

Miseries of Women and Natural Disasters

Women as a group are vulnerable to human rights violations and exploitation – the scenario does not change with disasters. Unfortunately, the disasters often exacerbate rather than address their vulnerabilities.¹ However, those who survive do not have any silver lining as we have found that women and girls often confront discrimination and gender-based violence in the aftermath of large-scale natural disasters. Pregnant and lactating women may not have access to necessary health care and food supplements.²

In spite of the fact that there are several international instruments which prohibits gender discrimination, it is a common affair when disaster strikes. The Pan-American Health Organizations give the following reasons for why a woman's role results in her being worse affected by disasters:³

1. Women have less access to resources that are essential in disaster preparedness, mitigation and rehabilitation. These include social networks and influence, transportation, information, skills, control over land and other economic resources, personal mobility, secure housing and employment, and control over decision-making.
2. Women are victims of the gendered division of labour. They are over-represented in the agriculture industry, self-employment and the informal economy, in under-paid jobs with little security and no benefits such as health care or union representation. The informal and agricultural sectors are usually the most impacted by natural disasters, thus women become over-represented among the unemployed following a disaster.

Article 3, International Covenant on Civil and Political Rights, 1966

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 3, International Covenant on Economic, Social and Cultural Rights, 1966

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

3. Women are primarily responsible for domestic duties. These include child care and care for the elderly or disabled, as such they do not have the liberty of migrating to look for work following a disaster. Men often migrate, leaving behind very high numbers of female-headed households. The failure to recognize this reality and women's double burden of productive and reproductive labour means that women's visibility in society remains low, and attention to their needs is woefully inadequate.
4. A woman's burden is increased in temporary shelters. Inadequate facilities for simple daily tasks such as cooking means that women's domestic burden increases at the same time as her economic burden, leaving her less freedom and mobility to look for alternative sources of income.
5. Disasters can serve to increase violence against women. Aside from the increase in female-headed households and the fact that the majority of shelter residents are women, numerous studies have shown an increase in levels of domestic and sexual violence following disasters.

Platform of Action, 1995, Fourth World Conference on Women

46. To this end, Governments, the international community and civil society, including nongovernmental organizations and the private sector, are called upon to take strategic action in the following critical areas of concern:

- *Violence against women*
- *Inequality between men and women in the sharing of power and decision-making at all levels*
- *Insufficient mechanisms at all levels to promote the advancement of women*
- *Lack of respect for and inadequate promotion and protection of the human rights of women*
- *Persistent discrimination against and violation of the rights of the girl child*

A. Orissa Super Cyclone

(i) Psychological distress:

The disaster had a dreadful effect on the mental health of the women survivors inducing several of them to commit suicide. The disturbing fact came to light when the Bangalore-based National Institute of Mental Health and Neuro Sciences (NIMHANS) and Sneha Abhiyan, an initiative of ActionAid, conducted a survey for the Orissa State Disaster Mitigation Authority (OSDMA) on the mental health problems in Ersama block of the worst-hit Jagatsinghpur district. The result showed that as many as 59 people have committed suicide during the first five years following the disaster. The victims belong to the 14-35 years of age group, and were mostly women and girls.⁴

In Noliasahi hamlet in Gadakujang gram panchayat, 57-year-old Bhabi Behera attempted suicide twice by hanging herself from a tree but her neighbors saved her both times. She was not able to cope with the loss of her house and belongings in the cyclone. Later on a voluntary organization helped her to recover from stress. But no one was able to save 42-year-old cyclone widow Sandhya and her 16-year-old daughter Kuni in Sarabapata village who committed suicide after losing their other family members.⁵

(ii) Exploitation for marriage:

The kind of exploitation that existed in Orissa since the cyclone is unbelievable. There was a pattern to most cases of exploitation for first several years. In several cases, recorded by Sneha Abhiyan, widows have been sexually exploited as well.⁶ With no social blanket to fall back on, the widows tend to find solace in men who come forward, seemingly to share their lives. But in most cases, the women find themselves duped - emotionally and financially. Each death of a family member fetched Rs.75,000 as compensation. But many of the men who married the women blew the money, and deserted them. They even had left some of the women pregnant.⁷

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A.3.3 Appropriate measures should be taken as early and as quickly as possible to protect affected populations, in particular women and boy and girl children, against trafficking, forced labour and contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

(iii) Prostitution and flesh trade:

It is not the fact that prostitution and flesh trade initiated with the disaster but certainly it had a great impact. Often misery forced women and girls to go into this trade and at times, they were forced into. Just

days after the cyclone, reports of the trafficking of women and young girls began to appear in the local press.⁹ An exploratory study in 12 coastal districts by the Task Force on Women and Violence (TFWV), an OXFAM-backed forum, growing in scale and complexity, was highlighted after the super-cyclone in 1999, though studies indicate that it could have begun by 1997. Investigating trafficking reports after the 1999 super-cyclone, the Orissa State Commission for Women found that in five coastal districts, each had its own established marketing destinations, determined by road and rail connections.⁹

B. Gujarat Earthquake:

(i) Loss of livelihood:

Disasters impact on the livelihood of women leaving them jobless and devoid of resources in Gujarat, many women found employment in the agricultural sector. When the earthquake hit in 2001, underground hydrological systems shifted resulting in contamination of the soil. Agriculture became less profitable, driving down the demand for workers with the types of skills those women had developed. The employment opportunities for women took a noose dive but the State did not have any answer to it.

A research study conducted six weeks after the disaster by the University of Colorado revealed that both the quake and the extended drought appeared to hit two groups of women especially: women who worked as waged agricultural labourers and women employed as salt farmers.¹⁰ In several villages salt farming had stopped. The quake also had dramatic effects on complex underground hydrological systems and they had significantly reduced the demand for female labour. Women were reluctant to leave children unattended at home to travel to work to far off places. Such developments had significant implications for long-term regional and household economic recovery.

Regarding farm labour, 38% of the surveyed villages reported “no work available” for women following the earthquake, primarily due to damage

to land and crops. Though lack of rain, seeds, crops, and money to purchase seeds were seen as drought-related losses that reduced farm employment for women well before the quake, women more often spoke of work stopping due to earthquake (in 14 villages) than to drought (in eight villages). Gum collection and plantation work were also affected by earthquake.

Article 1, Convention on the Elimination of All Forms of Discrimination against Women, 1979

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

C. Tsunami:

(i) Right to Health:

When it comes to health, the women need special care other than men. In case of lactating and pregnant women, the priority ought to be the highest. Unfortunately, that had not been the case in our country. The State was very insensitive to the health issues of lactating women who lost their babies to the Tsunami. No treatment was

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B.2.5 *Those affected by the natural disaster should be given access to psycho-social assistance and social services, when necessary. Special attention should be given to the health needs of women, including provision of appropriate clothing and hygienic supplies, access to female health care providers and such services as reproductive health care.*

given to women who suffer from breast milk clotting at the camps. In some hospitals they were denied medical assistance for dubious reasons. In Tamil Nadu, there were no gynecologists available at the camps, only midwives from Primary Health Centres to treat common illnesses. Not enough relevant medicines or doctors at IDP camps sheltering, in average, 1500 people

The SPHERE standards on Non-food items standard 2: personal hygiene enunciates

Each disaster-affected household has access to sufficient soap and other items to ensure personal hygiene, health, dignity and well-being
Sanitary protection: *women and girls should receive appropriate material for menstruation. It is important that these materials are appropriate and discreet and that women are involved in making decisions about what is provided.*

each. Only available medicines are T.T. as anti-biotics. There were 20 pregnant women in the village of T.R. Pattinam who did not have access to gynecological assistance.¹¹ In addition, sanitary supplies are inadequate or nonexistent in many camps, causing women discomfort and embarrassment.¹² Such callousness on the part of the State proves its gender-insensitivity.

(ii) Safety and Privacy in the camps:

Many women and girls complained that they did not have proper, safe and private toilet and bathing facilities in relief camps and temporary shelters for the displaced. There were reports that in some temporary shelters, women and girls have resorted to walking in pairs to and from community toilet and bathing facilities to ward off harassment from men frustrated by lack of work and fueled by alcohol abuse. The relief camps were overcrowded, not safe and very insecure.¹³ At the temporary relief shelters set up for survivors from villages of Karaikkal, T.R.Pattinam and Vadakattalai, there were no facilities for women to bathe. They used to

bathe only at night. Some women were forced to sleep under trees with their children.¹⁴ In spite of all those problems, the administration turned blind eye to them.

(iii) Sexual exploitation of women in relief camps:

Principle 19 (2), Guiding Principles on Internal Displacement, 1998

Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

There were widespread reports of sexual harassment of women and adolescent girls in temporary shelters. A report in *The Week*, among the most widely circulated English-language magazines published in south India, said that sexual harassment was rampant in the camps. According to the report, widows have become particularly vulnerable to sexual abuse, especially from male relatives.¹⁵ In Chennai, a 15 year old girl was raped and murdered, while she was asleep on the platform along with all the other tsunami affected fisher folks.¹⁶

(iv) Unequal access to aid:

Women had no substantial stake in the relief and rehabilitation. Instead of being able to claim an independent and equal share of humanitarian aid, women's access is brokered through their husbands, fathers, or other male relatives. This is because the primary means of establishing identity and residence in India is the government issued 'ration card,' used to distribute subsidized food grain, which are all issued under the name of the male household head. After the tsunami, many women complained that distribution of relief and compensation was conducted through male heads of households. Press reports referred to several instances where women had complained that cash relief handed out to male survivors did not reach their families and was spent instead on liquor. Unmarried, widowed, and divorced women were often subsumed into the household units of their brothers or fathers or husband's relatives, instead of being counted as independent, female-headed households.¹⁷

There were instances that women, who have lost their husbands in the tsunami, were literally out on the road, not recognized as heads of household thus denied access to rehabilitation and relief assistance. They were not eligible for government support until they present dead bodies of their missing husbands to the government officials.¹⁸

(v) Loss of livelihood:

In Tamil Nadu, while enumerating the loss due to tsunami, the State has not taken into consideration the loss of livelihood of the women who were engaged in various occupations directly and indirectly in fishing process. Many women who were engaged as auctioneers,

purchasers and sale of fish on retail basis, women who were engaged in sale of fish at the fish markets were not considered for compensation. It is therefore necessary that those who were involved in the occupation in the sale of fish and who were indirectly affected by the tsunami should also be sufficiently compensated by the state. Many women who were running small income generation enterprises like petty shops, food stalls, tailoring marts etc along the coast and their livelihood needs should also be assessed for livelihood rehabilitation.¹⁹

The women –headed families in fisher work communities remain to be a cause of concern. Women in fish worker communities do not have any place in the traditional panchayats, and therefore do not have any decision making powers. While the fish worker community is such that no one is left destitute, it is also true that the support given to such families is usually at the subsistence level. Livelihood rehabilitation being based on replacement of boats and nets, families in which only women have survived face a situation in which they have no regular source of income any longer. They have only the ex- gratia payments to build their lives. Women from fishing communities who were widowed by the tsunami and therefore lost access to the catch that their husbands would have normally brought in, have not been considered in government livelihood programmes.²⁰

Case study on organ trade – a dangerous trend

India's thriving illegal trade in human organs has preyed on the hapless survivors of the tsunami, with reports that several poor fisherwomen, without any source of income, in tsunami shelters in Chennai and other areas of Tamil Nadu have sold their kidneys to organ traders to supplement their meager income.

