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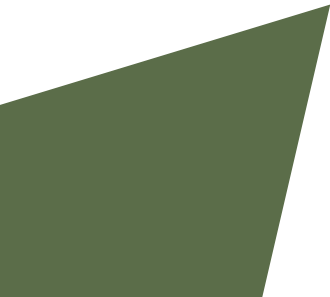
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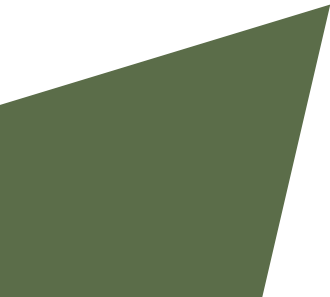
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HUMAN RIGHTS AND INTERNALLY DISPLACED PERSONS

A.P.Siddarrtha Sai Kumar Reddy

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INTRODUCTION

Human Rights are existing because to protect the individuals from the abuse of power of power by the state or by the organs of the state. Not only protecting them from such but also to help and guide the institutions of the state or the organs or the organs of the state for promotion of better living condition. Having said that there are many aspects of human rights in its own ways and they vary from a wide range of human rights right from the arrest to movement etc., Country like India have seen many plethora of cases on human rights. Internally Displaced Persons (IDP's) is also an area where there are violations and issues of human rights arise. Basically, Internally Displaced persons (hereinafter IDP's) are people who were forced to go away from their home but remains in the same country borders. They are generally called refugees but they don't fall under the category of refugees and also they don't fall under the legal definition of the refugees.

They are many factors to this kind of phenomenon, it can be the armed conflict as in north east India or it can be the due to draught or it might be because of the resettlement programme of the government where the organs of the state is negligent and they don't make that resettlement properly. Basically, it ranges from simple rivalry to the regional conflict to racial discrimination.

IDP's, particularly in India doesn't have strict law to protect them and they are the weaker sections of the people. The human rights of such people are getting affected because there is no proper definition or law to define or to protect these IDP's unlike refugees have at the international platform.

This paper tries to study the concept of IDP's and at the same time this paper tries to identify the reasons as to why this IDP's are in existence particularly in India. Also, there is need to know about the laws that can actually protect these vulnerable sections of the people. It is important to study about the process of development in the country by whatever it is named and that process effecting the IDP's.

It is important to have responsibility of the state on IDP's like any other citizen in the state to have basic in such a situation there is a need to take step forward and protect these vulnerable sections of the people and protect them with basic human rights that every human being on earth is entitled to. This paper would giving its suggestions in the conclusion at the knowledge of the researcher.

INTERNALLY DISPLACED PERSONS

Kofi Annan, the former Secretary General of United Nations has said that “internal displacement has emerged as one of the greatest human tragedies of our time. It has also created a un-precedent challenge for the international community: to find ways to respond to what is essentially an internal crisis”¹. Where the world is filled with many conflicts like racial discrimination, regional conflicts etc., whatever the conflicts. Some people want run away from the conflict but they can’t run away to some other country as the refugee law or international law doesn’t permit so, they remain in the same country but far from their habitual residence without any proper identity at their new place are generally called as Internal Displaced Persons. As per the studies IDP’s are out numbering the refugees as per the estimate these IDP’s has gone upto 20-25 million².

IDP was defined once in 1992 which has been set up as working definition by the United Nations Secretary General, “Persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife systematic violation of human rights or natural or man-made disasters; and who are within the territory of their own country”³.

Though definition doesn’t fit the exact scenario of the IDP’s as this definition is drawn from the definition of refugee which is of course a broader than in the laws. However this definition was revised in the year 1998 through the guiding principles of Internally Displaced Persons⁴.

So, from the definitions by the scholars and code that are defining Internally Displaced Persons it is something like when some group of people or persons move to different place from their habitual residence due to reasons like armed conflicts, racial discrimination, regional conflicts, man- made or natural disasters or any other ethnical, religion, cultural conflicts.

The protection and assistance to these IDP’s is important because they also deserve human rights like any other human being do. These aspects of protection and assistance come from the UN guiding principles of Internally Disciplined Persons although these norms don’t have the legal enforcement in any way possible as these IDP’s are very internal and concerned to the internal management of the country if the guiding principles have any legal force then again there will be conflict of sovereignty in the aspects of international law. So, these guiding principles can be a

¹ UNCHR guiding principles on IDPs.U.N Doc

² Phoung Catherine. The Internal protection of IDPs. New York university press.

³ Analytical report of the secretary general on IDPs-UNEE/cn/1992/23-14 Feb. 1992

⁴UN.DOCE/CN/4/1998/53 .

light to the governments through which they can adopt their policies or law's in order to assist and protect the vulnerable sections of people which in this case IDP's.

These principles can be guiding light to the governments to provide basic human rights regarding their both physical or material security and can be used against the organs of the state to stop abusing their power in whatever manner they use against IDP's.

IDP's in India⁵.

India, since it is born in 1947 have been facing of this displacement of the people some way or the other through the armed conflicts or ethnical conflicts. Jammu and Kashmir, Gujarat, North-Eastern states, middle India and also in South of India the issue of displacement is always there in India as mentioned it may have many reasons. Every type of displacement is prevalent in India.

