

Rights of Environmentally Displaced Persons: Need for a Legal Framework

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ABSTRACT: Environment is considered to be vital factor in the life of human being, from providing food to providing shelter plays an important role. Like how a good environment helps in all round development of one's personality and a bad environment inhibits its development. Man in order to survive adapts himself to his environment but rarely pays due attention for its improvement. It is depressing to know that the water we drink, the air we breathe are all polluted and we are now facing serious ecological crisis like acid rain, global warming, water and air pollution, the extinction of numerous animals and plant species and the loss of biodiversity. And there is new emerging group of people who cross border or leave their native place in search of shelter because of the natural disasters, flood, earthquakes, tsunami, climate change etc, who are variously termed as Environmentally Displaced Persons, Climate or Environmental Refugees, Climate-induced Displaced Persons. Such groups of people face deprivation and marginalization in their own and foreign land. Although Universal Human Rights regime exists for all across the globe, but for such people there is protection gap which needs to be filled with a legal framework which will afford them with protection as a human being. This paper seeks to discuss about the rights available to such group of people under the existing Human Rights regime and how a legislative framework can be developed for their protection.

Key Words: : Environment, Displacement, Life, Natural Disasters, Environmentally Displaced Persons, Human Rights.

INTRODUCTION

A recent World Bank Report states that increase in forced displacement as a result of conflict and persecution has led to crisis which needs, integration of humanitarian and developmental approach to serve better, to all residents and to ensure sustainable growth, and to support the community as a whole to reduce the vulnerability and to mitigate its impact on host communities.¹ Also it specifies that global warming is not only an environmental challenge but is a great challenge to Human Rights.

The UN Human Rights Council and Conference of Parties (COP) 21² have found that climate change and extreme weather events, undermine Internationally protected human rights that is from right to water, food, adequate housing, and sanitation to life. And this in turn raises the question of climate injustice.³

The movement of people as a result of changes in the environment is not a new phenomenon. People have been facing tough conditions in response to changes in their environment, often seasonally, for centuries. For pastoralists and nomadic peoples such movement is part of their livelihood. But on the other hand, it is only in the last 20 years or so that the international community has begun to slowly recognize the wider linkages and implications that a changing climate and environment has on human mobility.⁴

¹Axel Baeumler, Senior Infrastructure Economist, World Bank, co-author of the report.

²The 21st Conference of Parties (COP21), held that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

³ https://www.ohchr.org/Documents/Issues/Environment/Climate_change_cross-border26Oct.pdf

⁴⁴ INTERNAL DISPLACEMENT MONITORING CENTRE, 'ANNUAL REPORT 2016' (GENEVA, SEPT 2017) <<http://www.internal-displacement.org/assets/publications/2017/201709-annual-report-2016.pdf>> .

Usually the issue of displacement has been discussed in the light of political and military context but it can be observed that this issue is hardly recognized in the context of environmental changes. Further, it can be seen that the more than armed conflicts, the causes of environmental factors such as natural disasters, earthquake, climate change, tsunami, increase in glacial melt and rise in sea level, which is an upshot of human activities, has a significant impact on involuntary displacement. Estimations depict that the numbers have increased to millions of people being displaced by environmental changes than displaced by war.⁵ A recent report suggests that 27.8 million people are displaced by conflict, disasters and violence in 2015, and sudden onset of disasters alone displaced 19.2 million people across 113 countries in 2015⁶. The number of Environmentally Displaced Persons (EDPs) is more than twice the number of people who were displaced due to conflict and violence.

It has been observed that environmental causes for migration may range from unpredictable events which include natural disasters to industrial accidents to longer term degenerative process such as desertification and land degradation, industrial pollution and concentration of large number of people in risk prone areas, over developmental projects, increasing population density which has led to migration.⁷

Mostly policy makers, scholars and other expert organizations concentrate on scale of problems and after effects rather than means of preventing the crises. So far, there has been an ad hoc approach towards the issue. Migration is adaptive, natural and inevitable which occurs because of natural disasters; it is not realistic to simply mitigate, minimize the migration. The challenge is to manage and mitigate the process of migration as well as its prevention within and across borders by making International policies.

