

INTERNALLY DISPLACED PERSONS IN INDIA

A New Challenge Confronting India

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Abstract:

This paper aims to explore the Indian government's responses to the affection needs of Internally Displaced Persons (IDPs) in two Indian regions: Jammu and Kashmir and North East. Armed conflict communal or ethnic violence have continued to cause massive displacement in India. Nearly 2.4 million people in India were internally displaced due to conflict, violence and disasters in 2016, the third highest number globally, a new report by a monitoring center said. The Internal Displacement Monitoring Centre and the Norwegian Refugee Council released a report which ranked India third among countries most affected by displacement related to disasters followed by China and the Philippines. The country is in need of amending its policies in accordance with the United Nations Guiding Principles for protecting Internally displaced persons. The reliability of the existing data on IDPs and lack of a national governing body for protecting them are problems that need to be addressed.

Key Words:

Rohingya Muslims, State Border, Constitutional Rights, Ethnic Groups, Mega Projects, Non- Interference

While civil liberties lawyers and organization fought the legal battle in the supreme court to stay the deportation of Rohingya Muslims (refugees) from India as per the directive of the Indian government, it is pertinent to note the lack of recognition for the displaced persons within the country.

Who are IDPs?

An Internally Displaced Person (IDP) is someone who is forced to flee their home but who remains within their country's borders. They are often referred to as refugees, although they do not fall within the current legal definition of a refugee.

Refugees Vs IDPs:

Often the status of refugees is conflated with the status of IDPs, however there exist clear and distinct differences between both the movements. Though it is accepted that sometimes the movement of refugees and internally displaced persons' overlap. While a multilateral treaty exists for the protection of refugees (The Convention relating to 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 IDPs remains in a flux.

Guiding Principles on internal displacement:

The definition of IDPs which exist in International Law was provided by Mr. Deng, the 1998 human rights special representative of the Secretary General while he drafted the GPID (Guiding Principal on Internal Displacement: popularly known as *Deng Principles*).

Internally Displaced Persons:

“Persons or groups of person 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 conflict situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border”.

It is important to note that the movement of people has to be against their will and should be well within the territory of their country in order to be classified as an IDPs. Moreover, 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.

Despite the fact that definition of IDPs in the GPID is non legal in nature, the Guiding principles have gained international standing and authority. The guiding principles provides for thirty principles which shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction.

Internally Displaced Persons in India:

In May 2017, the Internal Displacement Monitoring Centre and the Norwegian Refugee Council released a new report which ranked India third among countries most affected by displacement related to disasters followed by China and the Philippines.

Findings of the Report:

- Nearly 2.4 million people in India were internally displaced due to conflict, violence and disasters in 2016, the third highest number globally.
- The highest displacements were recorded in China with 7.4 million people getting impacted, followed by the Philippines (5.9 million), India (2.4 million) and Indonesia (1.2 million). The figures for India include 796,000 people displaced as a result of conflict and violence.
- 3.6 million New displacements in South Asia in 2016 represented a drop of more than half from the 2015 figure of 7.9 million.

- Sixty Seven percent, or 2.4 million, were in India, most of them associated with monsoon season floods in Bihar that led to more than 1.6 million displacements between mid-July and October.
- While China, the Philippines and India have the highest absolute numbers, small island states suffer disproportionately once population size is taken into account.

Constitutional Rights:

- The constitution of India remains the charter which primarily protect and assists IDPs since they haven't crossed the National borders.
- IDPs are also governed by the protection of Human Rights Act, 1993 which provides citizens to seek enforcement of their human rights which are either guaranteed by Constitution or international covenants.

Fundamental Rights & IDPs

- They shall be treated equally (**Art.14**) without any discrimination (**Art.15**) on the grounds of religion, race, caste, sex, place of birth.
- They shall be provided with equal opportunity in public employment (**Art. 16**) and shall have freedom of speech and expression along with the right to assemble, form an association and to move freely within territory of India and practice their profession. (**Art 19**)
- Further, **Article 39** directs the state to secure its citizens with right to an adequate means of livelihood and **Article 41** rests obligation on the state to make effective provision to secure the right to work, education and to public assistance.
- Therefore, IDPs can approach SC or HC under **Art. 32** or **Art. 226** of the constitution to seek redressal of the infringement of their Fundamental Rights.

