

“The “Nowhere” People: Prevention, Mitigation and Rehabilitation of Internally Displaced Persons (IDPs) In India”

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INTRODUCTION

The climate change over the 21st century is extrapolated to increase displacement of people and can indirectly increase the risks of violent conflicts in the form of civil war and intergroup violence by augmenting well documented drivers of these conflicts such as poverty and economic shocks. The most prominent and disturbing aftermath of climate change displacement is the effect it has on internally displaced persons. As per the latest report of “The Internal Displacement Monitoring Centre of the Norwegian Refugee Council” (NRC), nearly 2.44 lakh people in India have been internally displaced due to disasters making it the 3rd among the most affected countries. While persons who cross the national borders are accorded the status of refugees, those who are the victims of climate change are severely neglected due to the dearth of laws in India. This issue presents challenges that are multidimensional particularly the need for providing material assistance to those in need as well as ensuring respect and protection for their fundamental human rights. The Government should and must work to adopt a multifaceted, Co-operative and systematic approach to providing assistance for the internally displaced persons. A regional framework would allow India to determine its responsibilities to migrants escaping natural disasters and slow-onset environmental changes. Even if the climate refugees are recognized, who is going to be responsible for their protection and rehabilitation? This paper tries to address this issue from a social and legal aspect. The social, cultural, economic, and political repercussions that will take place as a result of this are studied and analyzed with the help of existing International Conventions, regulations and treaties relating to internally displaced persons.

The Internally Displaced Persons (IDP's) are further divided under two heads i.e. those would have a chance to return to their homes in case of transient damages and those who cannot be rehabilitated due to perdurable damages and destructions. A case study on past Indian experience with IDP's has been done with special reference to the coastal areas, Bihar, Orissa, Assam, Himachal Pradesh and Uttar Pradesh. The Legislation we are suggesting aims at prevention,

mitigation and rehabilitation of Internally Displaced Persons. It is also pertinent to mention that even though India has signed the Paris Agreement, there is little discussion going on with respect to IDPs. The complex procedures and provisions involved in this can only be understood by the study of the past experiences, the present proposals and the future actions.

KEYWORDS: Internally Displaced Person-Climate change-Law making-Refugees-Human Rights-Rehabilitation-Natural disasters.

ENVIRONMENTAL REFUGEES IN INDIA: ISSUES AND CHALLENGES.

STATUS OF IDPs IN INDIA.

The definition of a 'refugee' in international law is of critical importance for it can mean the difference between life and death for an individual seeking asylum. In everyday speech, the word refugee is used to describe a person who is forced to flee his or her home for any reason for which the individual is not responsible be it persecution, public disorder, civil war, famine, earthquake or environmental degradation. However, in international law, a refugee is a person who is forced to leave home for certain specified reasons and who, furthermore, is outside the country of his or her origin and does not have its protection. It is important to note the difference between refugees and internally displaced persons in this context. Internally displaced persons have fled their homes but not crossed an international frontier. Unlike refugees they are on the run at home. While they may have fled for similar reasons, IDPs stay within their own country and remain under the protection of its government, even if that government is the reason for their displacement. As a result, these people are among the most vulnerable in the world. This paper intends to discuss the legal protection for people who move in the context of environmental change.

As climate change worsens, India must consider a policy on Environmental displacement. A regional framework would allow India to determine its responsibilities towards migrants escaping natural disasters, and slow onset environmental changes.

On October 2, India became a signatory to the Paris Agreement on Climate Change, hence moving a step closer to achieving its goal of reducing carbon emissions. However, neither the climate pact nor the recently concluded United Nations Summit for Refugees and Migrants addressed the direct human cost of climate change: i.e, the displacement of millions by natural disasters and slow onset environmental changes.

It is well established that climate change often forces the affected populations to move from their habitual place of residence. According to the Internal Displacement Monitoring Centre, 19.3 million people were displaced worldwide in 2014 due to climate change, with studies indicating that the number could be anywhere between 250 million and one billion by 2050.