Instead of reacting to waves of EDPs entering the borders of countries around the world, we must see that there is reduction in the carbon emissions and other environmentally hazardous activities so that displacement of persons globally reduces.

Nature and definition of the term:

The term *Environmentally Displaced Persons* is nowhere defined and is often confused with Environmental Refugees and misconceptualized, and the reason why they are called displaced persons and not Refugees is because the Convention Relating to the Status of Refugees 1951 states that the main reason of their fleeing is the fear of being persecuted and in case of displaced person though the movement is involuntary it is because of the man-made environmental reason. And for the clear understanding the definitions given by the United Nations have been referred to:

Refugees - United Nations Convention Relating to the Status of Refugees defines refugee as “A person who owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it.”⁸

Migrants - A person who leaves his country of origin for the sake of improving his economic condition is to be termed as a migrant. Migration is a relatively permanent moving away of a collectivity, called migrants, from one geographical location to another, preceded by decision making on the part of the migrants on the basis of a hierarchically ordered set of values or valued ends and resulting in the interactional systems of the migrants. A migrant is not necessarily a refugee. A migrant leaves his country because of his personal choice.

Internally Displaced Persons - Internally Displaced Persons are defined in the UN Guiding Principles on Internally Displaced persons as: “The persons or group 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 internationally recognized state border”.⁹

⁵ Ibid

⁶ INTERNAL DISPLACEMENT MONITORING CENTRE, ‘ANNUAL REPORT 2016’ (GENEVA, SEPT 2017) <<http://www.internal-displacement.org/assets/publications/2017/201709-annual-report-2016.pdf>> .

⁷ Suzette Brooks Masters, *Environmentally Induced Migration: Beyond a Culture of Reaction*, 14 GEO. IMMIGR. L.J. 855 (2000)

⁸ United Nations Convention Relating to Status of Refugees 1951.

⁹ <http://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement>

Environmentally Displaced Persons- Environmentally Displaced Persons are defined as those who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption that jeopardized their existence, and/or seriously affected the quality of their life.¹⁰ Displacement always has been a major area, especially for countries in South Asian region. Accordingly, the displaced population have been forced to leave their home in search of safer destination due to armed conflict internal strife, natural calamities or even being carried by the rich developmental agencies. Environmental displacement is not solely an ecological problem. It is a multi-causal problem where ecological and socio-economic vulnerability act together to displace marginalized people.

Human displacement, caused by Natural disasters, melting of glaciers and rise in sea level, drought, floods, earthquakes and climate change, leading to cross-border mobility suffers from a legal protection gap and the issue human rights. Global attention is required at closing this gap. Hence to fill up the complete policy vacuum, in the face of the large and recurring problem in the context of Environmentally Induced Displacement, much of the debate has been taking place for the use of the term 'Refugee' to designate persons displaced by environmental factors. Most authors use phrases like 'Environmental Refugee' or 'Climate Refugee'. The term Refugee was defined in the immediate aftermath world war II in the Convention Relating to the Status of Refugee, 1951 to address the large scale displacements that occurred. Article 1 defines 'Refugee' as: "A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country". As per the definition, the expression 'Environmentally Displaced Persons' cannot be included within the meaning of 'Refugee' because neither persecution nor concerted state action is involved their displacement and would dilute the concept of Refugee under the Convention and would do nil to clarify questions of institutional accountability in relation to complications and response.¹¹

The International Organization of Migration, Refugee Policy Group and the United Nations High Commissioner for Refugees reflected same thoughts and concerns and opted not to use the term and restrained themselves from the use of the term 'Environmental Refugee', and kept themselves at the at a safe distance by using the term 'Environmentally Displaced Persons' instead of 'Environment Refugees'¹².

