



# DISPLACED PERSON IN INDIA AND THEIR DEVELOPMENT AS A PART OF HUMAN RIGHTS

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## Abstract

A nation always confers its citizens with that of rights either may be a legal right or a fundamental right. It is very genuine to receive such rights as provided by the nation. The nation should not take away the rights of its citizens nor should put any restrictions while they use the rights. There are chances at times that the government, for the sake of development may displace few people and there could a chance of losing the rights on the place provided for them. The 1998 UN Guiding Principles stresses on Internal Displacement that are not legally binding and an increasing number of Human rights supporters and scholars have been arguing in recent past years that the instrument is likely to be assumed as a legal significance which is beyond its status as a mere declaration of principles. This paper reflects how India is striving for the development of the displaced person and to protect the rights as a part of human rights keeping in mind the guidelines as provided by the UN.

**Keywords:** Displaced Persons, Human Rights.

## I INTRODUCTION

India has many laws related to the Internally displaced persons<sup>1</sup>. The displaced person is “a person who is forced to leave their home country because of war or persecution; a refugee”. Their life is not easy and they are exposed most of the time in many ways. Their rights get violated and needs to be protected. Protection here is a well defined one as all activities aimed at obtaining full and final respect for the rights of an individuals in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law

<sup>1</sup> According to the *Guiding Principles on Internal Displacement*, internally displaced persons (also known as "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 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 border." by About internally displaced persons-Special Rapporteur on the human rights of internally displaced persons

and refugee law. Protection here can be seen as: an objective; a legal responsibility; and an activity given to the authorised person who is involved in the protection of rights. Persons or a group of persons who are being forced or obliged to flee or leave their homes or places of habitual residence, in particular resulted 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. There are many reasons for the displacement of people there may be a sudden impact such as a natural disaster or any conflict triggers. We can supply immediate short-term relief by providing safe water and other basic sanitation; even emergency medical care and basic health services; or even a temporary shelter; including distribution of food and other urgently needed items.

All persons, including those who are internally displaced, are equally entitled to protection. As defined by the Guiding Principles on Internal Displacement<sup>2</sup>, The definition mentions some of the main causes of internal displacement, including armed conflict, violence, violations of human rights and disasters. This is not exhaustive list; the phrase “in particular” means that it do not exclude the possibility that other situations might meet the two keys criteria of involuntary movement within one’s country. It is important to be understood that the IDP definition is a descriptive definition rather than a legal definition. It simply describes factual situation of a person being uprooted within his/her nation of habitual residence. It does not confer special legal status or rights in the same way that recognition as a refugee does. There are many reasons for the displacement of people there may be a sudden impact such as a natural disaster or any conflict triggers. We can supply immediate short-term relief by providing safe water and other basic sanitation; even emergency medical care and basic health services; or even a temporary shelter; including distribution of food and other urgently needed items.

Internally displaced persons, known to be "IDPs," are being the part of broader civilian population which needs to be protected and given assistance in relation to conflict and human rights abuses or anything that is due to natural disasters. Focusing on IDPs is not intended to encourage the preferential treatment<sup>3</sup> of IDPs to exclusion of other populations at risk but, to improve the quality of the response developed for IDPs whose needs have been, inadequately addressed by the international humanitarian response. Forced from their homes as they should leave their place of residence for the sake of work, IDPs also experience specific forms of deprivation, such as loss of shelter many a times, and often face heightened or particular protection risks. These risks may include: sudden armed attack and abuse while fleeing in search of safety; family separation, including an increase in the

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<sup>2</sup> They address protection against displacement (principles 5 to 9), protection during displacement (principles 10 to 23), the framework for humanitarian assistance (principles 24 to 27) and protection during return, local integration in the locations where the persons have been displaced and resettlement in another part of the country (principles 28 to 30). Guiding Principles on Internal Displacement, <https://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement#:~:text=The%20Guiding%20Principles%20state%20that,other%20persons%20in%20their%20country>. Accessed on 23 Mar 2023.

<sup>3</sup> Treatment of one individual or group of individuals in a manner that is likely to lead to greater benefits, access, rights, opportunities or status than those of another individual or group of individuals. <https://eige.europa.eu/thesaurus/terms/1325#:~:text=Treatment%20of%20one%20individual%20or,individual%20or%20group%20of%20individuals>.

number of separated and unaccompanied children; heightened risk of sexual and gender-based violence, particularly affecting women and children; arbitrary deprivation of land, homes and other property; and displacement into inhospitable environments, where they suffer stigmas, marginalization, discrimination or harassment.

There are two issues if considered from normative perspective which must to be aware of and covered by the guiding principles and Indian Land Acquisition Laws<sup>4</sup>. The first is the Principle of the UN guiding Principles and Right to Property and restitution, which has increased and has been considered to be vital for the realization of the rights of internally displaced persons. The proportionality test is very crucial to assess the first phase of displacement (protection from displacement) and the second aspect relates to the third phase (protection after displacement). There are two issues discussed here and even to examine if Indian Courts take the issues related into consideration when they determine compensation levels for displaced persons. The researcher further concludes that the Land Acquisition Rehabilitation and Resettlement Bill 2011<sup>5</sup> should integrate human rights concerns for a better protection of the rights of displaced persons. It even argues that a rights based approach can enhance the quality of the services delivered by authorities. Protection of the rights of human rights of displaced person, human rights as guaranteed must be incorporated into appropriate legislation. The principles, norms on which implemented policies and plans are decided should also be a part of the legislation. In the final analysis the bill of 2011 seems to delineate duties here rather than detailing the rights of such person. The IDP concept is very unique due to its political, social and humanitarian complexity it has reached and the conflicting nature of discourse that is surrounding IDP protection. While the circumstances shall be to produce internal displacement are comparable to those which does produce refugees, many of the needs of IDPs and of refugees are mutually exclusive.