“During an inquiry by the Revenue Divisional Officer we found about 35 women of Tsunami Nagar (a temporary shelter) have sold their kidneys”, said Ranvir Prasad, an official of Thiruvallur district in southern Tamil Nadu. “These women were offered up to Rs 1 lakh for their kidneys by ‘organ brokers’ who took them to far-off places like Madurai to perform surgeries to remove the organs,” Prasad added.

Worse, the women, mostly in the age group of 18- 35 years, were paid only a fraction of the amount promised to them by the touts and several of them now suffer from ill-health since they did not receive any post-operative care.

While the racket has reportedly been going on for nearly two years, no police complaints have been lodged till date. However, following the recent media reports, the state government had ordered the Ponnery Revenue Divisional Officer (RDO) M S Sangeetha to investigate the matter.

In her report to the Chennai District Collector, Sangeetha noted that despite the state government's largesse, women from fishing families are being forced by penury to sell their kidneys.

Prasad said the RDO had spoken to 16 women at the shelter at Eranavur, 7 kilometres north of the state capital Chennai who said they had sold their kidneys to brokers. Some of the 'donors' told the RDO that they agreed to the deal because they had no other means of livelihood.

The women said the temporary shelters built for them several kilometers from the seafront were too far to allow them to sell their fish as easily as they once did. "Poverty drove me to sell one of my kidneys. I wasn't earning enough through the sale of fish. I sold my kidney for Rs 40,000 but now I regret it, as I feel uneasy and find it difficult to work. Sometimes I have breathing difficulty and feel weak," said Thilakavathy, a 31-year old widowed mother of three.

(vi) Tsunami Marriages:

As people were languishing in temporary shelters without basic amenities in post-disaster trauma, the Tamil Nadu government made a 'benevolent' offer that it would provide financial assistance to the survivors, who had planned their marriages before the tsunami. While some of the marriages that were planned before tsunami got the benefit, a spate of "unplanned" marriages followed the announcement. Added to this was the incentive of a permanent home promised to newlyweds and with marriages there were many instant families to lay claims. In Nagapattinam, a mass marriage was announced; twenty couples got married. As expected soon the entire episode turned horrendous. In the pursuit of money, many child marriages took place. Some were married to elderly widowers whose children turned out to be elder than their new wives! To add to the misery, many of those brides soon became victims of domestic violence and were turned out of their in-laws homes. At the end, it turned out that most of the marriages took place between tsunami widowers and very young girls compared to very few widow remarriage.²¹

D. Recommendations:

In all the disasters, the State has largely ignored gender-sensitivity in planning, relief and rehabilitation. It has also failed to address the issues of violence against women. In spite of their obvious contribution in all spheres, the women continue to be treated as secondary citizens. The situation is worse for the widows and women-headed families. In a hope to stop discrimination against women and for the better protection of their human rights, certain recommendations are put forward:

(i) Inclusion of women in government policies: Programmes and policies undertaken by governments to restore normalcy largely were centered on men. Such programmes cannot serve the purpose of women. Hence, it is important to involve women in decision making about damage assessment, allocation of housing plots, land surveys, livelihood opportunities etc. Also it is important that the government deploy more women staff on ground who may be more sensitive towards the problems of the women, rather than having all-men bastion.

(ii) Stop violence against women:

One of the off-shoot of the disasters has been increased violence against women – physical and sexual. There are reports of even forced prostitutions in Orissa. If such incidents continue, women actually become doubly vulnerable. Hence, it is the duty of the State to prevent such occurrences which have been also spelt out in different international standards.

(iii) Need for monitoring and grievance-redressal mechanisms:

As the women are often exposed to various forms of violence and inequality, it is important that they find the platform to voice against those human rights violations. In the existence of such mechanisms, State can ensure better protection of women in the post-disaster situations. Additionally the State also needs to take proper actions against the perpetrators who are found guilty.

Notes:

¹ Damyanty Sridharan, 'Women face double discrimination during disasters', *Infochange*, available at <http://www.infochangeindia.org/features311.jsp>

² 'After the Deluge: India's Reconstruction Following the 2004 Tsunami', (*Human Rights Watch*), p. 16, available at <http://hrw.org/reports/2005/india0505/india0505.pdf>

³ 'Fact Sheet – Program on Women, Health and Development: Gender and Natural Disasters' (*Pan-American Health Organization, February 2001*), available at <http://www.gdnonline.org/resources/paho-gender&disasters.doc>

⁴ Prafulla Das, 'The Agony of Living', *Frontline*, Vol 21, Issue 23, Nov. 06 - 19, 2004, available at <http://www.hinduonnet.com/fline/fl2123/stories/20041119002204600.htm>

⁵ *Id.*

⁶ 'Tide of Misfortune', *The Telegraph*, December 05, 2004, available at http://www.telegraphindia.com/1041205/asp/opinion/story_4087797.asp

⁷ *Supra*, note 5.

⁸ 'Women and children first', *Infochange*, available at http://www.infochangeindia.org/DisastersIstory.jsp?recordno=1298§ion_idv=12

⁹ Manipadma Jena, 'Trafficking in Overdrive', available at <http://www.boloji.com/wfs/wfs160.htm>

¹⁰ Elaine Enarson, "'We Want Work": Rural Women in the Gujarat Drought and Earthquake', *Quick Response Research Report #135. (Colorado: Natural Hazards Research and Applications Information Center, University of Colorado, 2002)*, available at <http://www.colorado.edu/hazards/qr/qr135/qr135.html>

¹¹ *Asia Pacific Forum on Women, Law and Development: 'Women's Human Rights Concerns in Tsunami Affected Countries'*, available at http://www.apwld.org/tsunami_humanrights.htm

¹² *'After The Tsunami Human Rights of Vulnerable Populations'* (Berkeley: Human Rights Center, University of California, October, 2005), p. 22, available at <http://www.reliefweb.int/library/documents/2005/ewc-tsunami-oct05.pdf>

¹³ *Supra*, note 2, p. 17.

¹⁴ *Supra*, note 11.

¹⁵ *Supra*, note 2, p.17.

¹⁶ *Supra*, note 11.

¹⁷ *Supra*, note 2, p. 18.

¹⁸ *Asia Pacific Forum on Women, Law and Development: 'The Tsunami exacerbates Dalit women's sufferings from caste discrimination'*, available at http://www.apwld.org/tsunami_dalitwomen.htm

¹⁹ *'State and Civil Society in Disaster Response: An Analysis of the Tamil Nadu Tsunami experience'* (Mumbai: Tata Institute of Social Sciences, 2005), p. 26.

²⁰ *'Tsunami Response: A Human Rights Assessment'* (ActionAid International), p. 47, available at http://www.reliefweb.int/library/documents/2006/tsunami_HR01.pdf

²¹ *Supra*, note 18.



Child Rights in the context of Natural Disasters

Children are always considered to be a vulnerable group in the context of any natural disaster as they are affected in a uniquely horrific manner due to their physical, psychological and social vulnerabilities. Children account for around a third of the casualties in a natural disaster (UNICEF). Taking the example of the recent disaster Tsunami, among the victims, children constituted a higher number in some cases; such as in the Karaikal region of Pondicherry 251 of the 490 casualties were children, of these 148 were girls. The death rate of children in the tsunami disaster was particularly high because the wave hit during mid-morning when they were on the beaches collecting fish, often with their mothers.¹ In any disaster, the situation of

**Article 24, International
Covenant on Civil and Political
Rights, 1966**

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

children requires special attention. They suffer traumatic experiences beyond their understanding and are often left without any family, food and support. In relief camps there is no one to care for them and their only real hope is that their separation from their parents is not permanent. The numbers of orphans after natural disasters increase substantially and their situation is of particular concern. Children need to be returned to a stable, familiar way of life as soon as possible after a disaster, much of which will revolve around returning to school. These

children have the right to a safe and healthy childhood which will give them the foundations for their future: more action need to be taken towards making sure this is possible after a natural disaster. According to the UNICEF, children account for a third of the casualty. In any disaster, the situation of children requires special attention given their inherent vulnerability. In post disasters, children who have survived have had to deal with the trauma of seeing their family, friends and homes being washed away. Their family, the support system they would normally lean upon in times of crisis, is not available, leaving their present and future very uncertain. At the relief camps, with no one in particular to take care of them, the chances of these children being able to access vital medical help, and even water and food are not very high. The dangers

of sexual abuse are also existent in temporary shelters.

In such a state of affairs, this report intends to focus on various crucial issues relating to children in the post-disaster situation and analyzing them in the light of the existing human rights standards.

A. Adoption

(i) Orissa Super cyclone

There was a view that adoption of destitute children by external agencies should be discouraged, because it is a fact that however well-meaning people are, it is proved that a child flourishes best in the cultural context he/she has grown up in.

