

HOMELESS IN THE HOMELAND – A STUDY ON THE RIGHTS OF INTERNALLY DISPLACED PERSONS

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ABSTRACT

Internally displaced persons (IDPs) are those who have been forced or obliged to leave their homes behind, notably for reasons related to armed conflict or other violence, and who remain within the borders of their country. There is no universal, legally binding instrument equivalent to the 1951 Refugee Convention that specifically addresses their plight. People forced to flee or leave their homes are generally subject to heightened vulnerability in a number of areas. They remain at high risk of physical attack, sexual assault and abduction, and frequently are deprived of adequate shelter, food and health services. The overwhelming majority of IDPs are women and children who are especially at risk of abuse of their basic rights. More often than refugees, the internally displaced tend to remain close to or become trapped in zones of conflict. There is very little to no protection available to IDPs. This paper tries to analyse the International and Indian legal framework available to protect the rights of IDPs.

INTRODUCTION- THE PLIGHT OF THE INTERNALLY DISPLACED PERSONS:

The Global Report on Internal Displacement revealed that about 55 million people were living in internal displacement across the world at the end of 2020; 48 million as a result of conflict and violence and 7 million as a result of disasters.ⁱ In India alone, about 1.4 million were internally displaced.ⁱⁱ This trend of uprooting people from their homes remains unlikely to reverse given the figures of the previous years and is a matter of serious concern.

It is also distressing to take in that there is no legal definition of those who constitute an ‘internally displaced person’ in International Law.ⁱⁱⁱ But rather a descriptive/factual definition has been given in the United Nations’ 1998 Guiding Principles on Internal Displacement which does not confer any special legal status or rights.^{iv}

According to the Guiding Principles, the Internally Displaced Persons (IDPs) are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.”^v Involuntary departure and the fact that the individual remains within his/her country are the two defining and distinguishing elements of an IDP.

Internal Displacement almost always generates a situation of hardship for those displaced and makes them the most vulnerable populations. It results in a loss of land, livelihood and collapse of family and community structures. It also leads to a loss of less tangible symbolic goods such as cultural heritage and a sense of belonging to a particular place.^{vi}

From a human rights perspective, internal displacement may constitute a forced eviction, which by itself is a gross violation of human rights.^{vii} IDPs are subjected to numerous violations of human rights. They are deprived of the most basic human survival needs such as food, water and shelter, and basic sanitation and healthcare as they are cut off from their normal means of income.

Compounding their plight, the IDPs are stigmatized, marginalized and discriminated against and often viewed with suspicion and hostility in the areas to which they are displaced. They are more prone to violence and several forms of abuse.

Women are at a high risk of facing sexual and gender-based violence, trafficking and exploitation.^{viii} Children are affected as it disrupts their education and are at high risks of abuse, neglect, poverty, exploitation and illness both physiological and psychological.

Unlike the refugees, IDPs remain within their national borders and are paradoxically assumed to be under the care of their government, despite the fact that their displacement is often caused by the same national authorities.^{ix} For the same reason, their plight remains largely ignored by international organisations and state authorities. They remain ‘homeless in their homes’.

INTERNAL DISPLACEMENT IN INDIA- CAUSES AND CONSEQUENCES:

In India, the nature, frequency and extent of the causes of internal displacement are so varying. The majority of cases in which people have been forced to flee their homes are the consequence of government pursuit of political goals and development objectives.^x

There are four broad categories of reasons for internal displacement in India as follows- political causes, such as secessionist movements in Jammu and Kashmir and some North-Eastern States; identity-based autonomy movements such as in Bodoland, Punjab and Gorkhaland; localised violence in some parts of the country; and environmental and development-induced displacement.^{xi}

Development-induced displacement and resettlement (DIDR) has overwhelmingly dominated the IDP situation in India. Hundreds of people are forcibly evicted from their own homes to make way for construction of dams, highways, urban renewal, power plants, mining and other development projects.^{xii} An instance best-fit to be mentioned is the construction of Sardar Sarovar Dam on the river Narmada which caused the displacement of around 0.2 million people and more than 56% of the displaced people belonged to the indigenous tribal groups.^{xiii}

These DIDRs threaten indigenous people with even greater impoverishment. It is only those cases of 'involuntary resettlement' which come to the attention of social and environmental activists, and are thus highlighted,^{xiv} like the Narmada Bachao Andolan movement against displacement which gained international attention and the national authorities stepped in and provided the best ever resettlement and rehabilitation policy to those being displaced.