It was in 1970s, *Lester Brown of World Watch Institute*, highlighted in his speeches about the plight of people displaced due to environmental factors¹³. Later, Prof. Essam El Hinnawi talked about the issue and defined "Environmental Refugees" as: "Those who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption, that jeopardize their existence and/or seriously affected the quality of their life".¹⁴ According to him environmental disruption means any physical, chemical, biological changes in the ecosystem that render it, temporarily or permanently, unsuitable to support human life..

While International Association for the study of Forced Migration¹⁵ (IASFM) explains 'Forced Migration' as a general term that refers to the movements of Refugee and Internally Displaced People as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine or development projects.

Also it is stated that the definition of the term 'Environmentally Displaced Persons' is derived from the definition of Internally displaced Persons. it defined as: "Persons who has/is been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of, in order to avoid the effects of,

¹⁰Jaykumarkirathi, *Environmental Refugees: A case for including them within the ambit of International Refugee Law*, Indian Law Journal (2007).

¹¹Oxford's Refugee Participation Network.

¹²The 1996 Symposium Secretariat stated that "people who are migrating for environmental reasons fall outside the categories protected by instruments of international refugee law, both in terms of the text and intent of the drafters, and in terms of much current practice." International Symposium, *Environmentally-Induced Population Displacement*.

¹³<http://www.worldwatch.org/mission>, Founded in 1974 by Lester Brown as an independent research institute devoted to global environmental concerns, World Watch was quickly recognized by opinion leaders around the world for its foresight and accessible, fact-based analysis.

¹⁴El-Hinnawi, Essam; "Environmental Refugees" UNEP 1985

¹⁵<http://www.Forced migration.org>

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”.

The expression and, meaning of EDPs have been looked upon by various Expert Committees and International Agencies. The Inter-Agency Standing Committee (IASC) Working Group on Migration/Displacement and Climate Change have summarized the nature of movement, the affected persons and the protection framework under which those who are moving may be granted protection. In the absence of an internationally agreed definition, International Organization for Migration (IOM) developed a working definition in 2007 which defines ‘Environmental Migrants’ as: *“Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.”*¹⁶

A renowned environmentalist, Norman Myers who has studied environment and population displacement for years defines EDP as: *“People who can no longer gain a secure livelihood in their homelands because of drought, desertification, soil erosion, deforestation and other problems related to environment, together with associated problems of profound poverty and population pressures”*.¹⁷

The common factors among the definitions referred above are that because of the change in climatic conditions, floods, earthquake, tsunami, deforestation, desertification, and other environmental related factors humans are compelled to move in search of other place which would support their livelihood.

Human Rights and Protection of Environmentally Displaced Persons

Human rights which are universal in nature obligates every Government to act in prescribed way or to refrain from doing so. In order to promote human rights and freedom of individuals, which as a comprehensive body of human rights law, all the nations can subscribe for protection of social, civil, cultural, political and economic rights.¹⁸

When it comes to matter of Rights and Protection the question arises is what do you mean by protecting rights, what rights may be protected and whose duty is it to protect people displaced by climate change and environmental factors. Forming a practical refugee policy was one of the significant tasks of United Nations when it was created. At the time of its creation the United Nations policy makers looked at the problems faced by refugee as temporary and, as a end result, passed the Refugee Convention, which remains unaffected till today.¹⁹ The Convention states that the term Refugee shall apply to: *“Persons who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of religion, race, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his formal habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”*²⁰

Few commentators contend that Environmentally Displaced Persons are unconditionally included under the Refugee Convention, where they can avail themselves protection under the Convention and believe that they are persecuted on political and environmental reasons but to avail the protection for one must qualify the conditions as per the definition²¹. For instance, it is said that the government which places people at the greater risks at the time of natural disaster, it is the same government that does not approach the disadvantaged people at the time of emergency. Quite a good number of countries face large scale environmental degradation, which are mostly developing nations that rely closely on foreign industry; in such a circumstances, the people suffering as a outcome of effects of such industry, thus EDP must not be excluded from traditional Convention Refugee status because they suffer persecution either by the government or at the government’s acceptance.