In India, the displacement has many reasons mainly it can be said as political causes. Other than that there is identity based autonomy movement, Localized violence, Environmental and developmental induced displacement. Also, in recent years the failure of agriculture is also a reason for the displacement of the people.

In late 1980's the issue in the Kashmir broke out regarding Kashmiri Pandits where large number people belonging to this community have moved to different parts of the country due to international politics where the conflict between militants from Pakistan and Indian security Forces. As of June 2010, some 250,000 from Kashmir are in shadows of displacement⁶.

Also, in Kashmir as result of erection of fence regarding the Line of Control as large people as 15,000 were being displaced and they get nothing expect losing their farming lands, their livelihoods and there were continues threats from both the Pakistan army and Indian army as to the movement that people after 4 in the evening. This is grave violations of human rights in 2009 and it is considered as grave violation still.

While this was the scenario in the border state of Jammu and Kashmir, there is always internal disturbance in India by Maoist and Naxals especially in the central India and some parts of Andhra Pradesh and Telangana. And these places people were mostly belong to the tribal community and they live in forests in the name of development as in construction of dams or mining etc,. There

⁵ Madhulika Sahoo, Jalandhar Pradhan , Counting Conflict-induced Internally Displaced Persons in India.

⁶ <https://www.unhcr.org/internally-displaced-people.html>. last visited 22:49, 24th April, 2019.

was a large displacement of the people due to these so called “developmental projects”. Narmada Bachao Andolan is one of its type movement against to these projects.

Naxal and Maoist conflicts with armed forces or police forces are one its kind. Both the sides of the conflict were involved in the violations of human rights as result many people were, as estimated, around 450,000 people were displaced due to this Naxalite conflict since 2005. Due to which there was lack of health care, education, sanitation and even shelter. There were many children who were denied education since they were displaced from some other state and the language is not the same⁷.

In Gujarat, in 2002 there was huge out broke of communal violence between Hindus and Muslims. This communal violence in Gujarat allegedly conspired by the government officials and some Hindu organisations after the killing of 58 Hindu pilgrims were killed in fire in Godra Train. As a result of these communal violence which were allegedly politically motivated, around 250,000 people were displaced and have lost their basic human rights and still live in relief camps setup by different organisations.

There were around 81 relief camps out which 5 were recognised by the government and they were only provided with education to children and other relief camps were denied of even education and many of the families were recognised as below poverty line⁸.

The National Commission of Minorities reported that there is evidence as to the many families that were victims of communal violence in Gujarat were living in subhuman conditions and they were being denied of many facilities by the government and they still live in camps that were build by the NGO's. These Internally Displaced families were not anyway supported by the state and they were even denied of going back to their habitual residences⁹. This incident is crystal clear example for the violations of human rights that are concerned to IDP's by the state through its negligence or otherwise.

The causes of the Internal Displacement as metioned in the previous paragraphs are all combined causes of internal displacement in North Eastern states. There are politican conflicts, armed conflicts and also developmental projects which made people to displace from their habitual residence. It is reported that nearly 1 million people were displaced from the those states due to

⁷ *Supra Note 6.*

⁸ www.achrweb.org

⁹ National commission for Minorities report, 200

ethnic conflicts since 20 years which gives waves of shocks in the light of violation of human rights.

North eastern states, have been facing the problems of rebel groups just like Naxals and Maoists in the central India and also they face the problem of foreign invasion where the armed forces were deployed and take the control of the land. Such situations the AFSPA (Armed Forces Special Powers Act) was in the news for grave violations of human rights and also the governments forcibly evicts the people from there without showing any alternative remedy. It can be said that the north eastern region of India is hot bed of violation of human rights. Particularly, in the case of internal displacement it is this ethnic conflict which made the people over there were displaced it is reported that from 1990's to 2011 over 800,000 were forced to leave their habitual residences because of the ethnic difference people over their share¹⁰.

Keeping these ethnic conflicts, communal violence's, political agendas, the real problem is when the state forces the people to move out of their habitual residence in the name of "development" and then completely neglecting or minimal concern towards those displaced people is the case of violation of human rights by the states. And these developmental projects are done every year which means that every year there will be displacements, small or large, which is not good to system in which India is there.

According to the world bank studies in 1990's, in India the people displaced through the developmental projects were much higher than the people displaced through the different types of conflicts. It is estimated by the world bank that every year there around 1 million people were facing this displacement due to infrastructural developments. As mentioned in the previous paragraphs there are incidents in India also like Sardar Sarvor Dam on Narmada River. Recently, the land acquisition in Andhra Pradesh for its new Capital Amaravathi also such type of displacement and government promise some alternative which remains as promise forever.

There is no really strong law relating to these land acquisitions in which most of times favours the state. There is speedy recovery of the resettlement for the people who were displaced from that place.