But there are many other DIDRs that were forced and the authorities have not paid attention to the concerns of the displaced people. Like the case of Rameshwar Pura resettlement site of Gujarat, where seven people belonging to the tribal groups from Madhya Pradesh died due to poor drinking water facilities and the accumulated impact of malnutrition.^{xv}

The State often fails to pay compensation for the common property resources like forest, water, among others, previously enjoyed by those displaced people in their original place of residence.^{xvi} Nonetheless, the resettled populations tend to become impoverished over time.

THE EXISTING VOID IN THE INTERNATIONAL LEGAL FRAMEWORK VIS-À-VIS IDPS:

Though the crisis is truly global, the concept of state responsibility to guarantee the protection and general welfare of citizens and all those under state jurisdiction is becoming increasingly accepted in international law.^{xvii} The problem of IDPs are often seen to be falling under the sovereignty of a State.

As a matter of fact, if these IDPs cross the internationally recognised borders, they would be classified as ‘refugees’, for whom a well-established legal and institutional framework for their protection has been provided through the 1951 Refugee Convention and UN High Commissioner for Refugees.^{xviii} But the IDPs who outnumber the refugees are left at the mercy of the State with no international legal or institutional framework to address their grievances.

This vacuum of responsibility for the IDPs was looming large for decades and ended when the United Nations took cognizance of this issue and introduced the Guiding Principles of Internal Displacement in 1998. It set forth the rights of IDPs and obligations on national authorities towards the IDPs.^{xix} These principles identify the various causes for internal displacement and covers all the phases of displacement viz., the pre-displacement phase, the displacement itself and the resettlement phase.^{xx}

Under the Guiding Principles, the State has the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within its jurisdiction.^{xxi} The IDPs have the same rights and freedoms under international and domestic law as other persons in their country,^{xxii} the right to be protected against arbitrary displacement from the place of habitual residence,^{xxiii} the right not to be displaced for large-scale development projects, which are not justified by compelling and overriding public interests and the right not be displaced in cases of armed conflict, unless the safety and security of the people requires so.^{xxiv} The principles also focus on taking measures to prevent the displacement of tribal people, indigenous people, peasants and other groups with special dependency and attachment to their lands.^{xxv}

The Guiding Principles reflect international human rights law and international humanitarian law, but are not binding on the states nor they are customary in nature. Since, it is left at the

disposal of the State to incorporate these principles into domestic legislative framework and a whole commitment to implement these principles is lacking.

Certain rights namely the right of all human beings to work and right to an adequate standard of living, right to be free from hunger, right of everyone to the enjoyment of the highest attainable standard of physical and mental health under ICESCR;^{xxvi} right against inhuman treatment and right to liberty under ICCPR^{xxvii} and many basic human rights under UDHR^{xxviii} have been guaranteed to everyone including the IDPs.

Over the decades, international recognition has been given to the battles of the IDPs by the OECD's Guidelines for Aid and Agencies on Involuntary Displacement and Resettlement in Development Projects, World Bank's Operational Directive 4.30 on Involuntary Resettlement, Internal Displacement Unit of OCHA and Internally Displaced Monitoring Centre.

Hitherto, there still seems to be a lacuna in the international legal framework. Furthermore, leaving the subject-matter of the IDPs entirely in the hands of national authorities, who are frequently the cause of their distress, as falling under 'state sovereignty' or 'state responsibility', without creating any international legal obligation, leaves them struggling for the basic rights that their fellow citizens enjoy.

THE MINIMAL PROTECTION AVAILABLE FOR IDPS UNDER INDIAN LEGAL FRAMEWORK:

Despite the magnitude of displacement in India and the fact that very few of those displaced have been properly resettled, India has no national policy or legal institutional framework to deal with the issues of IDPs. There have been only piecemeal and *ad hoc* initiatives at project and state level.^{xxix}

Since, specific laws to protect the rights of IDPs are lacking the only means to seek remedy is through the country's existing laws. Furthermore, there are no existing laws that creates a direct obligation on the State to provide for maintenance and protection of the IDPs.