The geographically diverse Indian subcontinent is particularly vulnerable to a wide variety of natural disasters, and India as the largest country in the region is the destination to move to for those displaced by these disasters.

Floods, storm surges, saltwater intrusions and cyclones have pushed millions of people from rural Bangladesh into India.

Earthquakes and water induced disasters in Nepal, droughts in Pakistan, and Afghanistan, and the rise in sea levels around the Maldives are also likely to cause large scale migration into India in the future.

Moreover, the vulnerability of populations to climate change related disaster goes beyond physical risk. There are also economic, social and cultural fallouts from such disasters, and these also drive migration, making it difficult to distinguish between environmental and economic migrants.

Thus, a community that is less equipped to anticipate, cope with and recover from a natural disaster, is more likely to migrate. Thus, a population that is already battling poverty will find it more difficult to rebuild their livelihood after a major natural disaster and would have no option rather than leaving the area in an attempt to start afresh elsewhere.

Conversely, climate change can also cause an escalation in political unrest and push people to migrate in search of a more peaceful country. The Syrian refugee crisis is an example of this phenomenon. Syria was plagued by a severe drought between 2007 – 2010, which resulted in the migration of more than a million people from rural to urban areas and triggered a social unrest that contributed to the popular uprising in 2011.

The legal issues around environmental displacement are multidimensional. Most often the affected populations move to a safer area within their own country in which case they are referred to as ‘internally displaced’.

These people continue to remain under the protection of their own government and should be managed through domestic laws and internal policy decisions. However, the issue becomes complicated when those displaced cross the border into another country, raising the question of whether or not they can avail the protection of their new country of residence, and if so, under what legal framework. There is no internationally accepted instrument to govern this category of migrants.

The cross border displaced who have migrated due to climate change are not recognized as refugees under the 1951 Refugee Convention or its 1967 Protocol and thus do not qualify for protection under national or international legal frameworks for refugee protection. Infact, the international community is yet to agree even on a definition of this category of displaced persons

.Very few countries recognize environmentally displaced persons as a specific group, notable among them being Sweden and Finland. Some, like the US and the EU, have instruments of temporary protection addressing sudden onset natural disasters but are less applicable to slow onset adverse environmental change.

While there has been a growing recognition of climate change induced cross-border displacement, experts are divided on how to address this crisis. Countries like the Maldives and Bangladesh have in the past proposed amending the 1951 Convention to include “climate refugees” within its mandate, but some scholars feel that doing so would dilute refugee protection as it exists. There remains the need to reach an agreement on the very definition of environmental refugees, as well as on the principles of responsibility, sharing and protection.

In the absence of this agreement, a regional framework or bilateral agreement would be the most viable alternative for South Asia. Such an agreement would take into account, the existing geopolitical and economic relations, and allow the countries involved to take measures based on their political will and capacity.

INTERNAL DISPLACEMENT

Internal displacement is a situation where populations are forced to flee during environmental disasters but subsequently return home when the situation stabilizes. The rights of forcibly displaced migrants are regulated by the United Nations Guiding Principles on Internally Displaced Persons. However, these principles are not legally binding upon the states, and as a result they are often poorly implemented. Where people migrate due to slow-onset climate changes, determining whether this migration is forced or voluntary is complex. While a multilateral treaty exists for the protection of refugees (The Convention relating to the Status of Refugees, 1951 and its 1967 Protocol) along with the mandate of a specialized international institution (United Nations High Commission for Refugees [UNHCR]), the status of refugees remain in a flux. From 1990s to 2015, India has seen a steep escalation in the internal movement. However, it remains as one of the countries which haven’t recognized Guiding Principles of Internal Displacement (GPID), the prime international framework available for the protection of IDPs because of the reason that it came into existence without any intergovernmental negotiations when more than 17 countries in the world have domesticated the principles into its municipal law. As a result, India plays within the vacuum and consider itself bereft of any obligation under law when both international and domestic legal framework mandates protection to be awarded to the IDPs.

WHO ARE IDPs?