¹⁰ *Supra Note 6.*

LEGAL PROTECTION OF INTERNALLY DISPLACED PERSONS

There is no separate law in India to protect or to take responsibility of the IDP's by the state. The only law that is there to interpret in the case of the IDP's is that of Constitution. Under writ jurisdiction of the Constitution by interpreting Article 21 which is Right to Life, the courts may grant some kind of relief to the IDP's. Also, Article 39 and Article 41 of the constitution which are part of Directive Principles of state Policy where it says that shall secure the livelihood of the people and to secure the right to work, education etc., though they are enforceable in the court of law they can be interpreted in a way to get some kind of relief to the IDP's.

In Landmark decision of the Apex Court, which is "pavement dweller's case"¹¹ the court widened Article 21 as to include the "right to livelihood". In the famous Maneka Gandhi case¹² the Apex court categorically said that the right to life doesn't mean that physical existence but to live with dignity. Considering like these case and interpretation of Article 21 by the courts have been providing IDP's some protection.

In the cases of infrastructural developments, Land Acquisition Act provide some relief to the displaced groups. But there is no such rehabilitation programme by the government which provided an effective rehabilitation for the displaced groups.

Among the states in India, Maharashtra is only state where there is a law to protect the rights of displaced persons and other states have passed some governmental orders in regarding the rehabilitation or resettlement of the displaced persons. In 2014, Andhra Pradesh have also passed land acquisition Act which some relief to the people who wish to resettle. But the government reliefs were far reaching in a country like India to implement the laws effectively.

National Human Rights Commission has also played a considerable part in protect the rights of the displaced persons. They have recommended many actions to the state which can protect these vulnerable sections of the society and to protect the rights of the IDP's¹³.

National Relief and Rehabilitation Policy in the Rehabilitation and Resettlement Bill, 2007 has recommended by the National Human Rights Commission but the bill never saw the day light and was shelved by the Parliament.

¹¹ AIR 1981 SC 746.

¹² 1978 AIR 597 1978.

¹³ NHRC Recommendation on Relief and Rehabilitation of Displaced Persons-New Delhi. Oct 2008

In the international Arena, there are codes which protect the rights of the IDP's but they can only be guiding but legally enforceable. Guiding Principles on Internally displacement , 1998 have drafted by the UN¹⁴.

Considering India, there is no particular law to protect the IDP's there is only interpretation of the constitution through Article 21 and some other Article. It is high time that India need a law that can protect and secure and ensure basic human rights to the Internally displaced persons. There have been cases where country has seen and still seeing people who were internally displaced are suffering and going through bad phase by denial of basic human rights by the state. Hence it is high time to bring a legislation to protect, secure and ensure human rights of Internally Displaced Persons.

CONCLUSION

Like every other citizen of the country internally displaced persons also entitled for the protection of human rights. But due various reasons these people who are already vulnerable section of society are denied the protection under humanitarian law.

There are many causes for the displacement of the people internally. Some times it is the ethnical groups, sometimes it is armed conflicts, sometimes it is government either by way calling it "development" or "security purposes" whatever the reason is the IDP's are neglected once they are displaced and have to lead a life of subhuman where there is no access to basic human rights which is mandated by UN and they are completely neglected by the government for ages.

The solution for the protection of the human rights of the people who are internally displaced is to enact a legal framework where the government either state or central government takes the full responsibility of these IDP's. And also, to reconsider the legislations which paves way to commit the violation of human rights like AFSPA and to make necessary amendments where there can be assurance of the protection of human rights. In the case of natural disasters, the government by following effective measures to prevent these disasters before they even might occur. In the case of infrastructural developments the policy of sustainable development where the development is made without causing any harm to anybody need to follow.

There is need to establish a commission for Internally Displaced persons where the commission analyse and review the data and to recommend the states in protecting and assisting the IDP's.

¹⁴ Guiding principle on internally displacement. 1998

As discussed in this paper the legislation framing in regard to the IDP's protection and assistance is important and it is high time in India to enact a law in the light of conventions and guiding principles of Internal Displacement, 1998. And also, the state has to make sure about the implementation of these laws without fail. At the end of the day human rights of every person in the world need to be protected, secured and ensure that rights are properly utilising by the people and internally displaced persons are not excuse to that proposition. Human rights are basic and should be accessible to every person in the world.

BIBLIOGRAPHY

1. <https://www.unhcr.org/internally-displaced-people.html>. last visited 22:49, 24th April, 2019.
2. www.achrweb.org
3. National commission for Minorities report, 200
4. **Francis Coralie Mullin vs The Administrator, Union** ,AIR 1981 SC 746.
5. Maneka Gandhi v. Union of India, 1978 AIR 597 1978.
6. NHRC Recommendation on Relief and Rehabilitation of Displaced Persons-New Delhi. Oct 2008
7. Guiding principle on internally displacement. 1998
8. UNCHR guiding principles on IDPs.U.N Doc
9. Phoung Catherine. The Internal protection of IDPs. New York university press.
10. Analytical report of the secretary general on IDPs-UNEE/cn/1992/23-14 Feb. 1992
11. Madhulika Sahoo, Jalandhar Pradhan , Counting Conflict-induced Internally Displaced Persons in India.
12. Walter Fernandes, Internally Displaced Persons and Northeast India ,International Studies, 50(4) 1–19, 2017 Jawaharlal Nehru University, SAGE Publications.