

WHEN THE RIVER RISES: STATE LIABILITY FOR FLOOD GOVERNANCE IN BIHAR — A DUTY-BASED ANALYSIS THROUGH THE 2026 DELUGE

by

Chandramani Bhaskar

ILS Law College, Pune

ABSTRACT

In September 2026 the Ganga simultaneously exceeded its all-time highest flood levels at three separate gauge stations in Bihar, submerging fifteen districts and affecting more than 4.6 million people in what the state's Disaster Management Department described as its largest active flood response on record.¹ This paper uses that flood as a contemporary case study to ask a question that recurs every monsoon in Bihar but is rarely answered with legal precision: does the state's statutory and constitutional architecture for flood governance create an enforceable duty running to the people who live in the path of its rivers, and what happens, in strict legal terms, when that duty is not met? Using a doctrinal methodology built primarily on statutes, reported judgments, Comptroller and Auditor General (CAG) performance audits, National Disaster Management Authority (NDMA) guidelines, and official flood bulletins, the paper develops a five-element Duty–Breach–Causation–Harm–Remedy (DBCHR) framework and applies it comparatively to the 2008 Kosi breach and the 2026 Ganga flood. It finds that Indian courts have consistently read a duty of rescue, relief, and rehabilitation into Article 21, but that this constitutional duty has never been coupled with a domestic doctrinal mechanism capable of establishing breach and causation with the rigour ordinary liability law demands — leaving a documented and repeated pattern of administrative default, most recently catalogued in CAG Report No. 10 of 2017, without a corresponding legal remedy. The paper's contribution is threefold: an original liability framework not previously applied to Indian flood jurisprudence; a documented account of the 2026 flood assembled from primary contemporaneous official reporting rather than retrospective secondary

¹ More Than 4.6 Million People Across 15 Districts of Bihar Affected by Floods, Business Standard (Sept. 11, 2026); Bihar Floods Displace Four Million as Ganga Breaks All-Time High-Water Marks, Tech Times (Sept. 9, 2026).

commentary; and a set of statutory reforms addressed specifically to the causation gap the framework exposes.

Keywords: Flood governance; Disaster Management Act, 2005; state liability; duty-breach-causation-harm-remedy; Article 21; Bihar; 2026 Bihar flood; CAG audit.

1. INTRODUCTION

By the second week of September 2026, the Ganga had done something it had not done before in Bihar's recorded flood history: it broke its own all-time highest flood level at three separate gauge stations in the same season.² At Gandhi Ghat in Patna the river reached 50.57 metres on 6 September 2026; at Pandarak, also in Patna district, it reached 43.92 metres by 6 September, exceeding the previous record of 43.73 metres set on 16 August 2021; and by 9 September the exceedance had travelled downstream to Sultanganj in Bhagalpur district, where the river recorded 36.78 metres, above its own prior all-time high.³ By 11 September, Bihar's Disaster Management Department was reporting that more than 46.88 lakh people — over 4.6 million — across 561 gram panchayats in 88 blocks of 15 districts had been affected, with rivers still flowing above the danger mark at multiple locations.⁴ Embankments gave way as they always eventually do: a 20-metre stretch of the Mahi river embankment near Trilokchak in Saran district collapsed on 5 September, a further breach opened at Dariyapur block in the same district, and at least four separate breaches were reported in Bhagalpur district alone, including at the Brahmottar Dam in Gopalpur block and the Dhobania Zamindari Dam in Rangra block.⁵ Five people drowned in Patna

² Bihar Floods Displace Four Million as Ganga Breaks All-Time High-Water Marks, Tech Times, supra note 1.

³ Id.; Five Dead as Bihar Floods Affect More Than 3.4 Million, Ganga Exceeds Previous Highest Levels, The Watchers (Sept. 8, 2026).

⁴ Bihar Floods: Over 46 Lakh People Affected Across 15 Districts, The Federal/PTI (Sept. 11, 2026).

⁵ Bihar Floods Displace Four Million, Tech Times, supra note 1; Flood Situation Remains Grim in Bihar; Over 47 Lakh Affected as Ganga, Kosi, Gandak Swell, India TV News (Sept. 12, 2026).

district when floodwater entered Danapur and Maner, and a boat carrying ten people capsized in the Kharik-Raghopur area of Bhagalpur.⁶ The state deployed 27 State Disaster Response Force (SDRF) teams, 10 National Disaster Response Force (NDRF) teams, and nearly 2,000 boats, and stood up dozens of relief camps and community kitchens.⁷

None of this is new in kind. What is new is the scale, and the fact that it happened in a year with above-normal but not extraordinary rainfall — Bihar recorded roughly 27 to 31 percent above-normal rainfall in September 2026, a meaningful excess but not the kind of singular cloudburst that would make the disaster appear as an act of nature beyond the reach of ordinary administrative foresight.⁸ A flood of this magnitude, occurring within a legal and institutional framework that has existed in more or less its current form since 2005, and inside a river system whose behaviour, sediment load, and embankment vulnerabilities have been documented by the state's own auditors for two decades, raises a question that is legal rather than meteorological: what does Indian law actually require the state of Bihar to do about a hazard this well understood, and what — if anything — follows in law when it does not do it?

This paper takes up that question directly, using the 2026 flood as its central and most current case study, read alongside the far more litigated and audited 2008 Kosi breach at Kusaha. It does not attempt to relitigate flood hydrology or embankment engineering, both of which are addressed elsewhere by specialists better placed to do so.⁹ It asks a narrower, more tractable, and more structured question: whether the elements ordinarily used to establish liability — a duty, its breach, a causal link between that breach and resulting harm, the harm itself, and an available remedy — can be identified in Bihar's flood-governance framework, and where in that five-part chain Indian

⁶ Five Dead as Bihar Floods Affect More Than 3.4 Million, *The Watchers*, supra note 3.

⁷ Bihar Floods Displace Four Million, *Tech Times*, supra note 1; Bihar Flood Crisis: Over 22 Lakh Impacted Across 12 Districts as Ganga Rises Above Danger Mark, *Herald Goa* (Sept. 2026).

⁸ Flood Situation Remains Grim in Bihar, *India TV News*, supra note 5; Bihar Floods Displace Four Million, *Tech Times*, supra note 1.

⁹ See generally Dinesh Kumar Mishra, *The Kosi and the Embankment Story*, 43 *Econ. & Pol. Wkly.* 47 (Nov. 15, 2008) [hereinafter *Mishra, Kosi Story*].

law currently fails to close the loop between documented administrative default and legal consequence.

The remainder of the paper proceeds in ten further parts. Part II sets out the methodology, the research questions the paper answers, and the gap in the existing literature it is designed to fill. Part III develops the 2026 flood as a contemporary case study against the physical and administrative background of Bihar's flood problem. Part IV maps the legal and institutional framework at the national and state level. Part V examines the constitutional rights at stake under Article 21. Part VI is the paper's central analytical contribution: a Duty–Breach–Causation–Harm–Remedy framework for state liability, applied to both 2008 and 2026. Part VII identifies the gap between statutory design and ground-level practice. Part VIII surveys the judicial approach to flood and disaster litigation, including a 2024–2025 Supreme Court proceeding concerning infrastructure failure in flood-prone Bihar. Part IX offers recommendations tied directly to the gaps the DBCHR framework identifies. Part X states the paper's contribution explicitly, and Part XI concludes.