The definition of IDPs in International law was provided by Mr. Deng, the 1998 human rights special representative of the Secretary General while he drafted the GPID. According to him,

Internally Displaced Persons 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 the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized state border”.

In order to be classified as IDPs, the movement of people has to be against their will and should be well within the territory of their country. The movement is not just limited to the action/inaction of a state and its agencies, but even international organizations and corporations can induce displacement.

The following principles ensure to prevent the causes of displacement:-

- States must prevent and avoid conditions that might lead to displacement(Principle 5) ;
- IDPs have a right to be protected against arbitrary displacement (Principle 6);
- Where displacement is unavoidable, guarantees should be put in place to minimize its effects(Principle 7);
- Displacement should never occur in a manner that violates the right to life, dignity, liberty, and security(Principle 8);
- States have a particular obligation to protect against the displacement of groups that have a special dependency on, or attachment to the land(Principle 9);

CASE STUDY AND IDMC REPORT

India ranks highest among the world’s most disaster –prone countries for displacement of residents, with 23 lakhs on average uprooted due to calamities such as floods, cyclone and earthquakes. The reports produced by IDMC (internal displacement monitoring centre) shows huge rise in displacement of people due to natural calamities mainly flood. Latest figures from IDMC estimate that more than 19.3 million people were forced to flee their homes by disasters in 100 countries in 2014. Since 2008 an average of 26.4 million people per year have been displaced from their homes by disasters brought on by natural hazards. This is equivalent to one person being displaced every second¹.

BIHAR

The 2008 Bihar flood was one of the most disastrous floods in the history of Bihar, an impoverished and densely populated state in India. The Kosi embankment near the Indo-Nepal border broke on 18 August 2008. The river changed course and flooded areas which had not been

¹ www.indiaenvironmentportal.org.in last visited on 05-01-2018.

flooded in many decades².The flood affected over 2.3 million people in the northern part of Bihar³.Flooding occurred throughout the Kosi River valley in northern Bihar in the districts of Supaul,Araria,Saharsa,Madhepurra,Bhagalpur,West Champaran and Purnea⁴.The flood killed 250 people and forced nearly 3 million people from their homes in Bihar.⁵More than 3 lakh houses were destroyed and at least 3,40,000 hectares of crops were damaged. Villagers in Bihar ate raw rice and flour mixed with polluted water. Hunger and disease were widespread. The flood was reported as the region's worst flood in 50 years. The Government of Bihar initiated Kosi Reconstruction and Rehabilitation programme covering 30,000 affected families based on a pilot project implemented by ODR collaborative. After an agreement was signed with the World Bank in January 2011, this programme has been upscaled to cover 100,000 families⁶. The rehabilitation work has been incredibly slow. Out of a total 100000 houses to be built by the Government in the Kosi region comprising Madhepura and Supaul districts, only 12,500 were built till February 2014⁷. There was also administrative lapse from the part of officials as the messages sent by the engineers at the Kosi dam warning the state government of the impending disaster went unheeded as the official authorized to respond was on leave⁸.

ORISSA

During the year of 2008 the State of Orissa was ravaged by floods. This was also the aftereffect of the breaking of Kosi river from its course. Lakhs of people were displaced and the story they tell is saddening. Even though the government provided food and cloths , there was absence of drugs. Moreover they were rehabilitated to a place which was surrounded by water and mosquitoes⁹.These people are forced to stay in poverty and shoddy housing with meager resources to cope, conspicuously in disaster prone areas. Combined with poorly planned urbanization, environmental degradation, climate change and geological hazards the displaced had to suffer a lot¹⁰.A staggering number of 45.23 lakhs was affected by the floods¹¹.

ASSAM

A report issued by the Asian Centre For Human Rights claims that there are over 3,00,000 internally displaced persons in Assam , which is the highest in the world during 2014. Assam is susceptible to natural disasters like earthquake, floods, landslides, cyclone and occasional

² A Dalit watch report on the flood camps in Bihar Archived 14 January 2009 at the Wayback Machines.

