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Situational analysis of Internally Displaced Persons (IDPs) in the context of International law, Indian law and COVID - 19

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ABSTRACT

This paper explores the issue of protection of Internally Displaced Persons (IDPs) under both national and international law governing the same. Furthermore, an analysis has been carried out on the situation of the discrimination faced by the Kashmiri Pandits, the people of the states of Northeast India and most recently the migrant workers who have been displaced as a result of COVID 19. This study focuses on theoretical and the legal provisions dealing with the people who have suffered due to conflict induced displacements. It concludes by suggesting measures that need to be undertaken to alleviate the difficulties of those affected.

I. CONTEXTUALIZING IDPS – WHO ARE THE INTERNALLY DISPLACED?

During the 1980s, the segregationist Apartheid government policies resulted in not only conflict in the South African states but also led to mass displacement. As a result, Francis Deng was appointed as Special Representative for UN Secretary General and his role was to collect views and information from different governments on issues concerning human rights of IDPs as well as analyse the existing international human rights law framework. As per Deng, the situation of IDPs is unique and requires a separate category of law to deal with it³. Thus, the Guiding Principles on Internal Displacement came into being. The Guiding Principles covers protection, assistance needs of IDPs as well as provides solutions to the issues faced by them. Furthermore, these principles are based on rules upon which the international human rights law and international humanitarian law framework is based.

IDPs refer to “persons or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular as a result or in order to avoid the effects of *armed conflict, situations of generalized violence, violation of human rights or*

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³ R. Cohen, “*The guiding principles on Internal displacement: An innovation in International standard setting*”, 459-462 (2004).

*natural or human - made disasters*⁴. This definition has been given under the Guiding Principles on Internal Displacement which is a first of its kind document dealing with internally displaced persons. There exist multiple reasons due to which displacement takes place as highlighted in its definition. However, the proportion of displacements caused by conflicts is among the highest.

Conflict Induced Displacement refers to the existence of deep-rooted structural problems persisting with the laws and institutions of a society. *Article 6(1) of Guiding Principle on Internal Displacement defines conflict induced displacement as a right of every human being to not be arbitrarily displaced from his or home or place of habitual residence.* Moreover, the legal status of IDPs differ from that of refugees under international law, thus a separate instrument dealing with the protection of IDPs assumes greater significance.

There exist several instances in which the Guiding Principles have been recognized. As per the report of the UN Secretary General⁵, the Secretary General appealed to UN member states to recognize the Guiding Principles as the set of international norms dealing with protection of IDPs. One such example is Africa, which adopted the *Great Lakes Protocol on Protection and Assistance to IDPs* in 2006 to incorporate the Guiding Principles into a national legislation.

II. POSITION OF IDPS IN THE CONTEXT OF INTERNATIONAL LAW

From an international law perspective, it can be observed that the law has primarily focused on protecting the refugees and not IDPs even though some of the highest number of deaths during humanitarian emergencies occur amongst the IDPs. While the Refugee Convention of 1951 safeguards refugees, the IDPs are overlooked. This may be because in some cases it is the state's actions that leads to displacements based on *ethnic, religious or political reasons* and even as a counterinsurgency measure. As a result, the focus has been merely on *assistance rather than protection*.

However, the government of Greece argued for granting access to international aid for IDPs even though they are not internationally protected.⁶ In addition, it was during the International Conference on Central American Refugees that the need to provide special assistance to IDPs was recognized even though they remain within the jurisdiction and protection of their state⁷. Moreover, the intervention of the UN in states like Sudan in 1989

⁴ UN Commission on Human Rights, "Guiding Principles on Internal Displacement" (1998).

⁵ Ibid.

⁶ General Assembly Official Record, "Third Committee, Summary Record", 1949.

⁷ Bagshaw, "Developing a Normative Framework", 72-73.

and Somalia in 1992 regarding the issues concerning Internal Displacement raised deliberations on issues like *access, intervention and humanitarian assistance at the UN*. Consequently, the Guiding Principles came into existence in 1998 which addressed the rights of IDPs *before, during and after displacement* and established that the national governments cannot refuse access to their displaced communities.