Rights under the Constitution of India:

Under the Constitution, Fundamental Rights includes right such as Article 14 (provides the right not to be arbitrarily displaced, Article 19(1)(e) (ensures the right not to be evicted without any reasonable cause) and Article 21 (includes the right to adequate livelihood^{xxx} and right to live with human dignity and all bare necessities of life^{xxxii}) are guaranteed to all citizens which can be invoked by IDPs. And remedies can be sought in the Supreme Court or in any High Court under Article 32 and 226 respectively to enforce their rights. But the State can impose reasonable restrictions on all the above-mentioned Fundamental Rights.

The Constitution also lays down certain obligations on the State by way of Directive Principles of State Policy (DPSPs) wherein the State has the duty to provide right to work, education and public assistance to its citizens,^{xxxiii} to ensure proper conditions of work,^{xxxiii} and to raise the level of nutrition and the standard of living to improve public health.^{xxxiv} There is also a provision for early childhood care.^{xxxv} Though these DPSPs are not justiciable these serve as guidelines which are expected to be followed by the State in its every decision and action. If the authorities conscientiously abide by the DPSPs, while displacing people, then a fair share of the issues of the IDPs would be resolved.

Rights under other existing laws:

As already noted, there is no law to resolve the peculiar issues faced by the IDPs. And the existing laws like Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act) and others have only dealt with the rights of one category of IDPs i.e., development-induced displacement and to them also provides only the right to rehabilitation and resettlement.

The LARR Act was the first law in India that linked land acquisition and the accompanying obligations for compensation, resettlement and rehabilitation.^{xxxvi} It mandates that all acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition and compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.^{xxxvii} It requires consent of a majority

of land-owners and a Social Impact Assessment be conducted to identify affected families and calculate the social impact when land is acquired and imposes certain restrictions on the acquisition of irrigated land.^{xxxviii}

Other acts such as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest rights) Act, 2006, confers the forest dwellers the right to hold and live in the forest and their displacement is subject to adequate compensation and rehabilitation.^{xxxix} And the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, provides that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas or development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas.^{xl}

Conversely, there are many exemption clauses and loopholes to these provisions and these acts suffer from serious implementation defects. The people are not compensated for the common property resources and people who do not own land and were dependent on that region for their livelihood are left to suffer. Moreover, these acts do not necessarily mandate the authorities to protect the rights of the IDPs such as providing them food and clean water, opportunity to generate income and so on.

The IDPs of other categories have rights guaranteed under the Protection of Human Rights Act, 1993 wherein 'Human Rights' include the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.^{xli} Yet, there is no act to cater to the specific needs of the IDPs.

Measures taken by the Judiciary

The Supreme Court (SC) has served as a guardian of the rights of the IDPs and recognised their plight to a great extent. It has been steadily expanding the scope of Fundamental Rights which are consistent with the Guiding Principles.

In the case of *Narmada Bachao Andolan v. State of Madhya Pradesh*,^{xlii} the SC observed that the right to property is not merely a constitutional right but also a part of human rights. In

Nandini Sundar v. State of Chhattisgarh case,^{xliii} the SC opined that development projects have been insensitive to the needs of the communities being displaced especially the indigenous tribes and reduced them to “sub-human existence”.

In N.D. Jayal v. Union of India case,^{xliv} it was ruled that the overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted and none of them should be allowed to wait for rehabilitation. Similarly, in Narmada Bachao Andolan v. Union of India,^{xlv} the SC upheld that rehabilitation is not just providing food, clothes or shelter but is also about extending support to rebuild livelihood by ensuring necessary amenities of life.

CONCLUSION

Despite the ongoing COVID-19 pandemic, people living in internal displacement was recorded at an all-time high over a decade. Ofttimes, the displaced populations belong to the minority and/or marginalized groups tend to become even more impoverished. The people living in internal displacement encounter severe hardships. They remain virtually detached from the enjoyment of their rights as citizens of their own country. A crucial question of ‘when the internal displacement comes to an end?’ remains unanswered. There are inherent difficulties in reading international standards into national laws as the situation of IDPs varies widely. Notwithstanding, the least that can be done is to ensure that the basic human rights of IDPs are not violated.

An international legal and institutional framework should be formulated to make sure that the States do not evade their responsibilities in respect to the IDPs. At the domestic level, constituting a national institution for assisting the IDPs or strengthening the National Human Rights Institution to provide necessary services to the IDPs would be a good beginning. The adoption of a rights-based approach and accommodation of national authorities, non-state actors, international organisations and the IDPs themselves will reduce the complexity of the problems of the internally displaced and will be helpful to devise mechanisms and necessary strategies.