³ "Half of Bihar under water, 30 lakhs suffer", CNN IBN 9th January 2008.

⁴ SITUATION REPORT BIHAR FLOODS 2008 .

⁵ Michael Coggan in New Delhi (29 August 2008) "Death toll rises from Indian Floods – Just In-ABC news.

⁶ "India Home" ,Worldbank.org.in. 28 March 2018

⁷ "2008 Kosi Flood Victims in Bihar still await Rehabilitation" news.biharprabha.com

⁸ "Kosi Floods 2008: Justice Walia Commission submits probe report"

⁹ www.msfindia.in last visited 14-01-2018

¹⁰ "NO COUNTRY FOR THE INTERNALLY DISPLACED ESPECIALLY IF ITS IN INDIA"

www.hindustantimes.com last visited 15-01-2018

¹¹ Report of the Odisha Disaster Management Authority www.osdma.org

drought. It has seen two earthquakes one in 1897 and in 1950. These earthquakes not only caused death of lakhs but the effect was so visible it changed the course of many rivers. The repetition of flood and erosion is the burning problem of Assam. Since the 1950 earthquake the furry of flood damage has been on the rise.¹² Due to Flood problems the state has not been able to achieve the desired progress and prosperity despite having vast natural resources¹³. An official report of the State Water Resource Department states that 3,88476 hectares of land was lost to erosion between 1954-2002 at an annual rate of 8000 hectares. It means the displacement of 90,700 families living in 2534 villages¹⁴. Deforestation was also identified as a prime cause of flood in Assam. Indiscriminate deforestation has led to massive amount of top soil loose during rains. In addition to that, the development and improperly planned various infrastructures in the catchments areas such as roads, railways, embankments, settlement areas and land use policies obstruct the natural drainage in the catchment areas resulting in flood. A case study of a 52 year Simina Latifa Bibi shows the terrific plight of the displaced persons. As the family did not possess any land, they could not avail the IAY (Indira Awas Yojana) houses as IAY houses were not allotted for the landless. The family is currently living in filthy thatched houses which get wet in rain.¹⁵

CONCLUSION

People who are getting displaced due to natural disasters should be granted the refugee status in international law. The Govt must first try to identify and recognize the threat posed by climate changes to livelihoods and human safety. They should engage in giving technical and capacity building support to national and local initiatives tackling such displacement. Originate fitting policies to manage loss and damage by inscribing climate change-induced displacement. The creation of Climate Change Displacement Coordination Facility to relocate migrants and rehabilitate them in safer regions. An enduring panacea requires an international treaty framework that recognizes 'environmental refugees' and obligations of nation's states in accommodating them within their territories. Expanding the ambit of the existing UN Refugee Convention to include climate migration. The centre and states must engage in disaster preparedness and response plans.

India must implement the provisions and principles of the GUIDING PRINCIPLES OF INTERNAL DISPLACEMENT¹⁶ in national legislations. Section II contains 5 principles that imposes on all authorities and international actors is to prevent and avoid conditions that might lead to displacement of persons¹⁷. Before Displacement all essential measures such as Right to

¹² Shodhganga.inflibnet.ac.in last visited on 13-01-2018

¹³ "North East Portal, Flood and Flood Control Measures", available at www.neoportal.org

¹⁴ Talukdar, Sushant, "Torrent of Sorrow", Frontline 2007 Vol. 24 Issue 20

¹⁵ Assam Tribune cct, 2000

¹⁶ Document E/CN.4/1998/53/Add.2, dated 11 February 1998

¹⁷ Principle 6.

health and hygienic conditions to all members of the family shall be seen to¹⁸. Section 3 deals with Principles relating to the protection during Displacement and enumerates guidelines for the Displacement process. Protection shall be there to protect Right to Dignity¹⁹, Right against arbitrary arrest and detention, Right to movement and choose residence etc. Section 4 deals with principles relating to Humanitarian Assistance. Section 5 deals with principles relating to Return, Resettlement and reintegration.

¹⁸ Principle 7

¹⁹ Principle 11