The following category of persons qualify as IDPs:

- Internally displaced citizens of the country concerned
- the refugees who have returned to their country of origin but are not able to return to their former homes or find any durable solution through social economic integration in another part of the country.
- Displaced stateless persons who have their habitual residence in the country concerned.
- Displaced nationals of another country who have lived there for a long time (maybe even generations) and have largely lost contact with their country of nationality.

<sup>4</sup> This Act may be called the Land Acquisition Act, 1894. It shall come into force on the 1st day of March, 1894.

<https://indiankanoon.org/doc/7832/> Accessed on 01 Mar 23.

<sup>5</sup> The Land Acquisition Rehabilitation and Resettlement Bill, 2011 (Appendix I) was introduced in Lok Sabha on 7th September, 2011 and was referred to the Standing Committee on Rural Development on 13th September, 2011 by the Hon'ble Speaker Lok Sabha for examination and report to Parliament in terms of Rule 331 E (1) (b) of the Rules of Procedure and Conduct of Business in Lok Sabha. [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2011/SCR\\_Land\\_Acquisition\\_Rehabilitation\\_and\\_Resettlement\\_Bill\\_2011.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2011/SCR_Land_Acquisition_Rehabilitation_and_Resettlement_Bill_2011.pdf) accessed on 23 Mar 2023.

• Displaced nationals of another country who have their habitual residence in the country concerned because they been admitted permanently or for prolonged periods of time.

### **1. Objective and Aim**

1. To understand the importance of displaced workers.
2. To understand the problems faced by the displaced workers.
3. To understand the solutions if can be provided to them.
4. To examine why aren't we able to reach out to them?
5. To know the strength which makes those people work at any place.
6. The challenges faced by those people and how the rights are protected.
7. To protect their right under every circumstances.

### **2. Hypothesis**

Displaced Persons are humans too and their rights has to be protected and it is a worldwide discussed problem which has its own impacts both on the nation and at the international level in both positive and negative way.

### **3. Research Question**

1. Whether there is a need for the protection of their rights?
2. Whether special protection needed for them?
3. Whether the national organizations help them to protect rights?

### **4. Scope**

1. The concept of displacement has come into existence.
2. The treatment given to the IDP.
3. To get good laws protecting the rights of IDP.
4. How one can tackle the problems of displacement.
5. Suggestions to give protection to the displaced persons.

## **II FACTORS RELATING TO DISPLACED PERSONS:**

Some of the factors of internal displacement that tend to heighten protection risks are as below.

- 1 IDPs lose their homes and, as a result and may be in need of shelter.
- 2 In some cases, they will be compelled to seek shelter in crowded camps or settlements, that can give rise to various protection risks.
- 3 They have often lost access to their land or other property and are cut off from their normal livelihoods and other sources of income.

- 4 As a result they will suffer poverty, marginalization, exploitation and abuse.
- 5 Access to get adequate food, safe water and public services, or such as education and health care becomes difficult, often leading to high levels of hunger, malnutrition and disease.
- 6 Family and community-structures collapse and family members become separated.
- 7 Unaccompanied and separated children, single-headed households older persons and persons living with disabilities.

They often are at heightened risk of abuse, including sexual exploitation, that includes child labor or forced recruitment into armed forces or groups. Identity documents are often lost or either destroyed or confiscated in the course of displacement. That results IDPs often face difficulties in accessing public services, including education and health care, limits on freedom of movement and heightened risk of harassment, exploitation or arbitrary arrest and detention<sup>6</sup>. There are cases, IDPs are displaced to areas they face marginalization, discrimination and hostility often are exposed to landmines or explosive remnants of war, or are targeted to abuse and attack. In addition, tensions in these areas which are exacerbated by, for instance, competition over scarce resources or an increased risk of attacks because of the presence of IDP settlements.

### **How the Environmental Change Impacts on Livelihoods of IDP**

There are number of questions to be answered since the environment brings a huge change in that of the life of the displaced people. Environment directly affects the life of the people who are displaced by the government for the sake of the development of a particular area. The resources present in the environment brings a huge impact on it. It is very important to distinguish the slow onset and disaster related environmental changes. As both are different and could be effecting the poor or the displaced people in anyway. At times even the poor gets differentially affected. There are developmental agencies and the donors who carry ‘environment proof’ for their development policies and programmes. Having reviewed the concept of environmentally-induced displacement and the challenges of comprehending the scale of the phenomenon, this section examines the relationship between livelihoods, environmental change and forced migration. It even considers the important differences between long-onset and acute, episodic or disaster related environmental impacts, and their implications, before advocating proactive approaches of resilience, sustainability and adaptation.