The Super Cyclone of 1999 made several children orphaned over night. It had affected around 3.7 million children and orphaned about 1500. The government set up children rehabilitation centre called Mamata Griha in forty places in the month of December 1999. A local woman under the supervision of professional social workers managed each Mamata Griha. Adoption may not be the best solution in all circumstances as it may have an adverse impact on the children. By early 2001 these Mamata Grihas were dissolved and children dispersed to their village kins.

In some cases stipend was paid to the families looking after the children. But there were many cases where this was not done. An organization named CLAP conducted a large Public Hearing. It was revealed that the State is not aware of the situation of children after dissolution of the rehabilitation centres. Similarly the children who were given on adoption were not legally done.

The Children should have been referred to Orphanages and other Institutions in such circumstances. In India there is a law to regulate Orphanages in the shape of the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960. Similarly the Juvenile Justice (Care and Protection of Children) Act 2000 makes arrangement for regulation of certain types of Institutions for Children.²

They come under the category of “children in need of care and protection”. However, nothing of that sort was done. There were also instances of children being sold out in the name of adoption. For a traumatized child, to be taken away to a strange environment where there are different customs, language, food and possibly foreign parents, would be extremely unsettling. It would further disturb an already traumatized child.

The Juvenile Justice Act 2000 provides for care, protection & rehabilitation of children, ensuring the setting-up of child protection units and voluntary organizations participation.

(ii) Gujarat earthquake

The earthquake caused massive structural damage, up to 100,000 deaths, a half million injuries, and left more than 3 million people homeless. A large number of children were at school when the earthquake occurred and they were reported to form the majority of casualties. Most vulnerable are survivors who are orphans; women without family support; families without a wage earner; the handicapped; and the homeless, especially those who were landless and living in makeshift shelters. Their health and security was a major concern, however they were not identified and registered to allow close monitoring. Many of the orphans, single women, and handicapped were living with their relatives and some were living in camps.

There were many people who came forward to contribute to the relief operations by sending money, clothes, medicines and some even adopted the villages. But, very few people showed interest in adopting children. And in those straitened circumstances there was hardly any proper verification of those that did come forward. I wonder if this thing will not lead to more child labour or abuse.³

In Orissa, there was a different problem; entire families were wiped out. When word got out that orphans were being sold, Saroj Jha, an exceptional IAS officer, issued a government order prohibiting the removal of children from villages.

There was always a fear of malpractices in the name of adoption as there were very few people who genuinely came forward for adoption. Consequently, the government speedily issued an order totally banning the adoption of children. It was a blanket ban, and it worked because it was backed by the strong family ties of rural Gujarati households. Here, no one would dream of allowing a child to be taken away by strangers if family members were available. So uncles, aunts and grandparents took the orphans into their homes. It is the pride of Kutch that not a single child left the district for adoption.⁴ Thus, with a positive intervention on the part of the State, the possible abuses against orphans could be prevented to a great extent.

(iii) Tsunami

Children's issues rarely were a part of the agenda of various coordination meetings, most of which focused on housing and livelihoods. The issue of children orphaned by tsunami was a source of much debate. In the first days after tsunami, the government's immediate reaction was to call for people to come forward and adopt the orphaned children. In fact, the phone numbers of district social welfare officers were put on television to contact regarding adoption. There was a deluge of people and organizations from India and abroad coming forward to adopt these children. The term adoption was used very loosely, with incidents such as one in which the head of a renowned boarding school in Tamilnadu asked for a 100 orphans that his school could adopt being commonplace.⁵

The option of adoption for orphaned children is controversial. Trafficking in children for labour and sex in the guise of adoption has been reported in the past, and is a very relevant fear in this case, particularly given the presence of pedophiles in India's tourist districts. The Tamilnadu government has, however, addressed these concerns through various measures and directives including one that specified that no child was to be removed from the tsunami-affected district, and that all orphans without care takers would be housed in government orphanages.

Three orphanages were established in Cuddalore, Nagapattinam and kanyakumari for tsunami orphans. A fixed deposit of Rs 500,000 was created for each orphan that can be used for studies and self-employment when the child becomes a major.⁶ It is to the credit of the social structures of affected communities that very few orphans have had to avail of the facilities of the orphanages. The fish worker community prides itself on taking care of its own, and most orphans are under the care of extended family members. Even those in the orphanages are regularly visited by family and community members, direct, positive fallout of the decision to retain the children in orphanages in the affected districts themselves. Civil society organizations supported community-based parenting, and several such agencies set up sponsorship programmes for orphans and single parent children to support their education and basic needs.

Two service homes were opened for orphaned adolescent girls, and several such homeless girls have willingly gone to these homes as they found themselves forced to quit studies and either get married or stay at home in the houses of their extended families. Fixed deposits of Rs. 500,000 were made in the names of adolescent girls, and deposits of Rs. 300,000 made in the names of unmarried orphaned girls above the age of 18. Service homes have been set up for this group, and technical training programmes initiated as well. These fixed deposits have led to unforeseen consequences and several minor girls were married off, with money being offered as a future dowry, often to much older widowers. This matter was brought to the attention of the government by civil society organizations, and there were discussions to include a clause that revokes the deposit if the girls get married before the age of 18. Looking at all these consequences, it is high time to look for options for these orphaned children that are kind, humane and like the ones their parents would have provided.

Principle 11, Programme of Action of the United Nations International Conference on Population and Development, 1994

.....The child has the right to be cared for, guided and supported by parents, families and society and to be protected by appropriate legislative, administrative, social and educational measures, from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sale, trafficking, sexual abuse, and trafficking in its organs.

B. Trafficking & child Labour.

(i) Orissa Super cyclone

In the aftermath of the disaster, another form of deprivation of children from parental care was seen through various cases of violence and exploitation of children like trafficking, child labour,

The international standard pertaining to Part II B, Vienna Declaration and Programme of Action, 1993, World Conference on Human Rights ...emphasizes that Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse

Article 34, 35 and 36 of Convention on Rights of the Child (CRC) are related to freedom from sexual exploitation, freedom from sale, trafficking and abduction and freedom from other forms of exploitation. Article 39 is about receiving rehabilitative care and appropriate treatment for children's recovery and social integration.

Article 6, Convention on Rights of the Child (CRC)

Every child has the inherent right to life.children, especially young ones, are vulnerable and need special protection and support. The State has an obligation to ensure the child's survival and development

Article 19 and 37 (CRC)

.....stress on children's right to freedom from abuse and neglect. Likewise, Article 20 guarantees protection of the child without a family.

Article 24 (CRC)

.....ensures state parties recognize the right of the child to the enjoyment of the highest attainable standard of health and facilitates for treatment of illness and rehabilitation of health.

street children and kidnapping etc. There were cases where a child spends most of his time outside the family to eke out a living like begging, rag picking, child labour etc. It happens due to non-availability of familial environment of love, care, sympathy and emotional sharing etc. After the super cyclone in Orissa, there were girls being sold for Rs 200 and Rs 300. Some mothers sold off their girls and it was certainly not easy for them to bear the pain of parting with their children.⁷ The incidence of child labour also escalated after the super cyclone. Children are also being used by their families as a source of income during calamity years. This is particularly disturbing where girl children are being withdrawn from school and engaged as daily labour.⁸

However, the State government did not take any immediate measures to curb child trafficking and prostitution which was rampant after the disaster struck. None of the standards was complied to

by the government while developing mechanism to deal with the post-disaster situation.

The International Organization for Migration has estimated that 700,000 women and children globally are enmeshed in trafficking networks, involving US \$8 billion a year. This is now considered the third-largest source of profits in organized crime, behind only drugs and guns. It is said that India has more than half a million children in prostitution and most of them are trafficked in one way or another.⁹

That the state of Orissa too is involved in this trade, growing in scale and complexity, was highlighted after the super-cyclone in 1999, though studies indicate that it could have begun by 1997.

The IASC Operational Guidelines on Human Rights and Natural Disaster

Appropriate measures should be taken as early and as quickly as possible to re-establish contacts between members of families that have been separated in the course of the disaster, and to reunite them without delay, particularly when children are involved.

(ii) Gujarat Earthquake

Many children who became either orphan or disabled, they were most vulnerable to malnutrition, sexual exploitation, and even to being “disposed off” at convenience. There are reports that children were kidnapped and sold in order to force them into prostitution

Article 33, CRC
States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Supplying food for children was a major and immediate problem during the rehabilitation phase. There were reports of desperate parents selling their children to gangs who were involved in human trafficking because they could not feed their children. Three hundred and eighty-four children became orphans, 1,309 children were left with only a single parent, 1,287 women lost their husbands, and 1,024 people became handicapped in the Gujarat disaster. The government of Gujarat introduced a unique scheme in memory of the children killed in the earthquake of January 26, 2001. According to state government data, 1,031 children lost their lives while another 1,051 were seriously injured in the Gujarat earthquake.¹⁰ Even though the schools were started there were many who could not attend as their parents have been forced to migrate for labour, leaving the

children to have to look after the cattle and to care for their small siblings.¹¹

In spite of such a situation, the policies of the Government did hardly take care of the interests of the children. Under the Social rehabilitation of Gujarat Emergency Earthquake Reconstruction Project five types of vulnerable people were identified during the early stages of earthquake rehabilitation - old people, widows, disabled persons, orphans, and destitute women. The project provided for short term remedies and was passive to the long term remedies and needs of the destitute children. The Gujarat disaster management policy too did not spell out any provisions for the welfare of the children.