III. POSITION OF IDPS IN THE CONTEXT OF NATIONAL LAW AND THE INDIAN LEGAL FRAMEWORK

As per the definition of IDPs, not having crossed internationally recognized borders is a key feature of those displaced. This highlights the relevance of a national law and policies addressing their issues. Therefore, the responsibility of national governments to protect them is imperative. However, such responsibilities often give rise to issues of national sovereignty and sovereign equality of states. Most often, the factors affecting the discharge of national responsibility include *lack of capacity and willingness* on part of governments. It is also worth noting that sometimes the states are driven by compulsion to assume their responsibilities towards displaced people so as to restrict humanitarian access and intervention of international actors. As a result, the consultation between national, regional, international actors and representatives of those displaced becomes important to take into consideration the *protection and assistance needs* of the IDPs⁸.

An issue which is heavily debated is the necessity of such national instruments. Needless to state, the fact that those displaced have lost their homes, means of livelihood, families etc. definitely categorise them as a separate, vulnerable group. A national instrument should not only take the needs of the displaced into consideration but also the needs of those affected due to displacements such as host communities or the communities that were left behind. For example, in countries like Yemen and Kenya specific national instruments have taken into consideration the needs of such communities⁹.

Coming to the Indian scenario, in the backdrop of the Citizenship Amendment Act the total number of people internally displaced due to conflict and violence is estimated to be 3,200 in 2020 particularly due to the adoption of the Citizenship Amendment Act as per the mid-year report of Internal Displacement Monitoring Centre (IDMC).¹⁰ As far as post-independent India is concerned only about one third of the displaced people have been able to be resettled

⁸ J. Fabre, “*Durable Solutions for Internally Displaced People: A Comparative Study of Reintegration Studies*” (2011).

⁹ Nina Sreepfer, “*Addressing Internal Displacement through National Laws and Policies: A Plea for a Promising Means of Protection*”, 24 Int’l J. Refugee L. (2012).

¹⁰ Internal Displacement Monitoring Centre, “*Internal Displacement 2020: Mid-Year Update*”.

in the period from 1947 to 2004. Much of the people who have been displaced in India comprise of indigenous people (Scheduled Tribes), Dalits, fisherfolk and agriculturalists¹¹. Due to absence of an instrument specifically dealing with IDPs reference is made to Human rights related instruments such as the Guiding Principles on Internal Displacement. One such example is that of Kashmiri Pandits. The issue surrounding Kashmir traces its origin from 1989 when many Kashmiri Pandits were forced to leave Kashmir in fear of being killed and abducted. It is estimated that more than two hundred thousand Kashmiri Pandits were displaced as they were either threatened, killed or abducted¹². Furthermore, the reason behind specifically targeting Kashmiri Pandits was them being perceived as a symbol of the Union of India as they belonged to different religions than what was professed by most Kashmiris. According to different research the age of those displaced ranged from three months to seventy years which included teachers, doctors, farmers, businessmen etc. To add to the issues being faced, the programmes and policies addressing their concerns have been labeled as being transitional in nature despite the fact their return would only be possible when there is *safety, economic restructuring and reconciliation between stakeholders*.

In addition to Kashmir, there exists conflict Induced displacements in the states of Northeast India. Historically, the notion of exclusive homeland for ethnically defined groups led to separatist tendencies of insider and outsiders because of which large scale displacements have taken place. All of these issues trace their origin from the policies of the colonial state that organized people into groups in a pre-capitalist society with an aim to protect them from initial consequences of capitalism. Subsequently, it has been argued that exploitation by some non tribals does not constitute a valid reason to ignore the contribution of non tribals in general toward social and economic development. One of the most reported incidents from the North Eastern States is regarding the demand of homeland for the Bodos community situated on north bank of Brahmaputra. Some of the communities affected are East Bengali Muslims and Hindus, Nepalis etc¹³.

The above-mentioned examples are a testament to the already existing challenging and marginalized position of the internally displaced. This seems to have been exacerbated further due to the novel coronavirus outbreak.