**Slow onset environmental degradation** says Slow onset migration, with the possibility of return or permanent displacement, has been frequently caused by depletion of resources (land and water), deforestation, desertification and pollution. But that can be the one of the most difficult to predict because of the types of migration (seasonal,

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<sup>6</sup> Arbitrary arrest and arbitrary detention are the arrest or detention of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or in which there has been no proper due process of law or order. [https://en.wikipedia.org/wiki/Arbitrary\\_arrest\\_and\\_detention#:~:text=Arbitrary%20arrest%20and%20arbitrary%20detention,process%20of%20law%20or%20order](https://en.wikipedia.org/wiki/Arbitrary_arrest_and_detention#:~:text=Arbitrary%20arrest%20and%20arbitrary%20detention,process%20of%20law%20or%20order). Accessed on 21 Mar 2023.

return, repeat, permanent and temporary), the multi-causality of intervening variables (socioeconomic status and migrant selectivity) and the complexity of environmental outcomes (deforestation and fisheries depletion)

**Acute onset or episodic environmental degradation** Recently this has become more evident that climatic changes express itself not only through slow shifts in an average environmental conditions over relatively long periods, but even also by the growing incidence of extreme weather events due to increased energy within the climate system.

**Ways forward** These admittedly selective examples of the impacts of environmental change on potential forced migration point to four conclusions with respect to policy development.

### III GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

Whenever it is necessary to bring any principles for a concern related to the international then it shall be decided by the United Nations including its members who shall really come out of such a situation wherein they adopt all the possible principles that can be really helpful to solve the conflicts.

#### Scope And Purpose

1. The Guiding Principles that address the specific needs of internally displaced persons worldwide. They shall identify rights and guarantees that are relevant to the protection of persons from a forced displacement and to their protection with assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of the Principles, internally displaced persons are persons or the 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 conflict<sup>7</sup>, situations that are generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect which are consistent with international human rights law and international humanitarian law. They provide many guidance to:
  - (a) The Representative of the Secretary-General<sup>8</sup> relating to internally displaced persons in carrying out his mandate;
  - (b) States when faced with the phenomenon of internal displacement;
  - (c) All other authorities, groups and persons in their relations with internally displaced persons; and

<sup>7</sup> Armed conflict means a state of war or a conflict which involves armed operations which by their nature or extent are likely to affect the application of treaties between States parties to the armed conflict or between a State party to the armed conflict and a third State, regardless of a formal declaration of war or other declaration by any or all of the parties to the armed conflict. <https://www.lawinsider.com/dictionary/armed-conflict> accessed on 21 Mar 2023

<sup>8</sup> The secretary-general of the United Nations (UNSG or SG) is the chief administrative officer of the United Nations and head of the United Nations Secretariat, one of the six principal organs of the United Nations. [https://en.wikipedia.org/wiki/Secretary-General\\_of\\_the\\_United\\_Nations](https://en.wikipedia.org/wiki/Secretary-General_of_the_United_Nations) accessed on 11 Jun 23.

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

### **The Core Principles of Humanitarian Action**

Several core principles which are a guide to all humanitarian action and should be respected by the staff and partners at all times. Respect for these principles is very critical to the integrity of our work and the credibility and safety of humanitarian operations.

**Do no harm:** Action, as well as an inaction, can have unintended negative consequences. We must see that it ensures that our actions and interventions (or lack thereof) do not adversely affect individuals or their communities, our partners or our colleagues, and that they do not expose them to harm. Before taking an action, we must anticipate the consequences, assess any potential risk factors and take measures to eliminate and minimize such risks.

**Humanity and the humanitarian imperative:** The prime motivation and the purpose of our work is we have to save lives and to prevent and alleviate human suffering, wherever it is found. Individuals must to be treated humanely, with dignity and respect, and have a full and equal right and ability to receive humanitarian assistance.

**Impartiality:** Humanitarian action must be taken without any adverse distinction based on nationality, ethnic origin, religion, class, political opinion or other ground. Priorities for humanitarian action must be determined on the basis of rights and needs alone. The principle of impartiality, therefore, establishes two clear rules of conduct for humanitarian work: The non-discrimination and proportionality according to need.

**Independence:** Humanitarian action must be set free from interference, whether political, ideological, economic or military.

**Neutrality:** Humanitarian action must not to take or be perceived to take sides in an armed conflict or other dispute. The principle of neutrality will neither prevent us from taking action nor will provide an excuse for inaction; indeed, failure to take an action could even amount to taking sides. It provides many important guidance on how we should act, by considering how our actions might be interpreted by others. We, therefore, need to be aware of our own prejudices as well as the ways in which aid can be manipulated, diverted or exploited for political or military purposes. Our actions and activities must be transparent, balanced and based on objective criteria. In addition to the core principles, several key considerations should guide us in our work.

**Confidentiality:** Respecting the confidentiality and guaranteeing the privacy and security of individuals, their families and wider communities must be of paramount consideration at all times. Breach of such confidentiality or careless towards handling of information can have serious consequences for all the persons of concern as well as for our partners, our colleagues and even the humanitarian operation as a whole. We must always to assess

potential risk factors involved and seek informed consent for the gathering and use of such information. Vigorous data-protection methods must be in place to guarantee the security of recorded information.

