availability of flood warning. The Central Water Commission (CWC) which is the
only agency authorized to provide early flood warning is also criticized for not giving such warning to Kerala government. Mr Thakkar said, “We are shocked to find that the agency (CWC) has absolutely no flood forecasting sites. It has only flood monitoring sites in Kerala,” he added. "Its high time that the CWC includes some key dams like Idukki and Idamalayar and some key locations in its flood forecasting” (BBC News, 2018).

The heavy and continuous rainfall, argued by many experts, is not natural; rather it is a product of many human activities. Some of the recent studies have revealed that the increase in rainfall is due to climate change, deforestation and human incursion. The study conducted by Indian Institute of Tropical Meteorology, in 2014, identified global warming as one of the main reasons for the increase in the intensity of monsoon rain while another study conducted in 2017 by IIT Mumbai held deforestation as the main factor behind this phenomenon (The Hindustan Times, 2018). Eminent environment scientist Dr. V. S. Vijayan argued that Kerala is undergoing a man-made disaster and attributed the present floods to unscientific developmental activities and human infiltrations in ecologically-sensitive areas. In the context of this flood he said, “This was waiting to happen. Insensible use of land, soil and rocks led to this deluge. Landslides and flash floods happened in areas that witnessed widespread human incursions. I hope everyone will learn a lesson from this. Due to climate change, such tragedies are bound to increase. Nobody can stop rains or control floods. But we can take measures to lower the intensity of such impacts” (The Hindustan Times, 2018).

Besides the above, it is argued and believed by many disaster experts, activists, politicians and even administrative authorities that the said disaster is mostly a ‘man-made disaster’. On the basis of preliminary investigation it can be concluded in this case that lack of disaster preparedness and early warning, poor dam management, inadequate flood control structure, failure of evacuation of people from the flood prone areas and massive land slide due to wet and loose land, along with many structural factors such as deforestation, rapid urbanization, encroachments of flood plains, reclamation of wetlands, poorly managed drainage system and poor disaster resilient community are some of the major cause of this devastating flood and related deaths. Other than the above mentioned commonly held factors the most important factor, in the case of Kerala Flood, that contributed to such a large number of deaths was the unprecedented and unexpected nature of the hazard whose impact, because of the lack of past experience, was beyond the imagination of both government authorities as well as communities and for which both were little prepared.

4. Institutional Failure: Lack of legal and Administrative Accountability

India, after passing the Disaster Management Act of 2005, have developed very comprehensive disaster management policies and strong institutions like NDMA and NIDM which have developed more than dozens of policy measures spreading over all aspects of disaster management following various scientific studies and research. However, at the state, district and local levels where real efforts have to be made to promote disaster resilience, there are lots of administrative apathy, negligence and unaccountability which have been considered as a major cause of so much damage and deaths during natural hazards. In the present case, Kerala government has not taken any measure for disaster risk reduction as per the National Disaster Management Policy despite the recent survey report ranked it as one of the 10 states most vulnerable to floods. The failure of local authorities in managing dams and to foresee the dangers in releasing water from the reservoirs clearly demonstrates unprofessional and unaccountable behaviour of the administration and strong administrative apathy and negligence; for which many people died.

The proper scrutiny of the situation reveals that there are host of factors responsible for this deluge. However the central question that everyone tries to answer is who is responsible to create these situations? Of course, we can argue that except few factors which are beyond the capacity of human being, all are created by the state administration. It is well argued by experts, activists, authorities and politicians that it was the administrative negligence or governance failure (Ray-Bennett, 2018) that was solely responsible for the death of more than 483 people and the damage of the property worth $ 3 million. The CAG the highest institution to audit government actions, in its performance audit report very strongly blame the Kerala government’s failure as the major cause of this calamity and its related deaths. If state administration had acted in an accountable manner and at the appropriate time in respect to taking measures dealing with disaster risk reduction, devastation of such a magnitude and death of so many people could have been avoided. This paper argues that there is a need to develop a strong accountability system that will make the authorities answerable for their indifferent behaviour; which is possible if we work in a broad human rights-based framework (Kalin, 2011).