2. METHODOLOGY, RESEARCH QUESTIONS, AND RESEARCH GAP

2.1 Research Questions

This paper is organised around four research questions.

RQ1. Does the statutory and constitutional framework governing floods in Bihar — principally the Disaster Management Act, 2005, NDMA and BSDMA guidelines, and Article 21 jurisprudence — impose a duty on the state that is enforceable by an individual flood victim, as opposed to a policy commitment the state may or may not choose to honour?

RQ2. Can the conventional elements of civil liability — duty, breach, causation, harm, and remedy — be meaningfully mapped onto documented flood-governance failures in Bihar, using the 2008 Kosi breach and the 2026 Ganga flood as comparative instances separated by nearly two decades of the same statutory regime?

RQ3. What does primary audit and judicial material — CAG performance audits, NDMA guidelines, and reported judgments — reveal about the specific point in that five-part chain at which Indian law currently fails to convert a documented administrative default into an enforceable remedy?

RQ4. What statutory or institutional reforms would close the gap RQ3 identifies, without requiring wholesale reinvention of India's disaster-law architecture?

2.2 Methodology

The paper adopts a doctrinal, black-letter methodology supplemented by a structured comparative case-study method. Primary legal materials — the text of the Disaster Management Act, 2005; NDMA's National Disaster Management Guidelines on the Management of Floods (2008); reported judgments of the Supreme Court and High Courts; CAG/Principal Accountant General (PAG) performance audit reports, including CAG's Civil Audit Report on Bihar (2005) and CAG Report No. 10 of 2017 on flood control and flood forecasting schemes; and official flood bulletins issued by Bihar's Disaster Management Department, the Flood Management Information System Cell of the Water Resources Department, and the Bihar State Disaster Management Authority (BSDMA) — form the evidentiary spine of the analysis.¹⁰ Contemporaneous reporting of the 2026 flood by wire services and established outlets is used strictly as a source of primary factual data (gauge readings, casualty figures, deployment numbers, dates of embankment breaches) rather than as legal authority, and is cross-checked across multiple independent reports where possible. Secondary academic and journalistic commentary is used sparingly, chiefly for historical and technical context on embankment engineering that lies outside legal expertise, and is clearly distinguished from primary legal and audit material throughout.

¹⁰ Comptroller and Auditor General of India, Civil Audit Report, Bihar, for the year ended 31 March 2004, ch. III (Performance Review: Water Resources Department) [hereinafter CAG, Bihar Civil Audit 2005]; Comptroller and Auditor General of India, Report No. 10 of 2017 (Performance Audit, Union Government, Ministry of Water Resources), ch. 6 (Implementation of the Recommendations of Review and Oversight Committees for Flood Control Measures) [hereinafter CAG Report No. 10 of 2017]; National Disaster Management Authority, National Disaster Management Guidelines: Management of Floods (Jan. 2008) [hereinafter NDMA, Flood Guidelines 2008].

The comparative case-study method places the 2008 Kosi breach — the most thoroughly audited and litigated flood event in Bihar's recent history — alongside the 2026 Ganga flood, the most recent and, on several metrics, the most severe. The two events are separated by eighteen years during which the statutory framework remained materially unchanged until a substantial amendment in 2025, which came into force too recently to have affected outcomes in the 2026 flood, which makes the comparison a natural test of whether that framework has closed, narrowed, or left untouched the gap between administrative default and legal consequence.

The paper's limitations should be stated plainly. It is a doctrinal legal study, not an empirical or field study; it does not include interviews with flood-affected residents, district officials, or engineers, and it does not independently verify hydrological data. Its account of the 2026 flood is necessarily provisional, since the event was still unfolding and its administrative and judicial aftermath — audits, inquiries, possible litigation — had not yet occurred as of the time of writing. Where the paper draws conclusions from the 2026 flood, it does so cautiously, treating the event as illustrative of a longer-run pattern rather than as a fully adjudicated case.

2.3 Research Gap

Existing legal scholarship on Bihar's flood governance tends to fall into two separate literatures that rarely engage each other. The first treats the Disaster Management Act, 2005 and the associated institutional architecture as a matter of administrative or constitutional law, focused on Article 21's positive obligations and the post-disaster interventions of Indian courts in Uttarakhand, Jammu and Kashmir, and Kerala. The second, largely non-legal, literature — technical papers, audit reports, and civil-society fact-finding accounts — documents in granular detail how and why Bihar's embankments fail, without translating that documentation into a legal liability analysis. Neither literature has, to this paper's knowledge, organised the question of state responsibility for flood harm around the ordinary elements of civil liability — duty, breach, causation, harm, remedy — in a way that would let a court, a claimant, or a legislator identify precisely where the chain of legal responsibility currently breaks down. Nor has the existing legal literature engaged with a flood event as recent as September 2026; the 2008 Kosi breach remains the default contemporary reference point in most published legal commentary, even though it is now approaching two decades old and Bihar's flood-governance framework, embankment inventory, and audit record have all developed considerably since. This paper is designed to fill

both gaps at once: by building a duty-based liability framework specific to flood governance, and by testing that framework against the most current large-scale flood event available.

3. THE 2026 BIHAR FLOOD: HYDROLOGY, INSTITUTIONS, AND A CONTEMPORARY CASE STUDY

3.1 Physical and Administrative Background

Bihar's flood problem begins outside Bihar. About 65 percent of the catchment area of the major North Bihar rivers — the Kosi, Bagmati, Gandak, Burhi Gandak, Kamla Balan, Mahananda, and the Adhwara group — lies across the border in Nepal's geologically young middle hills, while only 35 percent lies within Bihar itself.¹¹ This means the water, and virtually all of the sediment that reaches Bihar's rivers each monsoon, is generated outside the jurisdiction that must manage its consequences. Roughly 73 percent of Bihar's geographical area sits within reach of these rivers in a bad monsoon, and around three-quarters of the population of North Bihar has, for decades, lived with flooding as an annual event rather than an occasional one.¹²

The state's response, dating to the Kosi Project of the 1950s, has been embankment construction; Bihar today has more than 3,400 kilometres of embankments, more than any other Indian state.¹³ By 2016, after 3,731 kilometres of levees had been built, the officially recognised flood-prone area of Bihar had grown to 7.295 million hectares — a two-and-a-half-fold increase since large-scale embankment construction began, according to a 2016 Central Water Commission assessment cited in contemporaneous reporting on the 2026 flood.¹⁴ This is not a marginal or contested technical point; it is the finding that the state's own flood-control agencies have not disputed for over a

¹¹ Water Resources Dep't, Gov't of Bihar, History of Flood in Bihar, <https://fmiscwrdbihar.gov.in/fmis/history.html> (last visited Sept. 13, 2026) [hereinafter FMISC, History of Flood in Bihar].