**Sensitivity:** Many IDPs have experienced violence, many abuse and other forms of personal harm. We should be sensitive to their suffering, treat them with respect and dignity, and have to avoid creating more harm by requiring them to relive painful experiences through repeated interviewing. We should also be careful to avoid creating false hopes and unrealistic expectations about what protection and assistance we can offer; failure to do so risks increased anxiety and hopelessness, and might even put people at greater risk by giving them a false sense of security.

**Strengthen local capacities:** The role of humanitarian actors is not to substitute, but to support and strengthen.

**local capacities:** both the capacity of an individual to claim their rights and the capacity of States and other authorities to fulfil their responsibilities to ensure protection of these rights. To this end, humanitarian actors should identify and work to strengthen effective local coping strategies and protection mechanisms.

Understand the context, including as it is perceived by others: To ensure that we “do no harm” and act in an impartial, independent and are in neutral manner, it is essential that we have to have sound understanding of the country, their culture and the communities in which we are into work. This must include an awareness of the political agendas, interests and perceptions of all those with whom we work. Information must flow from a wide range of sources and be verified to ensure that we gain an objective picture of the situation.

**Professionalism:** Our actions and activities must be in consistent with, and guided by, the highest standard of personal and professional integrity. In particular, we need to ensure that our conduct and that of our colleagues and partners respects the dignity and worth of all women and men, girls and boys of concern, that it is consistent with national laws and customs, and that it respects international human rights<sup>9</sup> and humanitarian law standards<sup>10</sup>. Any form of sexual abuse or exploitation, including entering into sexual relations with a beneficiary or exchanging aid for sexual favours is unlawful and amounts to gross misconduct.

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<sup>9</sup> The international human rights movement was strengthened when the United Nations General Assembly adopted of the Universal Declaration of Human Rights (UDHR) on 10 December 1948. <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed on 21 Mar 2023.

<sup>10</sup> International humanitarian law (IHL) is a set of rules that seek to limit the effects of armed conflict. It lays out the responsibilities of states and non-state armed groups during an armed conflict. [https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law\\_en#:~:text=International%20humanitarian%20law%20\(IHL\)%20is,humanitarian%20aid%20during%20armed%20conflicts](https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law_en#:~:text=International%20humanitarian%20law%20(IHL)%20is,humanitarian%20aid%20during%20armed%20conflicts) accessed on 21 Mar 2023.

## IV WHO WILL PROTECT INTERNALLY DISPLACED PERSONS:

Primary responsibility to protect IDPs and all persons within their own country rests with the national authorities of the country. It is the National responsibility is a core concept of all or any response to internal displacement. This is a fundamental principle operating of international community and is being routinely emphasized including governments themselves, as a function of their sovereignty. Yet, it is sometimes the very governments that are responsible for protecting and assisting their internally displaced populations that are unable or even unwilling to do so and, in few cases, they may even be directly involved in this forcibly uprooting civilians. Even then, the role of international actors is to reinforce, not replace, national responsibility. This requires a two-pronged approach as to encourage States and other authorities to meet their protection obligations under international law while also supporting the development of national and local capacities to fulfil these protection responsibilities. The Framework for National Responsibility<sup>11</sup> identifies almost 12 steps that governments should take towards ensuring an effective national response to internal displacement.

### National Responsibility towards Displaced Person

National responsibilities are in situations of internal displacement which in addition to ensuring the protection of rights in accordance as given in international law, national responsibility in situations of internal displacement entails:

1. Preventing the displacement and minimizing of its adverse effects;
2. Raising of national awareness about the problems so related ;
3. Collecting the data on number and condition of IDPs;
4. Supporting them and training on the rights of IDPs;
5. Creating a legal framework that upholds the rights of IDPs;
6. Developing some national policy for internal displacement;
7. Designating an institutional focal point related to IDPs;
8. Encouraging the national human rights institutions to address internal displacement;
9. Ensuring IDPs participate with decision making;
10. Supporting a durable solution;
11. Allocating an adequate resource to address internal displacement; and

<sup>11</sup> The purpose of this Framework for National Responsibility is to provide guidance to assist governments in addressing internal displacement in their countries and in meeting their obligations towards their displaced populations. [https://www.brookings.edu/wp-content/uploads/2016/06/04\\_national\\_responsibility\\_framework\\_eng.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/04_national_responsibility_framework_eng.pdf) accessed on 19 mar 2023.

12. Cooperating with the international community when national capacity is insufficient

### Role Of Constitution Law<sup>12</sup>

As we all know the Indian Constitution mainly concentrates upon protecting the rights of people or rather say its citizens, it may at once ignore the duties of the citizen towards the nation if not done by the citizens but it always tries to protect the rights of the citizens doesn't matter whether the right is a fundamental right or legal right. It assures that they are never violated by anyone. As the fundamental rights are conferred by the constitution on its citizens under Article 19(1)(e) that is to settle in any part of India every person is given the right, this is the fundamental right which is conferred upon the citizens and while they say about it it's the duty of every citizen not to violate the rights of any other person. Therefore, the people do displace and settle wherever they want but that is not a forcible one. Here the researcher has discussed the forcible displacement of people and how they lose their rights. Fundamental rights like Article 14<sup>13</sup>: Right to equality- any arbitrary displacement violates right to equality. Article 19 (1)(e): the right to reside and settle in any part of the territory of India. It includes rights not to be displaced without reasonable cause. Article 21<sup>14</sup>: Right to life and personal liberty which includes the right to livelihood and right to shelter<sup>15</sup>. Displacement is no doubt deprivation of right to livelihood All these rights are justifiable rights under article 32 and 226 of the Constitution.