(iii) Tsunami

Soon after the disaster struck, the Government agencies in India acted promptly due to which there was no evidence of child trafficking or abduction reported in Tamil Nadu and during the post-tsunami chaos. The Ministry of Social Defence banned the adoption of tsunami orphans by foreigners. Orphans were identified and taken to government and specially-approved orphanages. The Government reinforced traditional community care by announcing a compensation package for each orphan who was adopted by community members. This is to be paid only when the child reaches maturity and then only in installments. The Central Social Defence Ministry announced that there were a total of 529 tsunami orphans from five tsunami-affected states in state-run homes and orphanages.¹²

The Tamilnadu government had taken steps and measures to curb trafficking after tsunami in coastal regions the government that had banned adoption of children to check trafficking came forward to set up orphan homes. However, the other side of the story is that the orphan homes established by the government lacked space for accommodation and it was over crowded. The orphan children were taken into the orphan homes in heinous manner. They were not even aware of why the government was accommodating them in orphan homes. The orphan children were denied counseling. A report on Children participation in post tsunami reconstruction in Tamilnadu – India by the institute for child rights and development (IICRD) reveals that a year after tsunami families and communities were struggling to put their lives together as a result the incidence of child labour had increased because they were forced to work to support families who lost their livelihood of the primary care givers. The brunt of tsunami on children was that many children after tsunami have turned into child labors which is pre-existing in our system, and hardly efforts have been made by the government to get away with such practices which was rampant after tsunami.

We do not have legislation on child trafficking. There exists an Immoral Trafficking Act, which does not cover children comprehensively, so the laws do not reach far enough to protect children. In such a state of affairs, trafficking could be a serious issue to handle after any disaster in the future.

C. Health Issues

(i) Orissa super cyclone

The Orissa government was passive to the exigent health and nutritional needs of the children. Immense cases of malnutrition were reported after the super cyclone. The children encountered health problems in the temporary shelters. The state health authorities had prepared for the cholera outbreak by pre-positioning the relevant stocks. They rapidly responded to the cholera outbreak by informing all health professionals down to the lowest administrative levels about the outbreak, about outbreak control and case management guidelines. The psychological health issues of children were not addressed. There were reports of cholera, malaria, diarrhoea and gastroenteritis. Although initial outbreaks were contained, the threat of a serious epidemic remained. If this occurs, children under 5 years could be worst affected. Orissa is one of the poorest States in India, with the lowest number of doctors per capita in the country. Even before the cyclone health services could not meet the needs, and they were struggling to cope with the disaster.

***The sphere standard on
Control of communicable
diseases standard 3:
diagnosis and case
management***

People must have access to effective diagnosis and treatment for those infectious diseases that contribute most significantly to preventable excess morbidity and mortality. And the pertinent key indicator indicates that Public health education messages encourage people to seek early care for fever, cough, diarrhoea, etc., especially children, pregnant women and older people.

(ii) Gujarat earthquake

More than six months after the earthquake hit Gujarat State, children especially were still having its impact. Many were still living in temporary shelters with little or no access to clean water and basic health care. In some areas schools had not been rebuilt, so children had no access to education facilities. Many families had lost their livelihoods and more and more children had to work in order to be able to feed themselves and help feed their families. Hunger and malnutrition were apparent among the survivors with serious implications, particularly for children. Anemia was prevalent among children. Children were sexually exploited owing to the insecure temporary shelters.¹³ They suffered psychological problems due to the severe impact of the earthquake.

The psycho-social impact of the earthquake on women and children revealed that even six months after the earthquake psychological problems prevailed especially among the single, elderly, injured and with those in bereavement. The prevalent symptoms observed were insomnia, startle reaction, intrusive memories of the quake, obsessive possession syndrome, sadness, diminished interest in work and uncertainty of the future. Also psychosomatic ailments

were noticed among women, pertaining to their gynecological health. Unfortunately, the Gujarat Disaster Management Policy also does not have any effective provision to address the issues relating to health.

(iii) Tsunami

The survival of the children after a disaster becomes a priority as they become the most vulnerable group deprived of their parents in most cases. Apart from meeting their physical survival needs, it also becomes important to ensure that the disaster does not impair children's mental, social and emotional development. However, despite the increased importance of education, psychological support and protection measures, there is lack of efforts to meet these needs. Nobody can deny the fact that children have the basic right to survival. However, in the

Article 12, International Covenant on Economic, Social and Cultural Rights, 1966

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

“Dalit children in Kovalam are discriminated against.” From Kovalam, India (13-18 years old)¹⁴

process of post tsunami relief and rehabilitation, children in many places have been suffering and struggling to survive to the best of their capabilities. Along with the other members, children also became the victims of utter indifference of

not only those who are involved in the relief and rehabilitation process, but also those who apparently took their responsibility after they lost their parents and other family members.

Inappropriate aid was often deposited at the first available relief camp or community, whether it was wanted or not, while others were ignored. Various attempts were made to coordinate relief activities, but it led to more confusion.

The problems of duplication and competition continued to persist. In the process, many children, especially those belonging to lower caste, were discriminated. Disparities and inequities in the distribution of relief were quite evident in many tsunami affected areas. Loss of one or both parents, loss of siblings, relocation, witnessing traumatic events, adjusting to

Sphere Standards

*The following Standards stresses on the need of nutritional supplements for the children. **Correction of malnutrition standard 1: moderate malnutrition** Moderate malnutrition should be addressed.*

Correction of malnutrition standard 2: severe malnutrition

Severe malnutrition should be addressed.

Correction of malnutrition standard 3: micronutrient malnutrition

Micronutrient deficiencies should be addressed.

a new environment, sudden suspension of school and the breakdown of familiar secure social webs of interaction all tend to have severe psychological, emotional, physical and social consequences on children. It did have a deep impact on their health. Yet their special needs were not taken into consideration in most resettlement areas. From every aspect there seemed to be a large gap in the provision of mental health services to the children who were the worst sufferers. Although counseling was provided by some agencies, in most of the areas it had stopped, and long term therapy and education were not focused at all. Lack of ventilation and inadequate space for cooking was causing respiratory disorders, especially among women and children. Due to the intense heat and humidity inside the temporary structures, many children had developed boils on their skin and scalps. Hunger and malnutrition were apparent among the survivors with serious implications, particularly for children and pregnant women. Poor health conditions were rampant in almost all temporary housing sites.

D. Education

(i) Right to Education in the context of disaster:

Education can play an important role in helping children to cope in the aftermath of a disaster. Schools provide a forum in which practical survival skills can be taught, as well as a sense of stability and normality that can aid long-term recovery. As far as relief and rehabilitation go education is often one of the least-affected areas due to the importance given to it by the authorities.

Education opportunities were already inadequate in Orissa and services came under even greater pressure as a result of the disaster. A large number of primary schools were damaged or destroyed, and those left standing were largely occupied by homeless people. This highlights the infrastructural complexity of providing education after a disaster. A post-tsunami report exemplifies the lack of educational resources available after

a disaster. Of the children interviewed 81 per cent had only 1 or 2 uniform dresses and 89 per cent had lost school bags, books, etc. This report also highlighted how many children lose the right to play, thus having a real childhood, after a disaster – 52 per cent according to this survey.¹⁵

Principle 23, of the Guiding Principles on Internal Displacement, 1998, Commission on Human Rights
To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

(ii) Major issues relating to children's education:

Damage to the infrastructure: Education system was already very inadequate in Orissa, and services were under even greater pressure as a result of the disaster. Education can play an important role in helping children to cope in the aftermath of the cyclone. Schools provide a forum in which practical survival skills can be taught, as well as a sense of stability and normalcy that can aid long-term recovery.

Exemption of school fees: In the post-tsunami scenario, In order to help the lack of educational resources available after a disaster, students from tsunami- affected families were promised uniforms and books and an exemption from paying tuition, examination and special fees till the end of the academic year of 2005-2006. Unfortunately, ground level implementation of these policies, particularly the order exempting students from school fees was lacking. In many districts, private schools insisted on fees from tsunami-affected students saying that they would reimburse the fees once they received the money from the Government. In some places exorbitant fees were collected under heads other than tuition and special fees.

Replacement of textbooks and notebooks did not reach all students, and there were reports of children being asked to leave the classroom as they did not have the same materials.¹⁷ Civil society organizations worked on children's issues trying to

address them by making representations to the administration, speaking to school authorities and trying to replace necessary educational material themselves.

Even though a government order (GO Ms. 33) exempts tsunami-affected children from paying fees, children's education were affected with schools being washed away or shut down, and the relocation of communities to sites where there are no schools.

Access to schools: In many of the resettlement colonies children had resumed going to school. A few schools were close to where the community had been relocated. Eight-year-old Jagneshwari in Tazhanguda (Cuddalore District), however, was unable to attend school as she had lost her birth certificate in the tsunami and the local school insisted on the document as a precondition for admission.¹⁸ In the Veerabagupathy resettlement site (Kanyakumari District), parents complained that the school was very far from their current location and taking a bus placed an additional burden on the meagre income of the family.¹⁹

Governments also provided for separate public examinations for students from tsunami- affected schools. The problem with this was two-fold: it ignored those children who were indirectly

*Sasikala, studying at Our Lady Higher Secondary School, will be starting class eight this year. She said, "My fees are Rs. 1,000. I am scared that if my parents can't afford the money, they will make me stay at home."*¹⁶

affected and the way a school was defined as 'affected'. A school is deemed to have been 'affected' if it has any student from affected habitations. This is a definition which focuses largely on the social fabric of the school.²⁰

A main area of post-disaster education rehabilitation is the high truancy rate. These tended to be especially high early on because of the fear of a recurring tsunami (this needs to be addressed through better education to the affected – teachers, students and the community); temporary shelters were too far from primary schools and children did not leave these shelters as believed they needed to be there in order to claim relief. The truancy rates were particularly high amongst orphans, the number of whom attending school decreased as their age increased.²¹ Even those who manage to attend school in the relief stage are unlikely to continue their education in most post-disaster situations. Given that education is seen as one of the better addressed areas there are still a wide range of educational rights that are being violated in post-disaster situations.

IASC Operational Guidelines on Human Rights and Natural Disasters emphasizes that *The return of children, whether displaced or not, to schooling should be facilitated as early and as quickly as possible after the disaster. Education should respect their cultural identity, language and tradition.*

Lack of understanding and knowledge: One reason for the violation of right to education for children is that there tends to be a lack of understanding and knowledge of the situation and of the policies. This leads to children staying at home when they should be at school thinking that disasters would reoccur and hence they should not separate.

There is also a serious implementation problem, as shown by the fact that many children did not receive their school books and uniforms and exemptions from fees.