¹² Id.

¹³ Mishra, Kosi Story, *supra* note 9, at 47.

¹⁴ Bihar Floods Displace Four Million, Tech Times, *supra* note 1 (citing a 2016 Central Water Commission report on Bihar floods).

decade, and it recurs, in substantially the same form, in the CAG performance audit discussed in Part VI.¹⁵

This pattern is not confined to an exceptional year such as 2026. During the September 2024 monsoon, despite Bihar recording deficit rainfall overall, at least six embankments breached within twenty-four hours along the Kosi, Gandak, and Bagmati systems, with an independent civil-society engineering review attributing the failures to the same structural weaknesses documented in earlier audits rather than to rainfall intensity. The recurrence of embankment failure in a year of below-normal rainfall lends independent, non-audit support to this paper's central premise: that the scale of Bihar's flood harm tracks the condition of its flood-control infrastructure more closely than it tracks the volume of a given monsoon.¹⁶

3.2 The 2026 Flood as Case Study

The 2026 monsoon produced above-normal but not extreme rainfall for Bihar — the state recorded between roughly 27 and 31 percent above-normal rainfall in early-to-mid September, compounded by heavy downpour in Nepal's catchment areas that fed directly into the Ganga's tributaries.¹⁷ What made the event distinctive was not the volume of rain but what the river did once it arrived: the Ganga broke its own all-time highest flood level at three separate gauge stations within days of each other — Gandhi Ghat and Pandarak in Patna district, and Sultanganj in Bhagalpur district — a simultaneous breach of historical record at multiple points that outlets covering the event described as unprecedented in the river's monitored history.¹⁸

¹⁵ CAG Report No. 10 of 2017, *supra* note 10, § 6.2 tbl.6.1 (recording Bihar's flood-prone area as assessed by the state at 68.80 lakh hectares, against 42.60 lakh hectares jointly assessed for Bihar and Jharkhand by the Rashtriya Barh Aayog).

¹⁶ South Asia Network on Dams, Rivers and People, '2024: Do Embankments Save From Floods or Worsen the Disasters?' (SANDRP, 3 January 2025) <<https://sandrp.in/2025/01/03/2024-do-embankments-save-from-floods-or-worsen-the-disasters/>> accessed 17 September 2026.

¹⁷ Flood Situation Remains Grim in Bihar, India TV News, *supra* note 5; Bihar Floods Displace Four Million, Tech Times, *supra* note 1.

¹⁸ Bihar Floods Displace Four Million, Tech Times, *supra* note 1.

The human toll accumulated in stages that the official bulletins tracked closely. By 8 September, over 3.4 million people across 13 districts were affected and five people had drowned in Patna district; by 9 September, over 4 million people across 14 districts were displaced; by 11 September, the figure had risen to 46.88 lakh — over 4.6 million — people across 561 gram panchayats in 88 blocks of 15 districts, with the worst-affected districts including Bhagalpur, Patna, Saran, Vaishali, Begusarai, Katihar, Purnea, and Buxar.¹⁹ The pattern of embankment failure was concentrated but recurrent: a 20-metre breach of the Mahi river embankment at Trilokchak in Saran district on 5 September, a further breach at Dariyapur block in the same district, and at least four separate breaches in Bhagalpur district, including at the Brahmottar Dam in Gopalpur block (brought under control overnight with a Water Resources Department technical team and local residents) and the Dhobania Zamindari Dam in Rangra block, where roughly 20 feet of embankment eroded within a matter of hours.²⁰ The state's operational response — 27 SDRF teams, 10 NDRF teams, nearly 2,000 boats, 171 medical camps, and community kitchens serving tens of thousands of people daily in districts such as Patna and Saran — was significant in scale, and consistent with the kind of relief-and-rescue effort Indian courts have treated as an Article 21 obligation in earlier disasters.²¹ What that response did not include, at least as of the period covered by this paper, was any published account of why embankments that the state's own engineers had flagged for “high alert” nonetheless breached at multiple points in the same fortnight, or any indication that a CAG or PAG inquiry comparable to the one that followed the 2008 Kosi breach had been initiated.²²

¹⁹ Five Dead as Bihar Floods Affect More Than 3.4 Million, *The Watchers*, supra note 3; Bihar Floods Displace Four Million, *Tech Times*, supra note 1; Bihar Floods: Over 46 Lakh People Affected, *The Federal/PTI*, supra note 4.

²⁰ Bihar Floods Displace Four Million, *Tech Times*, supra note 1; Flood Situation Remains Grim in Bihar, *India TV News*, supra note 5; Bihar Flood Situation Grim, Over 47 Lakh Affected Across 15 Districts, *The Meghalayan Express* (Sept. 11, 2026).

²¹ Bihar Floods Displace Four Million, *Tech Times*, supra note 1; Bihar Flood Crisis, *Herald Goa*, supra note 7.

²² Bihar Flood Crisis, *Herald Goa*, supra note 7 (Water Resources Department engineers placed on “high alert” in Begusarai, Lakhisarai, Munger, Bhagalpur, and Katihar); Flood Situation Remains Grim in Bihar, *India TV News*, supra note 5 (subsequent breaches in Bhagalpur).

The broader climatic backdrop is worth noting without overstating it: the Intergovernmental Panel on Climate Change projects roughly a 7 percent intensification of extreme South Asian monsoon rainfall for every additional degree Celsius of global warming, and researchers studying recent monsoon seasons have linked warmer sea-surface temperatures and shifting jet streams to more intense precipitation concentrated in exactly the river basins that feed Bihar.²³ This does not change the legal analysis that follows, but it does mean that the frequency of events resembling 2026 is, on the available scientific evidence, more likely to increase than to revert to a historical baseline — which sharpens rather than dilutes the urgency of the liability and reform questions this paper addresses.

4. LEGAL AND INSTITUTIONAL FRAMEWORK

Until 2005, India had no general statute on disaster management; flood relief operated through executive instructions, state relief codes, and the Centre's residual power to declare a disaster a matter of national concern.²⁴ The Disaster Management Act, 2005 (DM Act) created a three-tier statutory structure — the National Disaster Management Authority (NDMA) at the apex, State Disaster Management Authorities (SDMAs) in each state, and District Disaster Management Authorities (DDMAs) below that — and defines a “disaster” broadly enough to cover both a sudden embankment breach and a slow-onset monsoon flood.²⁵

The National Authority, chaired by the Prime Minister, is empowered under Section 6 to lay down policies, approve the National Plan, and recommend funding; Section 8 constitutes a National Executive Committee tasked with preparing and coordinating the National Plan.²⁶ At the state level, Sections 14 through 24 establish the State Disaster Management Authority, chaired by the

²³ Bihar Floods Displace Four Million, Tech Times, supra note 1 (citing IPCC monsoon-intensification projections and recent monsoon research).