In *Olga Tellis vs. Bombay Municipal Corporation*<sup>16</sup>, “the Court noted that forcible eviction of pavement dwellers without providing adequate rehabilitation is violation of their fundamental rights.”

The Hon'ble Supreme Court in *Shantistar Builders v. Narayan Khimalal Totame*<sup>17</sup> “has held that right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in.” Further, the Court in *Chameli Singh v. State of U.P*<sup>18</sup> has held that “Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation.” In *B.D Sharma v. Union of India*, the court held that “people who are uprooted from their inhabitation should be rehabilitated and their fundamental rights should not be violated.”

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<sup>12</sup> Constitutional law is a body of law which defines the role, powers, and structure of different entities within a state, namely, the executive, the parliament or legislature, and the judiciary

<sup>13</sup> *Union Of India & Ors. vs Vijay Mam on 1 June, 2012*

<sup>14</sup> *Olga Tellis v. Bombay Municipal Corporation*

<sup>15</sup> *Mullin v. Union Territory of Delhi.*

<sup>16</sup> 1985 SCC (3) 545

<sup>17</sup> AIR 1990 SC 630

<sup>18</sup> Equivalent citations: AIR 1996 SC 1051, JT 1995 (9) SC 380, 1996 (1) SCALE 101, (1996) 2 SCC 549, 1995 Supp 6 SCR 827

## The Land Acquisition Act

- The Act provides fair compensation at market value for the lost cause to the individual who owned the land.
- Rehabilitation is not required under the Act.
- The Supreme Court has been stated as the only forum approachable for those individuals whose land is to be acquired or has been acquired.

## V GLOBAL PANDEMIC AND INTERNALLY DISPLACED PERSONS

Internally displaced persons are too much prone to be affected by covid-19 as it would be very difficult for them to maintain the social distancing and undertake preventive measures. They live in a crowded place as they will not be provided with good healthcare facilities. The lock down for a period of time has left most of the people become financially unstable and even people lost their job during that period of time. As the report given by WHO<sup>19</sup> stating that more than 10 million Internally displaced persons in Africa would contract Covid-19. The impact it created on IDP's are very significant in terms of their health, livelihood, living facilities and that of the education as everything had become too difficult to reach out. It created

1. Health Crisis<sup>20</sup>: IDP's are the most prone to the infections caused by virus as they lack safe housing facilities. They were forced to stay at most unhygienic places and there were even the informal settlements that were densely populated. They were not educated enough to understand social distancing, healthcare and other sanitation facilities. They even did lack all the basic facilities such as drinking water and nutrition.
2. Socio economic crisis: it's a known fact that the IDP's work in an informal sector and has no job security. They did not have any access to secured livelihood or other resources. Women and children faced exploitation, abuse and have no access to any legal services. Many women faced they were unable to get sanitary pads and had to use clothes as there was no good supply of goods. This showed lack of menstrual management.
3. Identity crisis<sup>21</sup>: the definition of Internally displaced person was not clear about including the migrant workers and it is the duty of the government to acknowledge their presence so that the rights can be

<sup>19</sup> The World Health Organization (WHO) is a specialized agency of the United Nations responsible for international public health. It is headquartered in Geneva, Switzerland and has six regional offices and 150 field offices worldwide. [https://en.wikipedia.org/wiki/World\\_Health\\_Organization](https://en.wikipedia.org/wiki/World_Health_Organization) accessed on 12 Jun 23.

<sup>20</sup> A health crisis or public health crisis is a difficult situation or complex health system that affects humans in one or more geographic areas (mainly occurred in natural hazards), from a particular locality to encompass the entire planet. Health crises generally have significant impacts on community health, loss of life, and on the economy. [https://en.wikipedia.org/wiki/Health\\_crisis](https://en.wikipedia.org/wiki/Health_crisis) accessed on 12 Jun 23.

<sup>21</sup> In psychology, identity crisis is a stage theory of identity development where it involves resolution of a conflict over the 8 stages of the lifespan.<sup>[1][2]</sup> The term was coined by German psychologist Erik Erikson. [https://en.wikipedia.org/wiki/Identity\\_crisis](https://en.wikipedia.org/wiki/Identity_crisis) accessed on 12 Jun 23.

determined. We have experienced the crisis that affected the migrant workers there was violation of the fundamental right.

4. Legal Crisis: IDP's do not get a legal protection they are either the citizens of their country or may be the migrants. They do not have a legal or political framework that addresses their concerns as they are not considered to be refugees. If seen the legal position of remain unsettled. It is a known fact that most of the people lost their job during the pandemic. There was no security for even these migrants.