Lacunae in the policy: Serious oversights in post-disaster educational relief policy includes transportation to school and forcing children to pay school/hostel fees, which money people could ill-afford to spare at such a time.²² The policy would had an impact if there was a clearer definition of the 'affected'.

CRC
Article 28 states the right of the child to education and Article 31 is the right of the child to rest and leisure, to engage in play and recreational activities. Article 16 is the right to privacy. Children are usually treated as beneficiaries during disasters and conflicts. They are the most vulnerable. Hence it is not only their survival rights (as mentioned above), but participation, protection and non-discrimination rights that need to be ensured. The state and other participating agencies have an obligation to enable these rights of the children

E. State Responsibility

The states concentrated in a very few children issues and did not cope up to address all their issues. The Tamilnadu government that took steps to curb trafficking did not provide for adequate provisions in orphan homes. Children were dumped without even knowing the reasons for it.

There was no provision for addressing the psychological problems of the children. The clothing needs of the children were not focused on. The Gujarat disaster management policy did not spell out any provisions for the welfare of children. The social rehabilitation of Gujarat emergency earthquake reconstruction project provided for short term remedies and was passive to the long term remedies and needs of the destitute children. The orissa relief code and the disaster management Act did not highlight on the exigent needs of the affected children. The state should recognize the rights of the children in post disasters. The following findings highlight the apathy of the states in addressing the issues of children in post disasters. The psychological impact of disasters on children are widely overlooked as it is not as visible as other factors and arguably more complex to deal with. Children are often unable to sleep for a long time after disasters and a lack of understanding means they often develop fears and beliefs that the disaster will return. Children need to be given care and support so they can try to recover and reintegrate into society. Only a very few children were given psychological counselling after tsunami out of a huge mass of children yearning for psychological counselling.

Reduced family income, the opportunity to work in construction projects, the need for girls to stay at home and care for younger/ older relatives and other factors can contribute to an increase in child labour after a disaster. Another practice that causes child labour is child marriage. When children marry young, they often have to discontinue their education. They have children younger and most of times have many more. This can cause over population and poverty, two factors related to child labour. Governments must establish effective National Plan of Action to end child labour. These plans should be made together with children. Governments must make sure that overseas development aid goes directly to its purpose and does not end up in the wrong hands.

F. Major findings with regard to the apathy of state in matters relating to children in post disasters.

There is little evidence that children's special needs of survival and development are addressed in disaster response and rehabilitation.²³ Generally

- There is little consideration of child protection needs and perspectives included in disaster response and rehabilitation. However, in recent disaster situations there is an increasing consideration of child protection needs and issues.
- During the disasters, the first priority was to save lives. The victims were hardly consulted about their short and longer- term needs and aspirations.

- There is a lack of child participation in situation assessment and decisions for relief and response materials as well as programme interventions. Despite the accumulated experience, children were not often consulted or treated as one of the actors and beneficiaries. The emergency situation and the need for rescue were often stated as reasons for neither adult nor children's participation.
- To a large extent differences among age groups and gender, children with special needs, did not receive adequate attention in the designing and implementing of relief operations except in some emergency relief and risk reduction activities that showed evidence of child participation. This indicates both lack of capacity among the staff members of organisations, regarding child participation and as well as little consideration of children's evolving capacities.²⁴
- The dire needs of children especially the orphan children were not met. Legal provisions were not laid out for adoption.
- The temporary shelters were very insecure exposing children to sexual abuse besides aggravated the health condition of children.
- Health condition of children especially those who were physically challenged as a result of the disaster were not cared for.
- Effectual measures were not designed to minimize the psychological trauma of the affected children.
- Child trafficking and prostitution were rampant after disasters especially after the Orissa super cyclone and the State has not taken measures to curb it.
- Educational needs of the children were not taken into consideration. Students were forced to pay school fees and the concessions allowed to them lacked monitoring and implementation.

G. Recommendations

- To advocate and lobby for child centred disaster policies, legislations and their implementation. The government agencies must have different institutional arrangements, policies and legislations regarding disaster preparedness and response.
- Special attention is to be given to the girl children for their protection in the post-disaster situation.
- There is an urgent need for promoting children's participation in rescue, relief and rehabilitation and preparedness phases of disaster including situation assessment and decision making.
- To develop a monitoring mechanism to see whether the basic human rights standards are adhered to while addressing the issues relating to children

NOTES:

¹ 'Recovery frame work in support of GOI for a post tsunami R&R program', available at <http://data.undp.org.in/dmweb/tsunami/UN%20Recovery%20Framework.pdf>

² 'Children without Parental Care - A Socio-Legal Analysis from Indian Perspective', available at http://www.crin.org/docs/resources/treaties/crc.40/GDD_2005_CLAP.pdf

³ Jivora, 'Uncountable consequences of the Gujarat earthquake', available at <http://www.merineews.com/catFull.jsp?articleID=123318>

⁴ Mari Marcel Thekaekara, 'Rehabilitating children: Adoption is not the answer', available at <http://www.infochangeindia.org/features240.jsp>

⁵ 'The State and Civil Society in Disaster Response: An Analysis of the Tamil Nadu Tsunami experience' (Mumbai: Tata Institute of Social Sciences, 2005), p. 22

⁶ Available at http://www.ncrc.in/Newsletter/NCRC/KalanganaiVilakkam_July106.pdf

⁷ 'Can Indian laws adequately prevent child trafficking', available at <http://www.moneycontrol.com/india/newsarticle/stocksnews.php?cid= 1&autono=32356&source=ibnlive.com>

⁸ Available at http://209.85.175.104/search?q=cache:cPeFagITUNcJ:unfccc.int/cop8/se/se_pres/isdr_pap_cop8.pdf+children+forced+ to+labour+after+orissa+super+cyclone&hl=en&ct=clnk&cd=7&gl=in

⁹ available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/OCHA-64BRGT?OpenDocument>

¹⁰ 'Kutch towns to have two-storeyed structures only', available at <http://www.infochangeindia.org/archives1.jsp?secno=12& monthname= March&year= 2002& detail=T>

¹¹ Available at http://act-intl.org/appeals/appeals_2003/ASIN31Rev2.pdf

¹² 'Engaging with children in disaster response, recovery and risk reduction: Learning from children's participation in the tsunami response', available at http://www.planusa.org/stuff/contentmgr/files/d9ee355af9fc9e39564ba31f686d519b/miscdocs/int_children_tsunami.pdf

¹³ Gujarat earthquake emergency update Dec 2002, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/OCHA-64CH4P?OpenDocument>

¹⁴ 'Children and the Tsunami', (Plan International), available at <http://www.plan-international.org/pdfs/childrenandthetsunami.pdf>

¹⁵ 'Impact of Tsunami on children' (TRRC) p.50

¹⁶ Available at <http://59.92.116.99/website/DOCPOST/Aug05/TS1-D-h-y00-schools-collecting-fees-from-the.pdf>

¹⁷ *Supra*, note 15, p.30

¹⁸ 'Post Tsunami relief and Rehabilitation : A violation of human rights' (Housing and Land Right Network), available at <http://www.hic-sarp.org/Tsunami%20Report.pdf>

¹⁹ *Id*

²⁰ Recovery Framework in support of Government of india for a post – Tsunami R & R Program

²¹ Study on Tsunami Widows and Orphan Children (TRRC)

²² Study on impact of Tsunami on children (TRRC) p.30

²³ Available at <http://www.crin.org/docs/Child%20Rights%20Prespectives%20final.pdf>

²⁴ Available at <http://www.crin.org/docs/Child%20Rights%20Prespectives%20final.pdf>



Minorities and other vulnerable Groups in Post- Disaster Situations

Social exclusion is a multidimensional, dynamic process whereby the system of social integration fails, leaving certain individuals or social groups outside the protection and benefits offered by the society in which they live, locally and globally.

– United Nations Team for Recovery Support

With its varied religious groups, social classes and vast economic differences, Indian society has always experienced the challenge of realizing and protecting equal rights of all. A progressive Constitution, a Court system which has witnessed a favourable increase in the public interest litigation, and active intervention of the civil society groups have been able to address such issues positively in the recent decades. However, our society is yet to reach a stage that is free from all sorts of discrimination against the vulnerable groups. Our Constitution stresses fundamental rights, asserts equality before law and prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. In spite of all, discrimination continues to persist in the society. In such a background, occurrence of disasters shifts the situation from bad to worse. It is now a common realization that a disaster enhances the vulnerability of or reduces the access of individuals or groups who were already vulnerable or who were on the social and economic margins of society prior to disaster. Societal inequalities and prejudices still persist in post-disaster situations, influencing the distribution of relief and support after a disaster. Although relief should be provided on account of need without any discrimination, that is often not the case. In fact, many studies, including in the context of the recent disaster tsunami, have clearly shown that many people have been excluded on the basis of caste, religion, etc., by the State in the relief and rehabilitation processes.¹

The status of the vulnerable groups have always been questioned as in most of the cases, their interests are hardly taken into consideration. This has been the experience in all the natural disasters that have struck India in the past. Taking instances from the previous experiences - unequal access to assistance, discrimination in aid provision, failure to include the vulnerable groups in all the different stages of planning and implementation in post-disaster rehabilitation – these are some of the common issues that had cropped up in the post-disaster situations leading to serious human rights violations of these marginalised groups.

This chapter examines the treatment of the vulnerable groups i.e. the minorities (including Descent-based, Religious, Linguistic Status), older people, disabled persons, and people living with HIV/AIDS etc., who, along with women and children, suffered extreme exclusion and discrimination in post-disaster situations in India. Affected minority groups are those which are often-times in conflict with the system on the basis of either caste or religion. Members of the scheduled castes and scheduled tribes and of minority religions are those who are most often subjected to discrimination because of their variegated view of the mainstream society. What was conceived to be the purpose of the study was to

- Examine and bring in to limelight the impact of disasters on the lives of the minorities and other vulnerable groups, so that they do gain appropriate visibility in the eyes of the resource rich NGOs, INGOs and the State.
- To look at various issues relating to these groups in the light of human rights standards and to see to what extent they are complied with in the post-disaster situations.
- To substantiate the argument with relevant case studies.
- To put forward recommendations to do away with such issues in future disasters.