²⁴ The Disaster Management Act, No. 53 of 2005, India Code, Statement of Objects and Reasons.

²⁵ Disaster Management Act §§ 2(d), 3, 14, 25.

²⁶ Id. §§ 6, 8.

Chief Minister, empowered under Section 18 to lay down state policy and approve the State Plan; BSDMA functions under this mandate, alongside the state's Disaster Management Department and the Water Resources Department's Flood Management Information System Cell (FMISC), which runs flood forecasting and embankment monitoring and issues the district-wise bulletins on which the 2026 casualty and displacement figures in Part III rely.²⁷ Sections 25 through 34 create District Disaster Management Authorities chaired by the District Magistrate, with a duty under Section 30 to prepare a district plan; Section 41 places specific duties on municipal bodies and panchayats, including ensuring that local construction conforms to disaster-mitigation standards.²⁸

Sections 12 and 19 are the most consequential provisions for present purposes: Section 12 requires NDMA to recommend guidelines on the “minimum standards of relief” — shelter, food, drinking water, medical care, sanitation — and Section 19 requires State Authorities to do the same at state level.²⁹ NDMA's National Disaster Management Guidelines on the Management of Floods, issued in January 2008, elaborate this mandate across ten chapters covering flood prevention, forecasting, dam and reservoir management, regulation and enforcement, and flood response, and were framed explicitly to shift disaster management from a relief-centric to a prevention-and-mitigation-centric approach.³⁰ The Act nowhere describes these minimum standards as directly enforceable rights, leaving that question to constitutional litigation, addressed in Part V.

Funding runs through National and State Disaster Response Funds under Sections 46 and 48; the National Disaster Response Force, under a Director-General appointed by the Central Government, has been deployed in most major Bihar flood years since 2008 and again in 2026.³¹

²⁷ Id. §§ 14, 18; Bihar State Disaster Mgmt. Auth.; Water Resources Dep't, Gov't of Bihar, Flood Mgmt. Info. Sys., <https://fmiscwrdbihar.gov.in> (last visited Sept. 13, 2026); Bihar State Disaster Mgmt. Auth., Flood, <https://bsdma.bihar.gov.in/en/flood> (last visited Sept. 13, 2026) [hereinafter BSDMA, Flood].

²⁸ Disaster Management Act §§ 30, 41.

²⁹ Id. §§ 12, 19.

³⁰ NDMA, Flood Guidelines 2008, *supra* note 10.

³¹ Disaster Management Act §§ 46, 48; Bihar Floods Displace Four Million, Tech Times, *supra* note 1 (NDRF deployment in 2026).

Two further pieces of the framework matter for the liability analysis in Part VI. First, embankment maintenance on the Kosi has depended since a 1954 agreement between India and Nepal, revised in 1966, under which India bears construction and maintenance responsibility for embankments partly on Nepalese territory — meaning some relevant decisions are taken, or delayed, at the level of an international treaty relationship rather than within Bihar’s own administrative hierarchy.³² Second, CAG’s constitutionally mandated audit function, exercised in Bihar through the Principal Accountant General, has produced two performance audits directly relevant to this paper: the Civil Audit Report on Bihar for the year ended 31 March 2004, which examined the Water Resources Department’s execution of anti-erosion and embankment works, and CAG Report No. 10 of 2017, a pan-India performance audit of flood control and flood forecasting schemes that names Bihar specifically in several of its findings.³³ Both reports are treated in this paper as primary evidence of breach, discussed in Part VI.

5. CONSTITUTIONAL RIGHTS OF FLOOD-AFFECTED COMMUNITIES

The Disaster Management Act says relatively little about what an individual flood victim is entitled to demand. That gap has been filled by the Supreme Court’s reading of Article 21, which guarantees that no person shall be deprived of life or personal liberty except by procedure established by law. Since *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court has treated “life” as extending beyond physical survival to a right to live with human dignity and the bare necessities of life, including shelter and nutrition.³⁴ *Olga Tellis v. Bombay Municipal Corporation* extended this to hold that the right to livelihood is integral to the right to life.³⁵ *Chameli Singh v. State of U.P.* held that the right to shelter flows from Article 21, describing

³² See Koshi Victims May Have No Option Except Courts, Dialogue Earth (Jan. 2019).

³³ CAG, Bihar Civil Audit 2005, *supra* note 10; CAG Report No. 10 of 2017, *supra* note 10.

³⁴ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

³⁵ *Olga Tellis v. Bombay Mun. Corp.*, AIR 1986 SC 180.

adequate shelter as more than four walls and requiring safety from the elements.³⁶ Read together, these decisions supply the constitutional vocabulary for flood litigation: displacement implicates the right to shelter, destruction of crops and livestock implicates livelihood, and death or injury from a preventable embankment failure implicates the core right to life — precisely the three categories of harm documented in the 2026 flood described in Part III.

Directive Principles reinforce this reading even though they are not independently enforceable. Article 47 directs the state to regard raising the level of nutrition and public health among its primary duties, and Article 48A directs the state to protect and improve the environment; courts have used both as interpretive aids in reading the content of Article 21.³⁷

Flood cases specifically have reached Indian courts more often than is commonly assumed. In *Prasanta Kumar Rout v. Government of Orissa*, residents of a township near Cuttack, cut off and partly submerged after the 1994 monsoon, petitioned the Orissa High Court to direct the state and the development authority to provide a permanent solution; the court accepted that Article 21's guarantee of a dignified life extends to protection from recurring waterlogging, while holding that the relief the authorities had actually delivered had been reasonably adequate given the area's lack of prior flood history, and kept the matter open for continuing judicial attention rather than issuing a one-time order.³⁸ The case illustrates both the promise and the limit of Article 21 litigation: courts will treat flood vulnerability as a constitutional question, but the relief they grant tends to track what the authorities themselves concede is feasible rather than an independently defined standard of adequate protection.

The Supreme Court's post-disaster interventions, though most arose from cloudbursts and earthquakes rather than riverine floods, apply comparable reasoning. After the 2013 Uttarakhand disaster, the Court entertained writ petitions alleging the state had failed to prevent epidemic risk from decomposing bodies, and directed the state and NDMA to file status reports and take specific

³⁶ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

³⁷ India Const. arts. 47, 48A; *Chameli Singh*, supra note 35.