Our understanding at this level establishes that the major responsibility of this flood and related deaths lies with the state machineries responsible for disaster management which has exhibited lots of lapses and systematic negligence in discharging their responsibilities in implementing disaster risk reduction measures. They have neither acted responsibly in preventing such activities like encroachments, deforestation, management of dams, etc. nor have taken adequate and appropriate preventive measures to deal with such emergency situations. The state administration mainly concentrates on relief and rehabilitation and spends its resources on these activities after every natural calamity rather than working and spending on disaster risk reduction (DRR) and building resilience. Therefore, the level of resilience to disaster is very low. Most of the states including Kerala have not conducted a scientific assessment of natural hazards, vulnerabilities and exposures of the changing dynamics and complexities of disasters. Whatever assessments are done at the state level, they are mainly based on the vulnerability atlas of India rather than on in-depth study at district and local level (Thakur, 2018).

As a result they have put the life of many people at risk. The vital questions that need to be answered here are how can state allow any activity that can cause the death of people? Or

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how can a state because of its inaction put the life of the people at risk?

5. Avoid Disaster Deaths through Human Rights-based Approach

The idea that it is very often man, not nature, is to be blamed for perish of human beings in disaster has been central to the disaster management for quite some time. But it is further strengthened in the recent human rights discourse which, as discussed before, makes the state responsible for such deaths. Many disaster experts and activists support and advocate this idea mainly after the European Court on Human Rights's Budayeva judgment, 2008. Those working in the human rights framework believes that by making the state legally responsible for disaster deaths, we can make the state administration more accountable and as a result they will not neglect the disaster risk reduction related activities and in making the society disaster resilient. It prevents the authorities from taking any action or for allowing any activities for example allowing construction in disaster prone areas that put the life of the people in risk during natural hazards. Many rights including the ‘right to life’ will be taken care off if the government acts lawfully. Madhav Gadgil, after the flood said “Forget our report. The government must begin to behave lawfully and then automatically it means our report is implemented” (The Times of India (b), 2018).

Making the disaster management work from human rights perspective, besides working in the broad field of disaster risk reduction, requires a detailed assessment of all specific factors that causes deaths and try to make adequate legal and administrative provisions to address them: for example provision for adequate compensation for damage of property; hassle free arrangements of documents lost during disasters; making arrangements for disaster insurance and so on. Certain other rights relevant in the context of disaster like ‘rights to housing’, ‘rights to land’ and ‘rights to property’ need to be well protected by the state.

Can legal liability be fixed on the state for its actions or inactions that are responsible for taking the right to life of a citizen; the protection of which is the constitutional obligation of the state? This question demands lots of changes in our legal process and administrative thinking.

6. Conclusion

With the adverse climatic conditions and climate change, the devastation and loss of life due to natural hazard will more likely to happen if state commit the same mistake again and again. The recent Kerala floods teach us very vital lessons of the impacts of water mismanagement and importance of flood mitigation measures. The South Asia region is most likely to experience an increase in floods in future. India could see a six-fold increase in population exposed to the risk of severe floods by 2040, with the number of people at risk rising to 25 million from 3.7 million between 1971 and 2004 (Willner, Levermann, Zjao, & Frieler, 2018). Therefore, it is high time that India should start proactively in implementing disaster risk deduction measures in general and more particularly measures to mitigate floods within the broad frameworks of human rights and avoidable deaths.

At the end, our study comes out with certain propositions. Firstly, a large number of deaths can be avoided and quantum of damage to the property and life stocks can be substantially reduced if proper disaster risk reduction measures are taken by the state disaster management authorities. The state should take this as a legal as well as moral obligation towards its citizens. Secondly, a strong disaster resilient government and community work in a big way in reducing loss of human life during natural hazards, which is widely believed to be produced by disaster management policies and institutional arrangements. However, in the case of Kerala flood, it is observed that disaster preparedness comes from the disaster not only from the disaster management policy and institutional arrangements. In other words, it is the past experiences of major disasters that make the system and community adequately prepared to face the hazards effectively. Should a community wait for a disaster to learn the disaster preparedness or the policies and programs can create the same? Our submission is that the state should work in the direction of building a disaster resilient community on a priority basis. Lastly, administrative negligence which amounts to this devastating disaster and related deaths of so many people can be addressed by implanting an effective system of administrative and legal accountability through adopting a rights-based approach in all stages of disaster management.

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