¹⁶ <https://www.iom.int/>

¹⁷ Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, 357 PHIL. TRANSACTIONS ROYAL SOCIETY BIOLOGICAL Sci. 609, 609 (2001), available at <http://rstb.royalsocietypublishing.org/content/357/1420/609.full.pdf+html> (explaining that there is a large population of people that relocate because they can no longer sustain a secure livelihood in their homelands).

¹⁸ <http://www.internal-displacement.org/global-report/grid2018/>

¹⁹ Brooke Havard, *Seeking Protection: Recognition of Environmentally Displaced Persons under International Human Rights Law*, 18 Vill. Envtl. L.J. 65 (2007).

²⁰ Convention and Protocol Relating to Status of Refugees, Article 1(2).

²¹ www.rsc.oc.ac.in

Every year millions of people are forced to leave their homes and are displaced.²² They are separated from their roots, communities, support networks and social ties. Natural hazard related disasters and climate change play a crucial part in some of these events. It is important to know that the reasons of increase in displacement is quite complex, the concern for their protection of people who cross border as a result of environmental changes have to be protected under the International Law specifically with respect to Human Rights Laws. Officially, they are not allowed to stay or entitled to admission to stay in third state country. And this depicts a “legal protection gap” and a situation is seen where people do not receive adequate government intervention, which displaces people and has as adverse effect on their human rights.

Significantly, the human rights framework identifies the “minimum standard of treatment” that should be afforded to ‘Environmentally Displaced Persons’. But it falls short in providing an effective mechanism or status when someone crosses a border due to environmental factors. The Refugee Convention which was created for specific purpose is complete but has limited application, yet there is a large gap that has to be covered, and this can be implemented through convergence of law of protection of human rights at international and regional level by expanding the conventional instruments into codified forms of subsidiary or complementary protection.²³

There are few Human Rights Documents which recognize the very basic human rights of men. The foremost document is Universal Declaration of Human Rights, 1948 (UDHR) which affirms individual’s inalienable and its incorporation in international treaties, regional human rights instruments and national constitutions and other laws. And was the first step in process of formulating International Bill of Human Rights. The Convention relating to Status of Refugees, 1951 was built on Article 14 which states that ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution’.

The Preamble to UDHR speaks about the protection of rights under the Rule of law and promote friendly relations between the countries and have promised to themselves to achieve cooperation and promote universal respect for observance of human rights and. Article 3 which states that Everyone has the right to life, liberty and security of person. Article 6 speaks about everyone has the right to recognition everywhere as a person before the law. And it can be seen that protection of human rights in any condition is upon the state irrespective of the being citizen or otherwise. Article 25 speaks about the duties of the States to take action to ensure that all citizens enjoy an adequate standard of living. It recognizes food, clothing, housing, health care and social services as essential components of a standard of living adequate for health and well-being.

International Convention of Civil and Political Rights (ICCPR)²⁴:- Article 12 of the Covenant speaks about freedom of movement and states that everyone has the liberty of movement and freedom of movement and to stay within the territory and to choose their own residence; Clause 2 states that everyone is free to leave any country including his own and these rights are not subject to any restrictions except that are provided by law to protect national security public health or public order, freedom of others or morals consistent with the other rights recognized in this covenant. And clause 4 states that no one shall be arbitrarily deprived to enter his own country.

Sustainable Development Goals²⁵:- Under United Nations Association of Greater Philadelphia, seventeen sustainable goals have been brought out titled as the Sustainable Development Goals 2015 – 2030 which aims at development in the field which includes livelihood, food security, climate change, health, and many other subjects.

Agenda 21:- Chapter 7 of Agenda 21 speaks about Promoting human settlement planning and management in disaster prone areas.²⁶

The three distinct areas which are foreseen under this programme are cultural safety, Pre-Disaster Planning and Post Disaster Reconstruction.

- *Developing Cultural Safety*: To create awareness locally and nationwide through media and other available means so that the information is easily transferred to population who are prone to

²² Isabel Mota Borges, *International Law and Environmental Displacement: Towards a New Human Rights-Based Protection Paradigm* (December 2015).