³⁸ *Prasanta Kumar Rout v. Gov't of Orissa*, 1994 (II) OLR 444 (Orissa H.C.).

remedial steps.³⁹ Following the 2014 Jammu and Kashmir floods, the Court directed the state to ensure flood-affected families received food, fuel, drinking water, and medicine, treating relief adequacy as squarely an Article 21 matter rather than a question of policy discretion beyond judicial reach.⁴⁰ After the 2018 Kerala floods, residents petitioned the High Court arguing that mismanagement of dam-water releases, not rainfall alone, had caused the disaster, framing the claim explicitly as a violation of Article 21 rights to life, livelihood, and transparent governance.⁴¹

Article 14 supplies a second, less litigated strand: because flood relief is frequently distributed through village-level lists prepared by local officials, unequal or discriminatory distribution raises an equality question distinct from the Article 21 question of aggregate adequacy — an issue courts have engaged with less consistently, leaving it an underdeveloped area of flood-governance jurisprudence.⁴²

6. STATE LIABILITY FOR FLOOD GOVERNANCE: A DUTY–BREACH–CAUSATION–HARM–REMEDY FRAMEWORK

The public-law materials in Part V establish that Article 21 imposes something recognisable as a duty on the state in the aftermath of a flood. What they do not do, on their own, is tell a court or a claimant how to establish that a specific instance of flood harm was caused by a specific administrative failure, in the structured way tort law ordinarily requires before liability attaches. This Part builds a five-element framework — Duty, Breach, Causation, Harm, Remedy (DBCHR) — designed to make that structure explicit, and applies it comparatively to the 2008 Kosi breach and the 2026 Ganga flood.

³⁹ Judicial Fallout of the Uttarakhand Disaster, Fair Observer (2013).

⁴⁰ Ensure Essential Items for Kashmiris, SC Tells Govt, The Peninsula Qatar (Sept. 19, 2014).

⁴¹ Kerala Floods: Two Residents File PIL, Say Water Management Saw No Change Since 1956, Down To Earth (2018).

⁴² Cf. India Const. art. 14.

6.1 Duty

Two independent sources of duty exist side by side. The constitutional duty, traced in Part V, obliges the state to protect life, shelter, and livelihood, and has been read by courts to include rescue, relief, and rehabilitation after a disaster occurs.⁴³ The statutory duty is narrower and more procedural: Sections 30 and 41 of the DM Act require district authorities and local bodies to prepare disaster management plans and ensure disaster-mitigation compliance, and NDMA's 2008 flood guidelines translate this into specific institutional obligations — flood forecasting, embankment inspection, dam and reservoir regulation, and pre-monsoon preparedness — that BSDMA and the Water Resources Department are required to discharge.⁴⁴ Neither Article 21 nor the DM Act describes embankment maintenance itself as a directly enforceable duty owed to an individual resident; the duty that is judicially enforceable is the downstream duty to rescue and relieve once a flood has occurred, not the upstream duty to prevent the embankment failure that made rescue necessary. This is the first structural weakness the framework exposes: Indian flood law has a well-developed post-disaster duty and a comparatively undeveloped pre-disaster one.

6.2 Breach

Breach is where the audit record becomes central, because it is where an independent, non-judicial body has already done much of the work a court would otherwise have to do. After the 2008 Kosi breach, the Bihar PAG found that the Water Resources Department had scaled back sanctioned protection works — reducing protective studs from eleven to five — at the exact stretch of embankment that later failed, a documented instance of a public audit body tracing a mass-casualty disaster to an identifiable administrative decision.⁴⁵ CAG's earlier Civil Audit Report on Bihar had already, years before the Kosi breach, documented a pattern of the same kind: contractors failing to supply or account for materials used in anti-erosion works, and works being “redone” at

⁴³ See Part V, *supra*; Judicial Fallout of the Uttarakhand Disaster, *supra* note 38; Ensure Essential Items for Kashmiris, *supra* note 39.

⁴⁴ Disaster Management Act §§ 30, 41; NDMA, Flood Guidelines 2008, *supra* note 10.

⁴⁵ Kosi Breach Due to Bihar Government's Apathy: PAG, India Water Portal (Jan. 18, 2010).

additional cost after initial execution failed to meet specification.⁴⁶ Nearly a decade after Kosi, CAG Report No. 10 of 2017 — a pan-India performance audit — found that Bihar was one of ten sampled states that had not prepared a Comprehensive Master Plan for flood management despite being one of the states the Ministry specifically asked to constitute an implementation committee for exactly that purpose; that Bihar had not carried out the scientific, five-yearly review of flood-prone area required by the Rashtriya Barh Aayog's 1980 recommendations; and that Bihar was one of the states that had not enacted a Flood Plain Zoning Act, despite a model bill having been circulated to all states since 1975.⁴⁷ These are not stray findings from a single report; they are the same categories of default — deferred or incomplete engineering works, absent planning documents, absent zoning law — recurring across audits separated by more than a decade, and they supply, in the language of ordinary liability analysis, a documented pattern of breach that long predates and, on the evidence available, continued through the 2026 flood, in which embankments the Water Resources Department had itself placed on “high alert” nonetheless breached in Saran and at four separate points in Bhagalpur within the same fortnight.⁴⁸ Breach, in other words, is the one element of the DBCHR framework for which India's own institutions have already generated primary, contemporaneous, and specific evidence — evidence that the litigation record discussed in Part VIII shows has almost never been used as the evidentiary basis for a liability claim.

Independent civil-society assessment of CAG's own audit methodology adds a further layer to the breach analysis. A detailed review of CAG's Bihar flood-control findings by the South Asia Network on Dams, Rivers and People concluded that the audit's recommendations remained confined to structural fixes, such as embankment repair and heightening, without examining whether the embankment-based strategy itself, and the ecological and sedimentation consequences documented since the Kosi breach, were an appropriate response at all. This critique matters for

⁴⁶ CAG, Bihar Civil Audit 2005, *supra* note 10 (documenting failures to supply or account for boulders and other materials procured for anti-erosion and embankment works, and works redone at additional cost after initial execution failed specification).

⁴⁷ CAG Report No. 10 of 2017, *supra* note 10, §§ 6.8–6.9 (Comprehensive Master Plan and Flood Plain Zoning findings).

⁴⁸ Bihar Flood Crisis, Herald Goa, *supra* note 7; Flood Situation Remains Grim in Bihar, India TV News, *supra* note 5.

the DBCHR framework because it suggests that even where breach is documented, the institutional response to that documentation has itself been narrowly framed, a limitation that any statutory presumption of causation proposed in Part IX would need to address rather than assume away.⁴⁹

6.3 Causation

Causation is the framework's weakest link, and the principal reason the documented breaches in 6.2 have not translated into legal remedies. In *M.C. Mehta v. Union of India*, arising from a gas leak rather than a flood, the Supreme Court fashioned the principle of absolute liability, holding that an enterprise engaged in a hazardous activity owes an absolute, non-delegable duty to prevent harm and cannot escape liability by showing reasonable care was taken; the Court applied comparable reasoning in *Indian Council for Enviro-Legal Action v. Union of India*, holding polluting industries liable to remediate harm without requiring proof of individual fault.⁵⁰ *Vellore Citizens' Welfare Forum v. Union of India* embedded the precautionary principle — that the absence of full scientific certainty about a threat is no excuse for deferring preventive measures — into Indian environmental law.⁵¹ No reported decision has yet applied either the absolute-liability standard or the precautionary principle to embankment failure specifically. The doctrinal foundation plainly exists: if the state manages a hazardous river through structures whose failure predictably and repeatedly causes mass harm, and CAG has already identified the specific administrative choices (reduced protective works, absent zoning law, unimplemented master plans) that made a given failure more likely, causation in the ordinary but-for sense is not difficult to state. What is missing is a procedural mechanism — a presumption, a burden-shifting rule, or a dedicated tribunal empowered to receive CAG/PAG findings as prima facie evidence — that would let a claimant convert that audit finding into a causal case without having to reconstruct,

⁴⁹ South Asia Network on Dams, Rivers and People, 'CAG Review of Flood Control Measures in Bihar: When Will Auditors Learn about Ecology?' (SANDRP, 15 September 2013) <<https://sandrp.in/2013/09/15/cag-review-of-flood-control-measures-in-bihar-when-will-auditors-learn-about-ecology/>> accessed 17 September 2026.

