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DAWN

NO LEGAL REGIME FOR AID

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EVEN with flood aid from various donors flowing into Pakistan, the government is not ready with any legal framework to receive this help for disbursement among those affected by the devastating waters.

All international relief operations raise several legal questions to which it is important to find answers. Otherwise, despite the willingness of friendly countries and donors to give aid to Pakistan, these questions can become serious impediments which can frustrate the donors.

For example, the question of giving visas to relief workers wishing to come to Pakistan can become an issue. At this point in time, there is no provision in the Passports Act 1974 or the immigration law that provides a simplified or a fast-track procedure for relief workers wishing to come to Pakistan; an executive order may exist but not be sufficient.

Obviously, the Pakistani government may have reservations in granting blanket visas to relief workers. It is a country's sovereign right to decline a visa or grant the same. But such a right has to be exercised in accordance with the law and along the parameters of the latter. Such a law, unfortunately, does not exist in Pakistan.

On the other hand, under international laws relating to disaster management, states are required to have legal procedures in place in the case of such eventualities.

For example, the Framework Convention on Civil Defence Assistance 2000 caters for only civil defence units of other states being permitted quick entry into the country where a disaster has struck. Such civil defence units can stay on until such time that the disaster is managed or if the affected state decides that these units must return.

Another fear with regard to the large number of relief workers entering a country in the throes of a calamity is that some may have unfriendly intentions or that their presence may constitute interference in the affairs of the receiving state.

To guard against such suspicions and in order to eliminate a possibility of this nature, the European Union had prepared the Guiding Principles on Humanitarian Assistance. Its Principle No 25 explicitly states that offers of assistance shall not be regarded as an unfriendly act or interference in the state's internal affairs. Pakistan can certainly incorporate this principle in a domestic law.

In addition to the same, the United Nations General Assembly in 1991 had prepared the Guiding Principles on Humanitarian Assistance. These require the territorial integrity and national unity of states to be respected. Therefore humanitarian assistance can be provided only with the consent of the affected country and, in principle, on the basis of an appeal by the affected country. These also state that there should be cooperation in accordance with the national law of the affected country — and that is where the concern lies. In Pakistan there is no such effective national law for boosting international cooperation in such a situation.

The donor agencies are bound to be seriously concerned about this because a national law on aid management is the first evidence of transparency in the disbursement of relief and such a law would inspire confidence in the donor. On Aug 17, 2010 in the UN General Assembly, a draft resolution was tabled regarding the floods in Pakistan. This was later passed on Aug 19.

Earlier, on Aug 11, an emergency response plan was prepared by the world body within days of the start of the floods. This was presented during the General Assembly session. It is embarrassing that the Pakistani government should have failed to come up with a matching plan despite the lapse of several weeks. Such poor preparedness sends a negative signal to donors.

Pakistan can also consider adopting in a domestic law a comprehensive code of conduct that has been prepared for NGOs involved in disaster relief. This code, prepared by the International Committee of the Red Cross, is an undertaking to ensure neutrality, giving priority to the mission needs and other sensitivities with regard to the accepting state.

The Office for the Coordination of Humanitarian Affairs in the UN has also prepared the Oslo Guidelines under which the UN can commission UN peacekeeping missions

anywhere to be diverted to relief operations under specified circumstances, although the circumstances in Pakistan on the ground may not warrant such an extreme measure.

Nevertheless, for routine movement of relief goods and relief workers, the World Customs Organisation has prepared a model bilateral agreement between an assisting state and the state receiving aid. The Pakistani government would be doing itself a service by examining the contents of the said agreement and considering its implementation by coordinating with the state rendering assistance, with any suitable modifications if these are required.

In conclusion it must be said that Pakistani officials need to take stock of the entire spectrum of the international law on disaster management which is much more exhaustive than the references indicated above. By studying these laws and adopting the more suitable provisions in these, Pakistan can upgrade its legal regime for greater aid transparency and management.

In this way, Pakistan can win the confidence of donor agencies and governments that are prepared to give assistance to Pakistan. The government must also remain aware of the follow-up steps in the UN as the secretary general has asked the General Assembly to submit a report on the implementation of emergency support to Pakistan.

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