ENDNOTES

- ⁱ *Global Report on Internal Displacement 2021*, INTERNAL DISPLACEMENT MONITORING CENTRE (2021), <https://www.internal-displacement.org>.
- ⁱⁱ *Id.*
- ⁱⁱⁱ Rhodri C. Williams, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, THE BROOKINGS INSTITUTION-UNIVERSITY OF BERN (2008), <https://www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/>.
- ^{iv} *Handbook for Protection of Internally Displaced Persons*, GLOBAL PROTECTION CLUSTER (2010), <https://www.unhcr.org/4c2355229.pdf>.
- ^v Guiding Principles on Internal Displacement, 1998. [*hereinafter*, Guiding Principles]
- ^{vi} Erin Mooney, *The concept of Internal Displacement and the case for Internally Displaced Persons as a category of concern*, 24 REFUGEE SURVEY QUARTERLY 9–26 (2005).
- ^{vii} Lidewij van der Ploeg & Frank Vanclay, *A human rights-based approach to project induced displacement and resettlement*, 35 IMPACT ASSESSMENT AND PROJECT APPRAISAL 34–52 (2017).
- ^{viii} Erin, *supra* note 6.
- ^{ix} Francis M. Deng, *Divided Nations: The Paradox of National Protection*, 603 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 217–225 (2006), <http://www.jstor.org/stable/25097767>.
- ^x Mahendra P Lama, *Internal Displacement in India: causes, protection and dilemmas*, FORCED MIGRATION REVIEW (2000), <https://www.fmreview.org/accountability-and-displacement/lama>.
- ^{xi} *Id.*
- ^{xii} Shaikh Sahanwaz Islam & Kumar Ashutosh, *Rights of Displaced Persons and Issue of Development*, 7 DEHRADUN LAW REVIEW 31–36 (2015).
- ^{xiii} Thakkar Himanshu, *Displacement and Development: Construction of the Sardar Dam*, CULTURAL SURVIVAL QUARTERLY MAGAZINE (1999), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/displacement-and-development-construction-sardar-dam>.
- ^{xiv} Lama, *supra* note 10.
- ^{xv} Himanshu, *supra* note 13.
- ^{xvi} *Id.*
- ^{xvii} Deng, *supra* note 9.
- ^{xviii} *Id.*
- ^{xix} Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, 14 HUMAN RIGHTS BRIEF 7–12 (2006).
- ^{xx} *Id.*
- ^{xxi} Guiding Principles, *supra* note 5, principle 3(1).
- ^{xxii} Guiding Principles, *supra* note 5, principle 1.
- ^{xxiii} Guiding Principles, *supra* note 5, principle 6(1).
- ^{xxiv} Guiding Principles, *supra* note 5, principle 6(2).
- ^{xxv} Guiding Principles, *supra* note 5, principle 9.
- ^{xxvi} International Covenant on Economic, Social and Cultural Rights *adopted and opened for signature* Dec. 16, 1996, art. 6, art. 11 & art. 12.
- ^{xxvii} International Covenant on Civil and Political Rights, *adopted and opened for signature* Dec. 16, 1996, art. 7 & art. 9.
- ^{xxviii} Universal Declaration on Human Rights, 1948 sets international human rights standards which has now become customary international law.
- ^{xxix} Lama, *supra* note 10.
- ^{xxx} *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C. 180.
- ^{xxxi} *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, A.I.R. 1981 S.C. 746.
- ^{xxxii} INDIA CONST. art. 41.
- ^{xxxiii} INDIA CONST. art. 43.
- ^{xxxiv} INDIA CONST. art. 47.
- ^{xxxv} INDIA CONST. art. 45.
- ^{xxxvi} Mint, *All you wanted to know about new Land Acquisition Bill*, LIVE MINT (Aug. 30, 2013, 01:18 PM), <https://www.livemint.com/Politics/FXZ9CrJApXRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>.
- ^{xxxvii} *Id.*
- ^{xxxviii} *Id.*

^{xxxix} The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, §. 3(1).

^{xl} The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, §. 4(i).

^{xli} The Protection of Human Rights Act, 1993, §. 2(1)(d).

^{xlii} A.I.R. 2011 S.C. 1989.

^{xliii} A.I.R. 2011 S.C. 2839.

^{xliv} (2004) 9 S.C.C. 362.

^{xliv} A.I.R. 2000 S.C. 3751.