⁵⁰ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086; *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

⁵¹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

from scratch and often years later, the engineering chain between a specific deferred repair and a specific breach. Because no such mechanism exists, the causal link between the documented defaults in Part 6.2 and the specific embankment breaches at Trilokchak, Dariyapur, Brahmottar, and Dhobania in 2026 will, in the absence of a fresh inquiry, likely remain exactly where it stood after 2008: administratively obvious and legally unestablished.

6.4 Harm

Harm is comparatively straightforward to document, and the scale comparison between 2008 and 2026 is instructive. The 2008 Kosi breach displaced close to three million people across five districts.⁵² The 2026 flood, by the state's own bulletins, affected more than 4.6 million people across fifteen districts, with at least five confirmed deaths in Patna district and a fatal boat capsizing in Bhagalpur, alongside the agricultural, infrastructural, and public-health harms — crop and livestock loss, road and rail disruption, waterborne disease risk — that accompany flooding of this scale.⁵³ On a simple numerical comparison, the 2026 event's affected population exceeds the 2008 displacement figure, even though 2026 has not (as of this paper) produced a single catastrophic breach comparable in singular scale to Kusaha, but rather a distributed pattern of multiple simultaneous embankment failures across several districts. This distinction matters for the causation analysis in 6.3: a distributed pattern of failure across many structures is harder to trace to any single administrative decision than one catastrophic breach at one location, which is precisely why a systemic evidentiary mechanism — rather than case-by-case reconstruction — is the more realistic route to closing the causation gap.

6.5 Remedy

The remedy actually available to flood victims in Bihar is almost entirely administrative rather than adjudicative: *ex gratia* payments from the State and National Disaster Response Funds, calculated on a schedule fixed by the Ministry of Home Affairs for death, injury, house damage,

⁵² Alok Gupta, Kosi Floods Inquiry Report Submitted, Finally, Down To Earth (2010).

⁵³ Five Dead as Bihar Floods Affect More Than 3.4 Million, The Watchers, *supra* note 3; Bihar Floods: Over 46 Lakh People Affected, The Federal/PTI, *supra* note 4.

and livestock or crop loss.⁵⁴ These payments are uniform and non-adversarial — a claimant need not prove fault to receive them — but the amount is fixed regardless of whether the loss resulted from an unavoidable natural event or a documented administrative failure of the kind CAG identified after Kosi. This flattens two categories of claim that ordinary liability principles would treat differently into a single administrative payout, and it is a substantial part of why flood victims in Bihar have rarely pursued litigation: the statutory relief route is faster and more certain than a writ petition or a tort suit, even where clear administrative fault could, in principle, support a larger recovery. No reported case appears to have used a CAG or PAG report as the evidentiary basis for a compensation claim following a Bihar flood, in 2008 or since — which is the clearest possible illustration of where, in the DBCHR chain, Indian flood-governance law currently stops: duty is judicially recognised, breach is administratively documented, but causation is never formally established and remedy therefore never moves beyond the flat, no-fault schedule. Part IX returns to this gap and proposes a specific institutional fix.

7. GROUND-LEVEL CHALLENGES AND LEGAL GAPS

The statutory architecture in Part IV looks considerably tidier on paper than it operates in practice, and the 2026 flood illustrates several of the same gaps documented after earlier floods. District Disaster Management Authorities, chaired by District Magistrates who already carry law-and-order, revenue, and election duties, function as one more item on an overloaded desk rather than a dedicated flood-response institution.⁵⁵ Embankment repair, sanctioned through the Water Resources Department's own budget cycle, routinely runs behind the pre-monsoon deadline; in 2026, the Water Resources Department had placed engineers on “high alert” along embankments in Begusarai, Lakhisarai, Munger, Bhagalpur, and Katihar shortly before several of those same

⁵⁴ Disaster Management Act §§ 46, 48; Ministry of Home Affairs, Gov't of India, Norms for Assistance from the SDRF/NDRF.

⁵⁵ Disaster Management Act § 31.

districts recorded breaches, which is consistent with a pattern of identified but unresolved vulnerability rather than genuine surprise.⁵⁶

Floodplain encroachment compounds the engineering problem, and CAG's own 2017 audit supplies the clearest statutory-level confirmation of the gap: of seventeen states and union territories sampled, only Manipur, Rajasthan, and Uttarakhand had enacted a Flood Plain Zoning Act based on the model bill circulated by the Central Water Commission since 1975, and Bihar was not among them.⁵⁷ Land use in Bihar's flood-prone districts therefore continues to be governed by ordinary revenue and municipal planning law that does not treat flood risk as a distinct planning criterion, meaning the legal framework has no mechanism to prevent new vulnerability from being created even as it manages existing vulnerability.

The compensation system generates its own ground-level friction. Payments under the State Disaster Response Fund require verification against land records and ownership documents, which disadvantages tenant farmers, sharecroppers, and households without clear title — a substantial share of the population in North Bihar's flood-prone districts, where land records have historically been poorly maintained.⁵⁸ Landless agricultural labourers, who lose wages rather than crops when a flood strikes, fall outside the schedule of compensable losses altogether, since that schedule is built around asset damage rather than income loss.⁵⁹ There is no dedicated tribunal or appellate mechanism for a rejected or delayed relief claim; a claimant's realistic options are an administrative representation to the same authority that made the initial decision, or a writ petition that is, for most affected households, unavailable given cost, distance, and time.⁶⁰

The absence of a functioning crop-insurance backstop compounds this gap. Bihar withdrew from the Pradhan Mantri Fasal Bima Yojana, the national crop-insurance scheme, from the 2018 kharif

⁵⁶ Bihar Flood Crisis, Herald Goa, *supra* note 7; Flood Situation Remains Grim in Bihar, India TV News, *supra* note 5.

⁵⁷ CAG Report No. 10 of 2017, *supra* note 10, § 6.9.

⁵⁸ FMISC, History of Flood in Bihar, *supra* note 11.

⁵⁹ Disaster Management Act §§ 12, 19.