Three major disasters – Orissa Super Cyclone, Gujarat Earthquake and Tsunami – which struck India in the past have been taken into consideration. There are some important questions which need to be raised while examining exclusion of minorities and other vulnerable groups in relief and rehabilitation programmes: Is the exclusion and discrimination due to human prejudice or due to practical information limitations? Is it a combination of both? What needs to be done to reduce the discrimination and exclusion of minority groups in post-disaster situations?

A. Orissa Super cyclone 1999:

Even before the super cyclone struck Orissa in 1999, the vulnerability of the marginalized section was a much highlighted issue. In fact, during the disaster, the caste system played an important role in defining access to opportunities and livelihoods. Within the coastal area there was considerable spatial separation between different castes and social/ language groups. Even immediately after the cyclone the caste barriers were still down. There was much collaboration across the divide to tend to the sick and needy, and to bury the dead. However, as the rehabilitation process started and choices had to be made between who received support and who did not, the barriers started to rise again.

(i) Marginal groups seriously ‘at risk’:

The twin cyclone had affected about 14 million people in 14 districts leaving a large number of marginal groups ‘at risk’. This comprised of male-headed families, families where the male head of the family has been seriously injured in the cyclone, aged and infirm, lepers and physically or mentally challenged persons.

(ii) Discriminating by caste:

People belonging to Dewar caste (also known as 'Kaibarta'), located in different coastal parts of Orissa are specifically referred to the fishing communities, who are one of the communities discriminated by the upper caste always. With the super cyclone hitting the coastal areas of Orissa, they continued to be discriminated further in the post-disaster relief and rehabilitation process.² Such incidents indicate that the basic human rights standards on equity, non-discrimination and impartiality were never complied with during the whole process of relief and rehabilitation.

Article 2, Universal Declaration of Human Rights, 1948

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

B. Gujarat earthquake

(i) Status of minorities in the State – a background:

Article 27, International Covenant on Civil and Political Rights, 1966

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

In the State of Gujarat, eighty percent of the population belongs to the Hindu religion. Thus, religion is an integral part of life with daily rituals. Though abandoned by law in 1949, the caste system continues to keep 70 – 80 million people ("untouchables") in poverty, in which the tribe population of the Kutch District is included. Discrimination of the minorities adds to dissatisfaction, aggression, and anger. When the disaster struck Gujarat, such discrimination against the vulnerable groups became more visible. This was very much in contradiction to the international standards on human rights which is universally acceptable and to be maintained in all circumstances.

(ii) Exclusion of vulnerable groups from the beneficiaries list:

The beneficiaries list for the relief and rehabilitation was to be prepared in consultation with the Village Panchayat or village development committees. Inclusion in the list became the focus of tremendous political pressure. The process of listing excluded beneficiaries belonging to minorities, vulnerable groups - women headed families, migrant labour, landless labour, disabled, destitute women, orphan girls and boys, especially in term of facilitating grants, house and land titles, credit and livelihoods which are very crucial to build up a sustainable community after a disaster strikes. On many occasions, these groups failed to convince the agencies regarding their entitlement to such relief and rehabilitation measures. In stead, they were excluded for not able to show any 'relevant' documents.

Principle 24, UN Guiding Principles on Internal Displacement

All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

(iii) Caste factor in the relocation of people:

Under the 'owner-driven approach' to the reconstruction of damaged and destroyed housing, the villagers were supposed to mutually determine, whether they want to be relocated or get compensation. What happened as a consequence of this was that 'socially and economically powerful castes' got together and purchased their own land and, in this way, decided to get relocated. This resulted in the lower castes being left with no option but to stay back. This physical segregation only further deepened the polarization between different castes. Moreover, the powerful castes manage to attract infrastructure and investment, through their contacts, while the poor and the marginalized are left devoid of even basic facilities.³

This report is supported by a statement made by Dr. Peter Schmitz from Germany's Foreign Aid Department. On returning from Gujarat, after the earthquake, he explained how wealthy people were able to rebuild houses with their own money and funds from the Government and added: "Totally different, however, is the situation of the segregated people from the lowest castes: They were only entitled, if at all, to only marginal compensation."⁴ By only receiving small amounts of compensation and because they have no savings of their own, they were unable to rebuild their homes and lives. Further, because most of them are illiterate, they could not assert their claims. In many villages, high caste people expected their houses to be built first. They were disappointed if their homes resembled that of their lower caste neighbours.⁵ This highlights the social setting which relief and rehabilitation programmes are trying to function within. Clearly such beliefs present problems in enforcing fair and equal term; but the responsible organizations should not ignore that such situations exist.

(iv) Inadequate policies and humanitarian responses:

Gujarat Reconstruction and Rehabilitation policy:

The Gujarat reconstruction and rehabilitation policy, set out after the earthquake, included special initiatives for some vulnerable groups such as widows, orphans, old persons and handicapped people. Although the policy announces 'support' for scheduled castes, minorities and lower classes, there is no specific help as such for them.⁶

Tenth Five – Year Plan :

Even more inadequate is the Government's Tenth Five-Year Plan. This similarly identifies vulnerable groups as: women, single parent families, elderly, handicapped and children.⁷ Nowhere in the Plan is there any mention of caste or religious minority groups. Ignoring their existence in this way seems to be a silent acceptance of the situation. Such policy should be a paradigm of how such vulnerable groups should be supported; this ignores the reality of social structures in India.

(v) Lack of proper needs assessment:

Another important aspect which was not taken into consideration was a proper needs assessment of the vulnerable groups in the earthquake affected areas. A proper assessment of the emerging needs of the affected people, especially children, women, elderly and other vulnerable sections of the people - for instance, minorities, dalits and migrants, could have brought these groups into focus to a large extent.

(vi) Lack of intervention from NGOs:

In the Gujarat rehabilitation and reconstruction phase there were 74 NGOs working on housing, 66 on health, 95 on education and 39 on livelihood restoration.⁸ Unfortunately, there was no organization which dealt specifically with making sure vulnerable groups received the relief and support which they had the right to receive. Perhaps having civil society organizations which are there specifically for that purpose would result in more such groups receiving what they are entitled to. Many of these organizations already do a good job in identifying and looking out for the vulnerable groups – certainly better than Government efforts.

Following are a few examples of organizations that promote the inclusion of vulnerable groups:

In a post-earthquake report the UNDP set out their idea of 'Transition Recovery' as a tool for sustainable development. This is based on societal acceptance. They approached all their work on the premise that dalits would suffer the worst discrimination.⁹ By doing this it is possible to target relief and assistance to minority groups, in the way women and children are specifically aided by organizations such as UNICEF. This need to accept the poor treatment of minority groups in order to provide better relief for them is exactly why Government policies and actions

fail to help these groups. The Government is not going to publicly admit that caste discrimination is still so rife in India.

Caste is officially no longer a problem in India and admitting it would discredit the authority and legitimacy of the Government. As such, the main source of hope for the minority groups lies with the civil society organizations. An exemplar of how they need to act in post-disaster situations, in order to provide minorities with their rights, is shown by an Indian NGO called the Evangelical Fellowship of India Commission on Relief (EFICOR). A key feature of their relief intervention was 'Fairness and Justice'. EFICOR made special efforts to reach out to the vulnerable and marginalized in the villages. It ensured that all communities were included on the distribution lists irrespective of caste and creed.¹⁰

Similar discriminations and responses are evident in the post-tsunami findings, which also examine the possibility that sometimes vulnerable groups get excluded due to a lack of data available on such groups as well as the caste-oriented mindset of the larger community which results in discriminatory and apathetic treatment of these groups.

C. Tsunami:

Initial assessments particularly by the media seem to be emphasizing on how well the relief and rehabilitation process was going on.

There was evidence to substantiate this fact, particularly through the instant response by which the State Governments of the tsunami affected States had moved to ensure interim compensation, distribution of relief, reopening of schools and other measures to reintroduce a measure of normalcy.

However the greatest blind spot of all agencies right from the Central Government to the State Government to the various NGOs both national and international to academic scholars, is the unwillingness to take on board the fundamental reality of Indian society, caste discrimination and how it plays out in relief and rehabilitation to ensure that Dalits and Adivasis are completely marginalized in these processes.¹¹

Some of the major issues that came up after the disaster are discussed below:

Overall, the national and state governments—particularly the government of Tamil Nadu state, which bore the brunt of the tragedy in India—responded promptly to the crisis, immediately launching relief and rescue operations and assisting survivors, especially the fishing communities of the seashore. Notwithstanding the general professionalism of the Indian aid effort, there were several reports of problems with distribution of food and provision of shelter. Such shortcomings would not necessarily be noteworthy given the size of the disaster and the ensuing relief effort, except to the extent that they highlighted systemic failures to take into account the needs of different vulnerable communities.

(i) Caste Discrimination: An overall picture of the status of dalits in India is not encouraging at all as they have always been discriminated not only by the upper caste communities, but also by the State authorities. Statistical data reveals that 37% of Dalits are living in poverty in India. More than half (54%) of their children are undernourished. The condition of dalit women is worse as they bear the burden of double discrimination (in terms of gender and caste). Apart from that, about one third of dalit households do not have basic facilities. In such a situation, tsunami has become another excuse for encouraging discrimination against them.

Dalits who work on catamarans and trawlers are “not even allowed inside relief camps by the typical representatives of local bodies or communities,” says M. Louis, State Coordinator of the Tsunami Relief and Rehabilitation coordination (TRRC).

In all coastal areas of Tamil Nadu, Andhra Pradesh and Kerala, Dalits live close to the fishermen villages and are also involved in fishing. In the Northern part of Tamilnadu, Dalits are mostly ‘allied fish workers’ and help

Fishermen in unloading fish, buying and selling etc. In other parts, Dalits go for shallow water fishing in catamarans, collect shells and conches and are also involved in fish vending. In Kerala, Dalits living in the coastal areas are mostly involved in Backwater fishing.

Apart from this, in all the coastal areas of the three States, dalits were working as agricultural labourers, marginal farmers or daily wagers prior to tsunami. Dalits are the only major community living close to the fishermen community. Consequently, caste discrimination is more prominent in these areas. In spite of the fact that these communities have been staying together for generations, the caste factor has always played a major role in keeping both the communities apart.