The Covid-19 outbreak is the worst situation of all in our country and is considered to be the 'disaster' by the Ministry of Home Affairs<sup>22</sup> under the Disaster Management Act 2005<sup>23</sup> following the order by the National Disaster Management Authority. Still there is no clarity upon the migrants to be classified as internally displaced persons an unanswered query. So whenever there is the question about the rights of the internally displaced persons it would be too difficult to be answered as there is no particular law for this.

## **VI PROTECTION DURING AND AFTER DISPLACEMENT**

### **Ensuring the Inclusion of Internally Displaced Persons in Transitional and Justice Processes.**

It is to achieve durable solutions for internally displaced persons, they must receive justice for the harm done to them, the violations of their human rights, and loss of life and property, through processes that go beyond the physical return, local integration or settlement elsewhere. In numerous internal displacement situations, however, internally displaced persons will not obtain justice or they achieve only partial redress or reparations for human rights violations that they have suffered, including for loss of housing, land or property. Traditionally even where such mechanisms exist, the range of serious civil and political rights violations addressed by transitional justice processes has been too narrow and has relatively neglected internally displaced persons. Recognizing the important work undertaken in this field, and with the objective of operationalizing existing resources and providing technical assistance<sup>22</sup> for their implementation, the Special Rapporteur will collaborate with relevant States, United Nations bodies and other international organizations, non-governmental organizations and national human rights institutions to address this important area of concern.

### **Improving the protection of internally displaced children**

It remains a considerable concern in the situation of displacement worldwide as the internally displaced children and their protection becomes a main concern. There are evidences that indicate that displaced children are facing neglected and they face violation of their human rights, they face even the violence and forced recruitment. Children are suffering and they die when they face displacement situations owing the failure of states as they do

<sup>22</sup> The Ministry of Home Affairs (IAST: *Gr̥ha Maṅtrālaya*), or simply the Home Ministry, is a ministry of the Government of India. It is mainly responsible for the maintenance of internal security and domestic policy. It is headed by Minister of Home Affairs. [https://en.wikipedia.org/wiki/Ministry\\_of\\_Home\\_Affairs\\_\(India\)](https://en.wikipedia.org/wiki/Ministry_of_Home_Affairs_(India)) accessed on 20 Jun 23.

<sup>23</sup> The Disaster Management Act, 2005, (23 December 2005) No. 53 of 2005, was passed by the Rajya Sabha, the upper house of the Parliament of India on 28 November, and the Lok Sabha, the lower house of the Parliament, on 12 December 2005. [https://en.wikipedia.org/wiki/Disaster\\_Management\\_Act,\\_2005](https://en.wikipedia.org/wiki/Disaster_Management_Act,_2005) accessed on 23Jun 23.

not respond rapidly and appropriately to the specific needs and they lack the capacity and resources of humanitarian. There are challenges that require renewed attention with a focus on concrete outcomes. There will be Special rapporteur to promote the international normative framework for the protection of children. The responsibility of States as well as other partners, to better protect internally displaced children and address their needs.

Enhancing the role of national human rights institutions<sup>24</sup> in the protection of internally displaced persons. Human rights violations frequently precede or trigger displacement and also occur during or after displacement. Consequently, national human rights institutions have a critical role in the protection of internally displaced persons. Their roles include advocacy and awareness-raising, training for officials and others in international human rights and humanitarian law and standards, monitoring of the rights of internally displaced persons, registration of individual complaints and investigation of specific cases so that perpetrators are held accountable.

## VII A ROLE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS

It is a known fact that the national human rights institutions makes very important contribution to national efforts promoting and protecting the human rights. They get an official recognition by the government which they enjoy and command significant respect within that of national societies as they are headed by influential and eminent personalities that includes the retired judges, or respected human rights activists. National human rights have an important and valuable role to be played in a country that faces internal displacement every now and then as it helps in promoting and protecting the human rights of IDP's as it has been recognised and encouraged by the government in UN resolutions. There are many national institutions that is focusing attention on the issue of internal displacement especially in developing countries though they lack the capacity. The Asia Pacific Forum<sup>25</sup> of National Human Rights Institutions in support of these has developed a project to assess the capacities of its member institutions with regard to internal displacement and mobilise assistance to help them enhance their capacities. The best practice in dealing with these internal displacement mean that governments acknowledge internal displacement as a human rights issue that belongs within the mandate of the National Human Rights Institution and they apportion greater resources to these institutions so that they can address the whole subject. There are few steps that the national institution could take to promote and protect the rights of the internally displaced. They are:

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<sup>24</sup> A national human rights institution (NHRI) is an independent state-based institution with the responsibility to broadly protect and promote human rights in a given country. The growth of such bodies has been encouraged by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which has provided advisory and support services, and facilitated access for NHRIs to the United Nations (UN) treaty bodies and other committees. [https://en.wikipedia.org/wiki/National\\_human\\_rights\\_institution#:~:text=A%20national%20human%20rights%20institution,rights%20in%20a%20given%20country](https://en.wikipedia.org/wiki/National_human_rights_institution#:~:text=A%20national%20human%20rights%20institution,rights%20in%20a%20given%20country). Accessed on 23 Jun 23.