⁶⁰ Cf. Prasanta Kumar Rout, *supra* note 37.

season onward, citing the scheme's fiscal terms, leaving flood-affected cultivators in the state without any insurance-based recourse for standing-crop loss and wholly dependent on the flat ex gratia schedule discussed above. Bihar's continued non-participation in the scheme, confirmed in recent reporting on the scheme's structural weaknesses, means that the gap this Part identifies for tenant farmers and landless labourers is not an implementation failure at the margins but a standing feature of the state's compensation architecture.⁶¹

Transboundary coordination with Nepal remains the least legally settled piece of the framework. The 1954 and 1966 Kosi agreements govern construction and maintenance responsibility for embankments on Nepalese soil, but disputes over responsibility for a given stretch, and over the pace of joint technical meetings, have recurred since well before 2008 and have no binding dispute-resolution mechanism beyond diplomatic negotiation.⁶² Because a domestic Indian court has no jurisdiction to compel Nepal to expedite a joint survey or approve a repair, the single largest source of catastrophic flood risk in North Bihar sits, in legal terms, largely outside the reach of the statutory framework built to manage it.

This is not a hypothetical risk. In August 2026, a flash flood originating in Nepal's Lhende Khola catchment forced Bihar's Water Resources Department to open all thirty-six gates of a major barrage on an emergency basis, the second such cross-border event in fourteen months; despite discussions following the earlier, July 2025 occurrence, no standing, automated, real-time data-sharing arrangement between the two sides had been put in place by the time of the second event. The episode illustrates, independently of the 2026 Ganga flood described in Part III, that the

⁶¹ 'When Crop Insurance Fails Farmers: Why India's PMFBY Scheme Needs Urgent Reform' Down To Earth (New Delhi, 7 April 2026) <<https://www.downtoearth.org.in/agriculture/when-crop-insurance-fails-farmers-pmfby-needs-a-rethink>> accessed 17 September 2026; Lok Sabha Secretariat, Standing Committee on Agriculture, Animal Husbandry and Food Processing (2020–21), Twenty-Ninth Report on Pradhan Mantri Fasal Bima Yojana (Government of India 2021).

⁶² Koshi Victims May Have No Option Except Courts, *supra* note 31.

absence of a binding transboundary mechanism is a live and recurring vulnerability rather than a one-off gap exposed by a single flood year.⁶³

Finally, none of the instruments discussed in Part IV treats climate change as a distinct legal category, even though the intensifying-monsoon evidence noted in Part III suggests that flood risk in the Ganga basin is a moving rather than a static design parameter.⁶⁴

8. JUDICIAL APPROACH AND EMERGING LEGAL PRINCIPLES

The judicial trend across the cases surveyed in Part V moves in one consistent direction: courts are willing to treat the basic conditions of survival — clean water, sanitation, shelter, medical care — as matters within Article 21 rather than as policy questions beyond judicial reach. This reasoning traces back to *Municipal Council, Ratlam v. Vardichand*, where the Supreme Court held that a municipality's plea of financial inability could not excuse its statutory duty to abate a public health nuisance, reasoning that a public body cannot use budgetary constraint as a shield against a duty owed to the public.⁶⁵ Applied to flood governance, the same reasoning would suggest that a state cannot plead a shortage of funds as a complete answer to a claim that it failed to maintain an embankment it knew, from its own audits, to be vulnerable.

A second development is the use of continuing supervision rather than a single final order: in several post-disaster interventions, courts called for status reports rather than issuing a one-time direction, keeping the matter on the docket until the state demonstrated relief had actually reached affected people.⁶⁶ At the same time, courts have shown real caution about substituting their own engineering judgment for that of technical agencies — in *Prasanta Kumar Rout*, the Orissa High

⁶³ South Asia Network on Dams, Rivers and People, 'DRP News Bulletin' (SANDRP, 3 August 2026) <<https://sandrp.in/2026/08/>> accessed 17 September 2026.

⁶⁴ Bihar Floods Displace Four Million, Tech Times, supra note 1.

⁶⁵ *Municipal Council, Ratlam v. Vardichand*, AIR 1980 SC 1622.

⁶⁶ Judicial Fallout of the Uttarakhand Disaster, supra note 38; Ensure Essential Items for Kashmiris, supra note 39.

Court accepted the development authority's account of cost and feasibility rather than ordering a specific engineering remedy, directing continued monitoring instead.⁶⁷

A recent and directly relevant illustration of both tendencies together comes from outside the flood context narrowly defined but squarely within Bihar's flood-prone infrastructure. In July 2024, a Supreme Court bench led by the then Chief Justice of India issued notice on a public interest litigation concerning the collapse of at least nine bridges in Bihar, including under-construction structures, with the petition explicitly framing the state's bridge-safety failures against the fact that Bihar is India's most flood-prone state, with 73.06 percent of its geographical area affected by floods.⁶⁸ In April 2025, the Court transferred the matter to the Patna High Court for "expeditious and appropriate hearings from time to time," rather than deciding it itself — a continuing-supervision approach consistent with the pattern identified above, and a signal that Indian courts are prepared to treat chronic infrastructure failure in a flood-prone state as an ongoing matter for structured judicial oversight rather than a single writ to be disposed of and closed.⁶⁹ This proceeding, still pending at the time of writing, is the most current instance of the judiciary engaging with exactly the kind of documented, repeated administrative default this paper's DBCHR framework is built to analyse, and its eventual disposition will be a useful test of whether Part 6.3's causation gap can be narrowed through litigation rather than only through legislation.

Taken together, the principle emerging from these decisions is one of reasonable foreseeability and response rather than a guarantee of flood-free outcomes: the state is not expected to prevent every flood, but it is expected to act on known risks, deliver relief meeting a basic threshold of adequacy, and remain answerable to a court for the gap between what it promised and what it delivered. No decision has yet imported the absolute-liability standard from *M.C. Mehta* into flood governance specifically, which is precisely the doctrinal gap Part 6.3 identifies and Part IX now addresses.

⁶⁷ Prasanta Kumar Rout, *supra* note 37.

⁶⁸ SC Transfers PIL on Bihar Bridge Collapses to Patna High Court, LiveLaw (Apr. 2, 2025).

⁶⁹ *Id.*; SC Transfers PIL on Bihar Bridge Collapses to Patna HC, Central Chronicle (Apr. 2, 2025).

9. RECOMMENDATIONS AND WAY FORWARD

The DBCHR framework in Part VI points to a specific location for reform: the gap sits overwhelmingly at causation, with breach already well documented and duty already judicially recognised. Five reforms follow directly from that diagnosis.

First, Parliament or the Bihar legislature should create a statutory presumption of causation: where a CAG or PAG performance audit, published within a defined period before a flood, has identified a specific, unremedied administrative default in the maintenance, design, or budgeting of a flood-control structure that subsequently fails, the burden should shift to the state to show that the default did not materially contribute to the failure, rather than requiring a claimant to reconstruct the engineering chain from scratch. This single procedural change would connect the breach evidence Part 6.2 shows India's own institutions already generate to the remedy Part 6.5 shows is currently unavailable.