Nature and Pattern of Internal Displacement in India:

The nature and dynamics of events leading to internal displacements has been varying from state to state depending upon the composition of the population and the related context of conflict.

Internal Displacement in Jammu and Kashmir:

- India's largest internal displacement stems from the conflict in the Northwestern state of Jammu and Kashmir between militants and Indian security forces and police.
- More than 90% of the Hindu population in the Kashmir Valley, the Kashmiri Pandits remain internally displaced as a result of this armed conflict.

The North – East: Internal Displacement in Assam: Tripura and Manipura:

- The eight states in the geographically isolated and economically underdeveloped north-east are home to 200 of the 430 tribal groups in India. 30 to 40 rebel groups are currently active in this region.
- An influx of migrants from the neighboring countries of Bangladesh, Nepal and Burma (Myanmar) has caused a massive population increase and subsequent competition for resources and jobs.
- This has also spurred ethnic conflicts over land and fighting for political autonomy or secession. The Northeast has been the scene of repeated ethnically-motivated conflicts in which the fight for a perceived homeland has sometimes resulted in ethnic cleansing.
- At least 50,000 people have been killed in such conflicts in the Northeast since India's independence in 1947.
- Violence has broken out in the States of Assam, Manipur, Nagaland, Tripura and Arunachal Pradesh, involving at least ten different ethnic groups (BODOS, Nagas, Kukis, Karbis, Dimasas, Paites, Mizos, Reangs, Bengalis and Chakmas). The largest forced displacement movements have occurred in the states of Assam, Manipur and Tripura.

Internal Displacement due to Naxalism:

- In central India, leftist extremist group commonly referred to as Maoists or Naxalites, have significantly increased insurgent activities during the past few years, including in the States of Madhya Pradesh, West Bengal, Bihar, Chhatisgarh, Jharkhand, Odisha, Tamil Nadu, Maharashtra and Andhra Pradesh.
- Violence has been especially on the increase in Andhra Pradesh and Odisha. Distinction against the tribal population, displacement by large development projects and government failure to ensure food security have been the main reasons for the rapid spread of the Naxalite movement.
- No estimate of the number of people displaced as a result of the insurgency in Central India is available, but anecdotal information suggests that thousands of villagers have been displaced either as a result of government mobilization against the insurgent groups or because they flee Naxalite violence.

Internal Displacement due to Development:

- The plight of indigenous people vis-à-vis displacement in India is basically a matter of policy failure and unaddressed alienation in the name of national interest.
- Tribes/Indigenous people in India constitute approximately seven percent of the population. The major threat to their livelihood is because of large scale alienation of their lands by state machinery for mega projects such as mining, large dams, industries, highways, army firing ranges military cantonments, etc.
- With the increasing privatization of resources mining has become a double-edged sword lucrative for the government but destructive for the marginalized people of the region.

India's Response to Internal Displacement:

- India has repeatedly expressed reservations in international forum about the UN Guiding Principles on internal Displacement, which it sees as infringing its national sovereignty.

- India has no national IDP policy targeting conflict induced IDPS, and the responsibility for IDP assistance and protection is frequently delegated to the state governments.
- India has no credible mechanism to investigate human rights violation perpetrated by the security and para military forces.
- Although the Indian government provides support to conflict affected populations, such assistance is mostly adhoc and does not correspond to the needs of the displaced. State governments are assigned the main responsibility to assist and rehabilitate the displaced, but practices vary significantly.

Need for a domestic Law:

- India not having a domestic legislation catering to IDPs is an extension to its stand against reorganization Guiding Principles under the veil of ‘Sovereignty’ and principles of ‘non –interference’.
- International human right instruments and the provisions of its own Constitution provides India with the mandate to safeguard the Rights of IDPs and it shall be failing its duty by not paying heed to the plight of its own citizens whose status has remain unchanged.
- Therefore, there is a dire need to acknowledge and protect the rights of IDPs by bringing out a separate legislation and if the government of the day lacks political will for the same, the onus shall shift to Indian Judiciary to interpret the constitution and International Law in the favor of IDPs.

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