<sup>25</sup> The Asia Pacific Forum (APF) is one of four regional networks of national human rights institutions (NHRIs) within the International Co-ordinating Committee of NHRIs. The APF formerly accredited NHRIs for compliance with the United Nations' Paris Principles, but now acknowledges the accreditation decisions of an ICC sub-committee on which the APF has one of the four (regional) seats. [https://en.wikipedia.org/wiki/Asia\\_Pacific\\_Forum](https://en.wikipedia.org/wiki/Asia_Pacific_Forum) accessed on 23 Jun 23.

1. To monitor the conditions of IDP ensuring them that they enjoy the same rights as that of the other citizens in the country and do not face discrimination in seeking the access to their rights and they receive the protection and assistance they require.
2. To conduct enquiries seeking the report of violation of IDP's Human rights and ensuring an effective response from the authorities.
3. To keep a follow up in relation with that of the warnings of the displacement and even to ensure that there is a effective measure taken by the concerned authorities to protect the crowd against that of the arbitrary displacement and whatever decisions that are taken by the authorities to displace populations as implemented in accordance with the guarantees which are set forth in the guiding principles.
4. Based on the guiding principles it can advise the government on that of the rights of IDP's working with that of the National Legislative Bodies<sup>26</sup> to frame policies and bring a plan of action in collaborative working with the government officials working to develop a national law on the internal displacement .
5. To monitor and draft a report on government's implementation of national legislation and compliance with International Treaty<sup>27</sup> Obligations as well as on implementation of policies.
6. To monitor the return or resettlement of IDP's physical security is at a grave risk.
7. To impose a strong relationship with that of the IDP associations as well as local NGO's and representatives of civil society that advocates for the protection of IDP rights.
8. To undertake educational activities and training programs, especially considering state institutions including the military and law enforcement agencies on the rights of IDP's with all the special attention paid to raising awareness of the particular protection and the assistance concerns of women, children and other groups who experience heightened vulnerability.
9. To build a network with that of the national human rights institutions in other countries and the relevant regional bodies to share the information and get experiences on internal displacement with a view to developing best practices.
10. To build a strong relationships with the IDP associations as well as local NGO's and representatives of that of the Civil society for the protection of the rights of the IDP.

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<sup>26</sup> Legislature of the Union, which is called Parliament, consists of the President and two Houses, known as Council of States (Rajya Sabha) and House of the People (Lok Sabha). Each House has to meet within six months of its previous sitting. A joint sitting of two Houses can be held in certain cases.

<sup>27</sup> Article 38(1) of the International Court of Justice's statute identifies treaties as a source of law, along with general principles and customs. Accessed on 21 Jun 23.

## How Judiciary Plays Its Role

The court expanded the language of Article 21<sup>28</sup> wherein it was insisted to incorporate the right to rehabilitation as a fundamental right, this did not apply to the real fact situation. It has taken a narrow approach by demarcating a line between policy decisions and judicial interference. The result was that the oustees could not secure justice and were failed by the courts ailed as citizen's custodian of rights. More significantly, the following criticisms can be made of the above decisions:

In *N.D. Jayal and Another v. Union of India*<sup>29</sup>, the court held that “the courts have recognised the rights of the ousters to be resettled and right to rehabilitation has been read into Article 21”. In *Francis Coralie v.U.T. of Delhi*<sup>30</sup> Justice Bhagwati observed that “the right to life includes the right to live with human dignity and all that gives along with it, namely the bare necessities of life. Such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings”. In *Olga Tellis v. Bombay Municipal Corporation*<sup>31</sup> case, the court observed that “Article 21 means something more and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.”

## VIII REHABILITATION AND OTHER RELATED LAWS

### Rehabilitation Of Internally Displaced Persons

Since independence many Indian state has adopted a model of development that involves construction of large multi-purpose dams. Such is the faith in the merits of building dams that they were said to be the temples of modern India. To support this assertion, few or many benefits of multi-purpose projects are often cited, but the costs behind them are shrouded from the eyes of the public. India now boasts that it is being the world's third largest dam builder. According to the Central Water Commission, we have almost 3600 dams that qualify as Big Dams, 3300 of them are being built after independence. Six hundred and ninety-five more are under construction. According to some detailed study of fifty-four Large Dams done by the Indian Institute of Public Administration, the average number of people displaced by the large dam construction in India is 44,182. Importantly, this data relates to the big dams alone and does not reflect the displacement caused by several other development projects. When estimating the number of persons displaced by big projects since 1947, a scholar-administrator and then, Secretary of India's Planning Commission<sup>32</sup>, Dr. N. C. Saxena, puts this number at 50 million.

<sup>28</sup> Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law. <https://indiankanoon.org/doc/1199182/> accessed on 19 Jun 23.

<sup>29</sup> 2003 Supp(3) SCR 152

<sup>30</sup> Equivalent citations: 1981 AIR 746, 1981 SCR (2) 516

<sup>31</sup> Equivalent citations: 1986 AIR 180, 1985 SCR Supl. (2) 51

<sup>32</sup> The Planning Commission was an institution in the Government of India, which formulated India's Five-Year Plans, among other functions. In his first Independence Day speech in 2014, Prime Minister Narendra Modi announced his intention to dissolve the Planning Commission.