Second, the “minimum standards of relief” under Sections 12 and 19 of the DM Act should be converted from executive guidelines into justiciable entitlements, with a defined schedule of relief a claimant can enforce directly.⁷⁰ This addresses the duty gap identified in 6.1 — the downstream rescue-and-relief duty — without requiring proof of fault, leaving fault-based claims for the first recommendation above.

Third, Bihar should adopt a graduated compensation framework that distinguishes ordinary flood loss from loss traceable to a documented administrative default, adjudicated through a dedicated flood claims tribunal rather than ordinary civil courts, which are too slow and too distant for most claimants.⁷¹ This tribunal is also the natural forum for the causation presumption proposed above, since it would develop the specialised competence to weigh audit findings that generalist civil courts currently lack.

A domestic precedent for adjudicating flood loss without case-by-case reconstruction of the damage chain already exists in embryonic form. Between 2017 and 2018, the International Water

⁷⁰ Disaster Management Act §§ 12, 19.

⁷¹ Kosi Breach Due to Bihar Government's Apathy: PAG, *supra* note 44.

Management Institute piloted an index-based flood insurance scheme for 200 farmers in Bihar's Muzaffarpur district, under which payouts were triggered once satellite and remote-sensor data confirmed that flood height and duration in a given area crossed a pre-set threshold, without requiring individual verification of crop damage. The pilot paid out to affected farmers within weeks rather than years, though it also showed that participants who paid premiums but received no payout in a given season lost confidence in the scheme, a design lesson directly relevant to the causation-presumption and tribunal mechanisms proposed above, which would need a comparably objective and transparent trigger to sustain public confidence over time.⁷²

Fourth, Bihar should finally enact a floodplain management statute broadly along the lines of the 1975 model bill CAG's 2017 audit found only three states had adopted, treating flood risk as an independent planning criterion and restricting new construction in the active floodplain of major rivers, paired with a resettlement and land-title mechanism for the tenant farmers and landless labourers Part VII shows are both excluded from compensation and disproportionately likely to live in the highest-risk locations.⁷³

Fifth, embankment maintenance and transboundary coordination with Nepal deserve a standing bilateral technical body with a defined schedule of joint inspection and a binding timeline for repair decisions, rather than the ad hoc ministerial meetings that have characterised Kosi management since the 1950s; because a domestic Indian court cannot compel Nepalese action, this reform has to proceed at the treaty level, but Bihar's state government and the Union Ministry of External Affairs could jointly press for it.⁷⁴

⁷² M Aheeyar, S de Silva and SS Sellamuttu, Pilot Evaluation of the Index Based Flood Insurance in Bihar, India: Lessons of Experience (International Water Management Institute 2019); Trishaa Bansal and Joseph Feyertag, Leveraging Parametric Insurance for Climate Adaptation and Resilience in India (Centre for Economic Transition Expertise, London School of Economics, Policy Brief, June 2026) <<https://cetex.org/wp-content/uploads/2026/06/Parametric-Insurance-in-India.pdf>> accessed 17 September 2026.

⁷³ CAG Report No. 10 of 2017, *supra* note 10, § 6.9.

⁷⁴ Koshi Victims May Have No Option Except Courts, *supra* note 31.

Two smaller changes would improve accountability without new legislation. District Disaster Management Authorities should be required to publish embankment inspection and repair records proactively under Section 4 of the Right to Information Act, so that the kind of gap CAG found after the fact in 2005, 2010, and 2017 can be identified before the next monsoon rather than after it.⁷⁵ And District Magistrates chairing DDMA's should be given a dedicated deputy for disaster management, freeing the office from competing entirely with law-and-order and revenue duties during the pre-monsoon period when embankment inspection matters most.

10. CONTRIBUTION OF THIS PAPER

This paper makes four specific contributions to the existing literature on flood governance and state responsibility in Bihar. First, it introduces a Duty–Breach–Causation–Harm–Remedy framework as an original analytical tool for flood liability, adapted from ordinary civil liability doctrine but not previously applied, to this paper's knowledge, to Indian disaster or flood jurisprudence; the framework's principal analytical payoff is to show that the gap in Bihar's flood-governance law sits specifically at causation, not at duty or breach, which existing scholarship treats less precisely. Second, it supplies a documented account of the September 2026 Bihar flood built from primary contemporaneous official and wire-service reporting — gauge readings, casualty figures, deployment numbers, and embankment-breach locations — rather than from retrospective secondary commentary, making it, to this paper's knowledge, among the first legal-academic treatments to use the 2026 event as a case study at all. Third, it draws together primary audit material — the 2005 Civil Audit Report on Bihar and CAG Report No. 10 of 2017 — that has previously circulated mainly in specialist water-policy and audit literature, and connects those findings explicitly to the legal question of state liability rather than leaving them as administrative record alone. Fourth, it translates the doctrinal gap the framework identifies into a specific, implementable reform — a statutory presumption of causation keyed to unremedied CAG/PAG

⁷⁵ The Right to Information Act, No. 22 of 2005, India Code, § 4; CAG, Bihar Civil Audit 2005, *supra* note 10; Kosi Breach Due to Bihar Government's Apathy: PAG, *supra* note 44; CAG Report No. 10 of 2017, *supra* note 10.

findings — rather than the more general calls for “better implementation” or “political will” that recur in existing commentary without specifying a legal mechanism.

11. CONCLUSION

Bihar’s flood problem is old, well documented, and in a meaningful sense man-made: the state chose embankments as its principal defence seven decades ago, and that choice has shaped both the geography of risk and the administrative habits that now govern it. The 2026 flood, in which the Ganga broke its own all-time highest flood level at three gauge stations within days and displaced more people than the far more litigated 2008 Kosi breach, shows that eighteen years of the Disaster Management Act, 2005 have not changed this underlying pattern in any fundamental way. The legal framework built around the problem — the DM Act, Bihar’s own institutional apparatus, and the constitutional rights that fill the gaps the statute leaves open — has produced a body of law more developed than is often assumed, particularly on the question of duty: courts have been willing to read Article 21 as guaranteeing a floor of shelter, livelihood, and rescue, and cases from Orissa, Uttarakhand, Jammu and Kashmir, and Kerala show this is not confined to Bihar. What the Duty–Breach–Causation–Harm–Remedy framework developed in this paper shows is that the law has not yet done the harder work of connecting that duty, and the breach that CAG’s own audits have documented three times over nearly two decades, to a remedy that responds to fault rather than simply to loss. Closing that gap does not require reinventing Indian disaster law. It requires a specific and modest procedural change — letting a documented audit finding do the evidentiary work a claimant currently cannot do alone — paired with the floodplain zoning, transboundary coordination, and claims-tribunal reforms this paper has set out. Until that happens, the law will keep doing what it did in 2008 and again in 2026: recognising, after the water recedes, that a public authority’s shortage of resources or the difficulty of its task does not excuse a known and preventable failure to protect the people who live, every monsoon, in the path of the river — while offering those same people no more than a flat, no-fault payment regardless of whether the failure was preventable at all.