²³ Ibid

²⁴ <https://www.ohchr.org/en/>

²⁵ <https://una-gp.org/the-sustainable-development-goals-2015-2030/>

²⁶ Agenda 21 - Chapter 7 Promoting Sustainable Human Settlement Development, Earth Summit, 1992

disasters. Also speaks about the strengthening and developing regionally, nationally and globally warning systems to alert about forthcoming disaster.

- *Developing pre disaster planning*: Pre-disaster planning has to be the integral part of the every country's planning on settlement including water and sewerage, communication and transportation networks, to prepare guidelines on location, design and operation of hazardous industrial activities, developing training programmes for non- governmental organizations and community groups, and to include warning techniques in pre disaster planning, and develop tools to ensure limitations on development and to ensure alternative means of compensation. To develop procedures and practices to ensure that the information is received at the other end and to involve the participation in disaster abatement and response procedure and plans.
- *Initiating Post-Disaster Reconstruction and Rehabilitation Planning*: In the post construction and rehabilitation, the International community plays the role of major partner in the of aftermath reconstruction and rehabilitation process, and shall ensure that the greater benefits are given to people from the funds allocated for the particular purpose, through following activities:

To carry out research on past experiences on the social and economic aspects of post disaster reconstruction and adopting good strategies for planning for post disaster development by introducing sustainable settlement patterns, preparing and disseminating international guidelines for adaptation to national and local needs and to support the initiations taken by national government for post disaster reconstruction.²⁷

United Framework on Climate Change Convention (UNFCCC):-Article 4(8) of Convention speaks about the implementation of the commitments in this article and states that the parties should give full consideration to actions that are necessary under the convention which includes funding, insurance and transfer of technology, to meet the concerns of development and meet the end, that arise from the adverse effects of climate change and to know the impact of implementation of response measures, especially on

- Countries with low lying coastal areas
- Small island countries and
- Countries with arid and semi arid areas, forested areas and areas liable to forest decay.

Inter Governmental Panel on Climate Change(IPCC):-The IPCC first assessment report indicated that the significant effect of climate change on society would be human migration that is involuntary form of displacement and relocation and this is considered to be the last resort, when other adaptation possibilities have been exhausted. But it was later considered to be the powerful strategy. The effect of such changes are likely to depict the regional variations, in their potential to trigger population displacement; small islands and coastal areas are prone to or likely to get affected by rise in sea level and severe weather events.²⁸

Climate change related displacement has triggered various security issues, which have been categorized into two areas related to concerns about human security challenges, including the security of individuals, households and communities and about their coping and adaptation capabilities.

From the above explanation we can find that though there are legislations made to combat natural disasters and other effects of climate change, yet there is a drawback in the legal protection that has to be provided to displaced persons who cross border and for the protection of their rights.

CONCLUSION

As mentioned above EDPs have no home/shelter in literal sense and, their rights available under the International Human Rights regime are at risk of violation, and their lack of protection is the reason why there is an urgent need for protection of such group of people. It is imperative that their rights should be recognized as that of Refugees under the Convention.

What we need to observe here is that the current protection is available to Internally Displaced Persons and Refugees and not to people who cross border because of change in environmental factors which adversely affects their life.

Such being the current situation it is highly necessary for developing a current legal framework for protection of Environmentally Displaced Persons and by creating a definition specifically for them. There is need to afford them a legal status which would form the basis or foundation for better life of and would help

²⁷ Ibid

²⁸ Susana Beatriz Adamo, *Environmentally induced population displacements*, Columbia University.

define their rights. Further obligations has to be imposed on Non Governmental Organizations and Inter Governmental Organizations.

When we look into the protective mechanism afforded to Refugees, in the same manner the rights of the EDPs can be protected by providing legal status is to them. And it shall be duty of the international community to come forward with a definition of Environmentally Displaced Persons so that protective measures are defined, their rights recognized.

Environmentally Displaced Persons can be protected in a better institutional framework like that of refugees and displaced persons under regional instruments such as Organization of African Unity (OAU) and Cartagena Declaration and Nansen Initiative.