[https://en.wikipedia.org/wiki/Planning\\_Commission\\_\(India\)#:~:text=The%20Planning%20Commission%20was%20an,Year%20Plan](https://en.wikipedia.org/wiki/Planning_Commission_(India)#:~:text=The%20Planning%20Commission%20was%20an,Year%20Plan)

Taking the above statistics, it is fair to conclude that costs behind the construction of dams have not been sufficiently debated else what can explain the absence of a dedicated legislation on rehabilitation? It was largely in 1980s owing to the struggles of the displaced persons that was due to the Narmada and the Tehri projects that took place where the realities of human devastation in the name of many large development projects came to light. The aim of this paper is not to denounce or question the merits of such projects, but is to look into the manner in which they have been executed. More importantly, the object is to analyse if the government has followed a transparent and fair procedure to rehabilitate the displaced persons ensuring their dignity of life and individuality and right to life as granted under Article 21 of the Constitution of India. To make such an enquiry it is imperative that the law, judicial pronouncements and the ground realities must be explored and an alternative solution to the problem of displacement must be found by looking for a remedy in international refugee law to address the issue..

### **Compensation for the Displaced Persons:**

The compensation to be paid to the displaced people should be according to the replacement value. It needs to include: the asset loss, lose of livelihood, the problems faced by the dependants and lives of those who render service to the village. The replacement value must include both material and monetary compensation that shall make it possible for the displaced persons so that they begin a new life as they have to face a new economic culture and society. They should be even prepared with psychologically, socially and even technically. The government has to keep it in mind that they cannot just compensate for only the patta land. It must also include barbers, labours and merchants vendors who depend on that place where they did dwell and sudden changes in the place would call for the payment to start a new life. The common property resource has to be replaced with that of viable alternatives. Training has to be given if necessary and they may need to be literate this would fall under the social cost of the project and nobody can ignore it.

### **IX CONCLUSION & SUGGESTION**

IDPs are at increased risk of recruitment practices which violate international human rights and humanitarian law, including recruitment of children or discriminatory or degrading recruitment practices applied to displaced adults and the recruitment of children represents a particular risk, as it does not only exploits the vulnerabilities of displaced children but also even exposes them to extreme threats and hinders their long-term development

The Legislature which is the body of making law has shown its keen willingness to enact a rehabilitation legislation to protect the rights of the displaced persons, the judiciary though grants the rights to them at the first place it has little implementation on them. In fact there were this Naramada and Tehri judgements that reflects the courts that has supported both the acts of the Government by standing by its decision that shows the further

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[s%2C%20among%20other%20functions.&text=In%20his%20first%20Independence%20Day,to%20dissolve%20the%20Planning%20Commission.](#) 12 Jun 23.

interest. The situation here is both the legislature and judiciary has joined its hand but have failed to give justice to the displaced people. There has to be an international pressure to so that they never get to violate the rights of the people.

In case of which individuals or communities belong to linguistic minority groups are displaced to areas where there are different languages spoken, failure to allow such IDPs to communicate in a language they can understand will heighten their vulnerability and leads to further violations of their human rights.

The Researcher recommends that States and other national stakeholders:

- (a) to ensure that consultation and participation shall be included and given a high priority in national legislation and even in policy relating to internally displaced persons, in conformity with international law and standards;
- (b) to establish most clear programmatic and operational methodologies for the participation of internally displaced persons which are based on effective practices, that provide clarity, establish time frames, ensure regular provision of information and outline the criteria and objectives of participatory processes;
- (c) to Identify a Government agency that is mandated to lead and coordinate participation activities with a cooperation to other national and local authorities, international entities and internally displaced persons;
- (d) to ensure necessary support needed and funding for the inclusive participatory processes and the recruitment, training and deployment of staff to support participation;
- (e) to ensure that participatory processes will include women, young people, persons with disabilities, minorities and others who may face exclusion or discrimination on the basis of identity, cultural, social, historical, political or other grounds;
- (f) to Incorporate in participatory processes traditional, customary and community-based organization and dialogue structures and practices, while ensuring that they do not reinforce existing marginalization or exclusion;

**The Special Rapporteur recommends that the following to be considered at international humanitarian and development partners and the international donor community:**

- (a) Support and adequately fund the programmes that shall include participatory processes consistently including from the earliest stages of displacement;
- (b) Coordinate approaches that is based on common standards which can enhance community engagement and even participation of internally displaced persons, including the most vulnerable;
- (c) Develop such internal capacity and deploy dedicated staff to field operations, specialized in participatory methodologies, to lead and facilitate the participatory process;

- (d) Provide such a technical assistance and training to national authorities, national human rights institutions and civil society partners to build their capacity to conduct and sustain participation processes;
- (e) Allow flexibility in such all programme and funding priorities to be taken into account and respond to all the outcomes of participatory processes;
- (f) Strengthen the local dialogue to be from support community feedback for programming and project implementation;
- (g) to ensure that humanitarian responses plans and the strategic monitoring of the plans incorporate participatory approaches and demonstrate analysis and consideration of inputs from affected communities;
- (h) Strengthening the cooperation and collaboration of humanitarian and development partners, including in the field of participatory processes, through different phases of displacement;

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