Being placed in the lower social strata, dalits have always been vulnerable to exploitation. In the post-tsunami relief and rehabilitation process, caste-based discrimination was evident in many places. Clean up efforts were made concentrating only on fishermen community. Water, roads, health centres and communication links to dalit settlements were badly affected, but repairs were not undertaken. Dalits are not allowed to drink water from tanks put up by UNICEF at some relief camps as the higher castes think that they pollute the water.

In the immediate aftermath of the tsunami, authorities brought in dalits from other areas to remove dead bodies. They were not even provided with gloves, masks or other

“I was employed as a scavenger by the local authority. When the tsunami hit, they told us to go and pick up the dead bodies on the shore, but they wouldn’t give us protective gloves or masks.”
Mr Kumar, a dalit,
Coimbatore, India

basic measures to prevent infection or the spread of disease. Discrimination against the lowest castes existed in fisher communities prior to the tsunami and continues in its wake.¹² Not only that, community kitchens established to distribute food to victims, were divided into two parts: one for the caste Indians and one for dalits, as the upper caste would not take food from the same place where the dalits are involved. There were also instances where the police refused to record the information about missing Dalits, while they did register first information reports about missing fishermen. It is unfortunate that even in times of disaster, caste prejudices continue to take the upper hand.

(ii) Access to relief and rehabilitation assistance:

The Government officials relied on lists of tsunami victims prepared by local fishermen's associations or local leaders to distribute aid. Since fishers did not permit dalits to join their associations, those dalits living as fishers, and who otherwise would have been eligible for government aid, were excluded from benefits.

People's Watch (a Madurai based national Human Rights organization) conducted a *Study on Discrimination / Exclusion in State Relief* to identify those who have been discriminated against or suffered from exclusion in state relief in nine Tsunami-affected districts.¹³ The study revealed that the people belonging to the dalit community were discriminated or excluded from State relief. It identified people and communities discriminated against or excluded from the State relief activities and submitted the list of eligible people including the dalit community to the Government to bring to an inclusion of these people in State relief. In some families, the dalit families did not have even tokens to access relief materials. In other cases, though there might be a token given they were not allowed to stand in the queue to collect relief materials, which they deserved.

In Thoothukudi (Tamil Nadu) officials belonging to Dalit communities were afraid of registering names of affected Dalits if their higher officials belonged to other castes. On the other hand, if people belonging to dominant castes were in positions of power they purposefully subject the Dalits to exclusion. (Study on Discrimination / Exclusion in State Relief)

(iii) Issues relating to shelter and other basic facilities:

It was reported that in many dalit settlements, most of the debris caused by the Tsunami was not cleared due to which people were unable to come back to their own houses. On the other hand, the clearance works in the fishing community hamlets were carried out quite fast.¹⁴

Most of the dalit families who lost their houses during tsunami were not eligible for housing assistance as for generations they have been living on their lands without land titles. Dalit

The NCDHR (National Campaign for Dalit Human Rights) investigation also documented incidents in which authorities in parts of Andhra Pradesh and Tamil Nadu provided Dalits with less relief and support than other victims. Dalit areas have been the last to have electricity and water supplies restored during rehabilitation efforts. NCDHR also cited allegations that officials are discriminating in providing financial assistance to the families of deceased Dalits.

shelters were usually built near graveyards or garbage dumps without any facility for sanitation and electricity. It is very difficult for women to survive without sanitation facilities. They are afraid to go to nearby bushes for fear of rape and molestation.¹⁵ The women face increased violence inside as well as outside the temporary shelters.

According to many press reports and an on-site investigation by the NCDHR, some higher-caste fishing communities refused to share emergency shelter and rations with the Dalits.¹⁶ In the report of TRRC study on Housing, it is mentioned that in the districts of Kanyakumari and Tuticorin, people belonging to dalit community were deprived of getting their houses registered with the Government for compensation.¹⁷

(iv) Livelihood aspects:

Tsunami left the coastal communities without any option of livelihood. Apart from the fishing community, the tenant farmers and agricultural labourers suffered huge loss. About 22,000 hectares of agricultural land was inundated. The winter crop was also destroyed. The land may not be ready for another yield for several years because the soil has turned brackish, leaving these agricultural workers and daily wage earners, many of whom were dalits and tribals, without livelihood. TRRC study *“Tsunami: The HIT and the AFFECTED”* emphasized that 346 hamlets of the non-ocean fishing communities, predominantly the Dalits and Tribals were excluded from livelihood restoration.¹⁸

Voluntary Guidelines for the Progressive Implementation of the Right to Food, World Food Summit 2002 (adopted in 2004)
States should take steps so that members of vulnerable groups can have access to opportunities and economic resources in order to participate fully and equally in the economy.

(v) Plight of other minority communities:

Another report specifically highlights the plight of the Muslim community. It gives evidence that Muslims were ignored by both the Government and NGOs, and that they were discriminated against by traditional fishing villages.¹⁹ This report also highlights a problem with many charitable foundations, religious organizations and corporate bodies. They often did not have a long-

term goal apart from increasing the influence of their organization and this produced limitations in offering relief.²⁰ These organizations tried to make political gains from the tsunami disaster.

(vi) Discrimination against persons suffering from HIV/AIDS:

Discrimination against the vulnerable group took various forms at different point of time in the post-tsunami scenario. In spite of the recognition of the rights of the persons suffering from HIV/AIDS by the International Community as well as the Constitutional guarantees, this sec-

Declaration of Commitment on HIV/AIDS, 2001, General Assembly resolution S-26/2

....enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and develop strategies to combat stigma and social exclusion connected with the epidemic.

tion of the society continues to suffer in every aspect of their life, be it education, access to property, employment, health care etc. In the context of tsunami, there has been evidence that a woman was denied financial support (unlike other members of her Self Help Group) for taking up income generation activities only because of the fact that she was a case of HIV/AIDS. The following case study was prepared based on a Public Consultation on human rights violation in the Tsunami affected areas of Andhra Pradesh.

Case Study of Discrimination against persons suffering from HIV/AIDS

Ms. Vatupalli Uma Devi, aged 24 years, is the third daughter among the four female children of Mr. Adi Shesha Rao and Mrs. Venkamma from Nakshtra Nagar, a Fisher – folk village in Nizampatnam revenue sub-division of Guntur District in Andhra Pradesh. However, they were neither helped by the Fishermen cooperatives nor the Government Departments. She got married to Mr. Peetha Rambabu, on 11.03.1999, the only son of Peetha Lakshmaiah and Sambrajyam, who hails from Krishna District - also belonging to the traditional marine Fisher-folk community. Her husband died after one year of her marriage being affected by HIV/AIDS. Consequently, she was forced to live with her parents.

Uma did not receive any support from her in-laws. In the course of time, she realized that she was also HIV infected. Soon the relatives started ill treating her and never used to speak to her or let others interact with her. At this point of time, her father gave her the needed support. This has been happening over the past two years and she learnt about Society For Integrated Rural Development (SFIRD) and approached for assistance.

Uma is a member of Amrutha Women Self-help group which comprises of 11 women Fisher-folk members. The members are with similar socio – economic profile belonging to Agnikulakshrathiya Fisher-folk community. The group has been functioning for the past four years and has been involved in savings, thrift and credit activities. After the Tsunami, members of the SHG approached bank authorities and requested for extending with financial support for taking up income generation activities.

The members of Amrutha Women Self-help group were aware that Uma is HIV infected. When Uma approached the leaders of the group for financial assistance for an amount of Rs 10,000, like other members of the group, they refused to extend any financial support stating that she was infected with AIDS and might die at any point of time. Uma approached the panchayath president who also could not provide her any moral support. She also met the staff of SFIRD and explained the situation but the members did not respond positively. Uma complained about this unfortunate incident to the Mandal officials, but owing to the strong traditions and customs in the Fisher-folk communities, they are also helpless in convincing the remaining members of Amrutha group concerning sanctioning the loan amount. This has left Uma totally in a helpless situation where her survival itself is at stake.

D. Recommendations

(i) Towards an inclusive policy on relief and rehabilitation

Any relief and rehabilitation policy framed by the State will have to be based on respecting the constitutional framework. This means that key to the policy will have to be solicitude to the weaker sections of Indian society including the SC and ST communities and other vulnerable groups.

(ii) Efforts towards elimination of pre-existing societal discrimination

To explain away such widespread discrimination as a purely administrative failure is problematic. First, it is not very credible given the high levels of caste discrimination recognized in India, in non-disaster situations. Second, it diverts attention away from the deep inequalities within the structure of society, and thus will do nothing to help break down such formations. Though the lack of data and information holds some responsibility for the high levels of exclusion, and needs to be improved, it must not be seen as the sole reason. Acceptance of societal discriminations is the first crucial step to developing policies and programmes which provide for those who are discriminated against.

(iii) Role of the Government and Civil Society:

The non-acceptance of discrimination by Government seriously limits their ability to provide for minority groups in post-disaster situations. As a result, the responsibility for these groups has, thus far, fallen on civil society groups; they are providing an essential service of helping those who are excluded from Government relief. Many of the local NGOs see post-disaster situations as an opportunity to break down age-old structures and replace them with a more progressive and inclusive society.²¹ However, there are problems with civil society groups which need to be addressed:

- Some organizations are trying to promote their own political agenda, rather than providing fair and equal relief to the affected people.
- There is a lack of transparency and accountability; this allows organizations to get away with relief corruption and exclusion.
- There is a need for better coordination amongst civil society groups and between civil society and government; this is needed in order to identify the excluded groups who need to be targeted.
- There is a lack of community participation, which ultimately deprives the vulnerable groups from getting involved in the process that matters them.

Some vulnerable groups argue there needs to be relief specific.²² This should be considered seriously by those agencies who are involved in any post-disaster relief and rehabilitation process. There needs to be an effective intervention on the part of the State as well as civil society organizations and programmes dealing specifically with these groups to prioritize their issues which often remain unaddressed.