¹¹ Report of the UN Secretary General, “*In Large Freedom: Towards Development, Security, and Human Rights for All*” (2005).

¹² Sheikh Mushtaq, “*Are Displaced Kashmiri Hindus Returning to their Homeland?*” (2009).

¹³ Sanjib Baruch, “*Citizens and Denizens : Ethnicity, Homelands and the Crisis of Displacement in Northeast India*,” 16 J. Refugee Stud. (2003).

IV. IDPS AND PANDEMIC INDUCED VULNERABILITIES

It cannot be overemphasized, that COVID-19 has brought the world to a grinding halt. The pandemic has affected up to the smallest community and has highlighted various social, political, and international issues globally as well as within national borders.¹⁴ As emphasized above, IDPs are a vulnerable group. The unprecedented nature of the COVID-19 pandemic seems to have further perpetuated existing vulnerabilities and begotten newer risks. The pandemic caused economies all over the world to shut down. People all over the world not only faced isolation but were subjected to merciless layoffs. The situation in India was no better. The hardest hit population have been migrant workers in India. Qualifying as IDPs, migrant workers were one of the first to lose their jobs and had to set out for their homes far away from their place of work. Hit by sudden economic uncertainty owing to job losses, the repercussions were grave both in terms of health as well as displacement. The mass exodus of migrant workers resulted in many deaths.

However, with no measures or policies in place by the government of India, they were and still are one of the most vulnerable categories of people. This vulnerability is further supplemented by the fact that the relief camps where such communities reside had to be closed due to adherence to protective measures like social distancing. Moreover, adhering to such protective measures seems to be impossible given the fact that such camps and settlements are overcrowded and unhygienic.

As IDPs without a defined right to refuge, in response to the ongoing pandemic an inclusive approach needs to be explored at the national as well as local levels. Even today, as the pandemic rages responses and preparedness strategies must be in tune with international standards.

V. THE WAY FORWARD

Not being a homogenous group, IDPs have specific needs, capacities, vulnerabilities as well as individual differences with respect to personal circumstances, age, gender, health etc. As per the Framework for Durable Solutions¹⁵, there exists certain measures to combat the hardships faced by the IDPs, for example providing a *safe environment, access to documentation, restitution of property rights, delivering basic necessities, services and livelihood* to those affected .

¹⁴ Orendain, D.J.A., Djalante, R. Ignored and invisible: internally displaced persons (IDPs) in the face of COVID-19 pandemic. *Sustain Sci* (2020).

¹⁵ W. Fernandes, "India's Forced Displacement Policy and Practice: Is Compensation Up to Its Functions?" 180-207 (2008).

Looking to the West, according to the Internal Displacement Monitoring Centre, IDPs have had to either return to their place of origin or locally integrate in their place of displacement but return to a third location has not been exercised in most of the situations as seen in Bosnia and Herzegovina. In contrast countries like Georgia and Afghanistan have changed their respective policies. Lastly, the Representative of the UN Secretary General on Human Rights of IDPs¹⁶ has supported the view that if the living conditions in a third place provide livelihood opportunities then the displaced communities would be in a better position to return their place of origin whenever it becomes possible.

The Indian Supreme Court has taken a humanitarian view of the situation of IDPs. It ruled in the Vishaka case¹⁷ that in case any International convention is consistent with any of the provisions stated under the Constitution then such convention must become part of the provisions so as to enlarge their meaning and to promote the object of constitutional guarantee. It has also supported the view that in circumstances where there is no specific *law, rule, regulation or instrument* providing for the way in which the IDPs are to be regulated, then such gaps must be filled by setting out the minimum standards for their *protection, rehabilitation and relocation* in order to ensure basic human rights.

Overall, a holistic and inclusive approach involving enhanced communication, humanitarian assistance and most importantly multi-sectoral collaboration with IDPs initiated by national and local governments is the need of the hour.

¹⁶ Report of the UN Secretary General, “*In Large Freedom: Towards Development, Security, and Human Rights for All*” (2005).

¹⁷ *Vishaka and Others versus State of Rajasthan and Others*, 6 SCC 241 (1997).

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