NOTES:

¹ Subhradipta Sarkar and Archana Sarma, 'Disaster Management Act, 2005: A Disaster in Waiting?' *Economic and Political Weekly*, (September 2, 2006), p. 3763.

² Sudhir Kumar Behera, 'DEWAR: The Caste and Its Identity', *Insight*, September 10, 2005, available at <http://insightjnu.blogspot.com/2005/09/dewar-caste-and-its-identity.html>

³ Rohit Jigyasu 'Post-Earthquake Rehabilitation in Gujarat 9 Months After: A Field Assessment' (Norwegian University of Science and Technology, Norway; 2001), p.3.

⁴ 'The Paupers have become even poorer' (Relief web, January 30, 2004), available at <http://www.reliefweb.int>

⁵ 'In rebuilding, India's needy become savvy aid consumers' (Relief Web: May 21, 2003) available at <http://www.reliefweb.int/rw/rwb.nsf>

⁶ *'The Gujarat Earthquake Reconstruction and Rehabilitation Policy'* (Government of Gujarat; 2001), p.21.

⁷ *'Disaster Management - The development perspective Government: An Extract of the Chapter in the Tenth Five Year Plan 2002-7'* (Government of India, Ministry of Home Affairs),

⁸ Smita Mishra Panda, *'NGOs as Partners in Disaster Recovery and Reconstruction: Case of Gujarat Earthquake'* (Institute of Rural Management, Gujarat; 2001), p.5.

⁹ *'From relief to recovery: The Gujarat Experience'* (UNDP; October 2001), p.12.

¹⁰ *'The Gujarat Earthquake Response 2001: Dawn of Hope – The Asha Reconstruction Project'* (EFICOR), available at <http://www.eficor.org/main/gujarat.htm>

¹¹ Niruj Mohan, Arvind Narrain, Nitin.R, Deepu and Clifton Rozario., *'Exclusion of Dalits and Adivasis in the time of Tsunami: The case for an inclusive relief and rehabilitation policy'*, available at http://www.lines-magazine.org/Art_Feb05/arvindetal.htm

¹² *'After the Tsunami: Human Rights of Vulnerable Populations'*, (Berkeley: Human Rights Centre, University of California, October 2005), available at <http://www.reliefweb.int/library/documents/2005/ewc-tsunami-oct05.pdf>

¹³ *'Study on Discrimination / Exclusion in State Relief'* (People's Watch- Tamil Nadu), available at <http://www.trrcindia.org/Study%20on%20Discrimination.pdf>

¹⁴ V.Chandrasekara Naidu, *'India- Human Rights of vulnerable populations after the tsunami'* available at <http://www.hrcberkeley.org/afterthetsunami/pdfs/03india.pdf>

¹⁵ *Supra*, note 13.

¹⁶ *'India: End Caste Bias in Tsunami Relief'*, Human Rights Watch News, available at <http://hrw.org/english/docs/2005/01/14/india10019.htm>

¹⁷ *'Tsunami Housing: Is still a dream?'*, (Tsunami Relief and Rehabilitation Coordination (TRRC) – Tamil Nadu and Pondicherry), available at <http://www.trrcindia.org/house.html>

¹⁸ *'Tsunami: The HIT and the AFFECTED'*, (TRRC), available at <http://www.trrcindia.org/live.html>

¹⁹ *'Status of minorities in Tsunami Affected Areas'* (TRRC), p.2, available at <http://www.trrcindia.org/Status%20of%20Minorities.pdf>

²⁰ *'The State and Civil Society in Disaster Response: An Analysis of the Tamil Nadu Experience'* (Mumbai: Tata Institute of Social Sciences, 2005), p.35.

²¹ *Supra*, note 8, p.26.

²² *Supra*, note 19, p.7.



Conclusion and Recommendations

States are directly responsible for respecting, protecting and fulfilling the human rights of their citizens and other persons on their territory or under their jurisdiction. Therefore, the State should do their utmost to ensure that these rights are protected. The natural disasters which hit parts of the country in the recent past have highlighted the need of the State to be sensitive to the multiple human rights challenges that persons affected by such disasters may face. In post-disaster scenario, they are under the obligation: (a) to prevent violations of these rights from occurring or from re-occurring; (b) to stop them while they are happening by making sure that its organs and authorities respect the rights concerned and protect victims against violations by third parties; and (c) to ensure reparation and full rehabilitation if a violation has happened.¹ Unfortunately, the analysis of several instances witnessed in all the three disasters does not provide us the above-mentioned favourable conclusion. In stead, we observe exactly the opposite scenario. This is a matter of serious concern. As a matter of fact, India is a party to all the international treaties which have been cited throughout and are legally bound by them. Thus it not only raises questions regarding rights of victims on moral and ethical but in legal sense also.

One of the underlying aspects of the relief and rehabilitation efforts in the post-disaster situations in India is the fact that they have always been in the form of compensation, government doles and ex-gratia payments. Unfortunately it has never become a matter of right for the survivors/ victims. On many occasions, money has been aplenty but there has often been no retrospect as to whether it has actually served the beneficiaries in a comprehensive way. The reconstruction efforts in many cases have been haphazard without any humane aspect imbibed in it. If such circumstances prevail, those reconstruction efforts remain to be 'popular' initiatives with political agenda yet remain unsuccessful in alleviating the sufferings of the victims in real terms and thus uphold their human rights violations.

¹ *'Protecting Persons Affected By Natural Disasters – IASC Operational Guidelines on Human Rights and Natural Disasters'*, (Washington: Brookings-Bern Project on Internal Displacement, 2006), p. 11.

TLAC – A forum for grievance redressal

Rights without remedies do not facilitate justice. Hence, it is important that in case of human rights violations which take place in the aftermath of disasters, the victims have an access for the redressal of their grievances. The Gujarat High Court set the ball rolling through its significant order to set up an ombudsman. Such an idea was successfully implemented in Tamil Nadu and Pondicherry by People's Watch (formally known as People's Watch – Tamil Nadu), Madurai, SOCO Trust, Madurai and Human Rights Law Network, Chennai, which came together to form a co-ordination to be known as Tsunami Legal Action Committee (TLAC) in February – March, 2005. The TLAC staff visited the affected areas, established legal camps and collected complaints of human rights violation amounting to a staggering number of 188, 000. They were classified into 9 broad categories, namely, Relief & Compensations, Fisheries, Land & Agriculture, Missing Documents, Bank & Insurance, Livelihood, Discrimination, Shelter and Miscellaneous. Then the TLAC approached government authorities as well as the National Human Rights Commission (NHRC). Such initiatives resulted in establishment of Lok Adalats (People's Tribunal) through which several violation were addressed. Needless to say, the concept of TLAC remains to be replicable.

TRRC – Policy influencing body

In cases of disasters of great magnitude, as referred to in this report, there is a vital need to ensure through a monitoring body that procedures involved in relief and rehabilitation are fair, inclusive, and appropriate for the communities affected. This need was felt soon after the Tsunami which prompted several NGOs and individuals largely from Tamil Nadu and Pondicherry towards a collaborative effort to form a co-ordination known as Tsunami Relief and Rehabilitation Coordination (TRRC) – Tamil Nadu and Pondicherry on December 31, 2004, which finally went on to welcome more than 300 organizations across the state and Union territory. TRRC played a pivotal role in constantly monitoring the various policies of the government and lobbying and advocating for bringing about positive changes regarding issues of forced eviction, safeguarding the 'right to the coast' of the coastal communities, housing and land allocation, exclusion and discrimination against the vulnerable groups. It was also instrumental in ensuring transparency and accountability of the government and non-government agencies to prevent misappropriation/corruption.

While this report points out various forms of human rights violations in the post-natural disaster situation, it also provides sector-wise recommendations in the corresponding chapters. However, to emphasize some of the key issues and draw the attention of the readers concerned, the following recommendations have been put forward:

(i) Need for a right-based approach in the law for disaster management: In spite of the fact that there were several recommendations made to the Government from different fora before the passing of the Disaster Management Act, 2005, they were hardly taken into consideration. The Act, as it stands today, does not have the human rights aspect imbibed in it. The approach of the law has been more state-centric rather than people oriented. In such a case, the rules and regulations are to be formulated in such a way that the human rights aspects are taken into consideration. In the process, the provisions of the human rights standards can very well serve as a point of reference. Also Tamil Nadu lacks a State Relief Code which needs to be in place at the earliest.

(ii) Towards an Inclusive policy: While setting out post-disaster policies, they should not reflect the needs of certain sections while the others are left out. The specific needs of the Dalits, women, children and other vulnerable groups should be addressed. Otherwise, the holistic aspect of human rights would be diluted.

(iii) Emphasis on disaster preparedness and risk reduction: The solution to the issues raised in this report cannot be achieved through only short-term relief initiatives. They should be part of disaster preparedness and risk reduction.

(iv) Existence of a co-ordination for monitoring: The objective of co-ordination is to bring the 'people's perspective' into the R & R processes – constantly interning into the State policies for positive reforms. Though there were many co-ordinations in existence in the post-disaster situations, but not all of them could justify the very purpose of such existence. However, the TRRC was able to ward off such problems and stand apart as an example to be replicable.

(v) Setting up of a Grievance redressal mechanism: This is vital for the enjoyment of rights. It has already been legally placed on record by the Gujarat High Court. The experiences of TLAC have strengthened the practicality of such mechanism.

(vi) Role of State and National Human Rights Institutions: The discussion will be futile if the role of the Human Rights Institutions in the country is not mentioned. The NHRC did a commendable job in engaging itself promptly in case of Orissa cyclone and Gujarat earthquake, but surprisingly, it had remained silent on tsunami. Attempts to draw its kind attention by TLAC failed to produce favourable results. However, the NHRC or the concerned State Commission has an important role to play. There should be a permanent cell within such institutions to address the disaster issue. Inspiration in this aspect can be drawn from Sri Lanka. The Human Rights Commission of Sri Lanka (HRCSL) was quick to establish a special disaster relief monitoring unit, Disaster Relief Monitoring Unit (DRMU) to ensure human rights protection during the post-tsunami reconstruction phase. The DRMU has been involved in the reconstruction of permanent housing, school buildings, health buildings and the like after the catastrophic event.