

**CHAPTER – IV**

**PROTECTION OF CONFLICT INDUCED INTERNALLY  
DISPLACED PERSONS: A GLOBAL AND NATIONAL  
PERSPECTIVE**

#### **4.0 INTRODUCTION**

The concept protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies (human rights law, humanitarian law & refugee law). Thus any protection action is based on the rule of law. It may also be argued that humanitarian problems, including those that result from displacement in the event of conflict, are the consequences of a violation, deliberate or otherwise, of rules of law and are primarily the responsibility of national authorities that are under an obligation to provide protection and assistance to the population (Hickel, 2001).

However, the problem of internally displaced persons (IDPs) received little attention or sometimes never received the attention they deserve. Although they are also the citizen of the country and all the law of the land were also applicable to them, however in terms of protection and enjoyment of rights they are often regarded as second class citizens. There is no adequate system to address the problems and assistance for the conflict induced internally displaced persons. The IDPs were literally refugees in their own country, as they did not cross the international border therefore, they cannot come under the protection and jurisdiction of United Nations High Commissioner for Refugees (UNHCR). In many circumstances state was directly or indirectly responsible for the displacement of its citizens. In that context the IDPs were in more vulnerable position than refugees although the nature of displacement and sufferings are same with that of refugees who are protected under various international laws and treaties.

Many of the government shy away from acknowledging and recognizing the presence of IDPs in their own country and their responsibility to protect them. The reason for this reluctance is often grounded in fear of becoming subject of international scrutiny or interference, in particular where governments bear responsibility for the violence and human rights violation that have caused the displacement. Hence, the IDPs need more protection and humanitarian assistance. The absence of any legal instrument creates vacuum in the protection of human rights of the IDPs under the regime of International Law.

The countries like Guatemala and Rwanda have at least recognized the existence of IDPs as such, although sustainable reintegration is yet to take place. Some countries have also developed laws policies and other documents regulating some or all aspects of internal displacement which includes Angola, Burundi, Liberia, and Uganda in Africa; India and Sri Lanka in Asia; Azerbaijan, Bosnia and Herzegovina, Georgia, the Russian federation, Serbia and Turkey in Europe; and Colombia and Peru in the Americas. Although numbers of the countries of the world are formulating policies for the protection of IDPs, the scope of existing laws and policies varies greatly, and not all the governments make genuine efforts to implement them (Bandyopadhyay & Subedi, 2012).

The respective national governments have the primary responsibility to prevent forced displacement and to ensure that the displaced are provided with full access to their rights and rehabilitation. Yet, the very governments responsible for protecting their citizens from displacement and other violations of their human rights often fail to ensure their protection and are themselves involved in forcibly uprooting civilians (Ibid, pp. V).

IDPs are also part of the broader civilian populations that needs protection and assistance because of conflict and human rights abuses. Forced from their homes, IDPs also experience specific forms of deprivation, such as lose of shelter and often face heightened or particular protection risks. In a situation of armed conflict IDPs may find themselves in territories over which state authority is absent or difficult to enforce, in such a situations, the prevention of displacement and the protection of IDPs are also the responsibility of the non-state actors. In those situations where state require support or

where national protection is not ensured, a critical protection role falls to the international community. It is difficult to address this “protection gap” not only because of the sensitivity of the subject within the country concerned, but also because of various gaps within the international framework (Group, June 2010). The main focus in this chapter is to find out various laws and mechanism to protect the human rights of the IDPs in terms of global and national context.

#### **4.1 PROTECTION OF IDPS THROUGH INTERNATIONAL LAW**

International law is the body of law which governs the conduct of, and relations between, States. International law is derived from two primary sources: international treaties and customary law.

- a) International Treaties: These are agreements between states. A treaty is legally binding on all states that have agreed to be bound by it, for instances by way of ratification or accession. A treaty can also be known as a covenant, convention, charter or protocol.
- b) Customary law or Custom: It results from general and consistent practice of States followed out of a sense of legal obligation. It is binding on all states, unless a state has persistently objected to the practice.

Besides that there are also secondary sources of international law but not binding on States. They are doctrine and jurisprudence. This can be useful to look into the jurisprudence relating to the protection of IDPs of courts and tribunals, such as regional courts or commissions on human rights, special tribunals or the permanent International Criminal Court established to judge crimes of genocide, war crimes and crimes against humanity (Ibid, pp. 20).

Internally displaced persons are entitled to enjoy, equally without discrimination, the same rights and freedom under international and national law as other citizens do in their country. Although international law does not specifically

address the plight of IDPs, however they entitled to be protected under the law. The three bodies of international law provide a comprehensive legal framework for protection in all situations of international displacement, including conflict induced displacement:

- a) International human rights law;
- b) International humanitarian law; and
- c) International criminal law

Further as citizens of the country IDPs remain entitled to full and equal protection under the State's national law, which should be compatible with the State's obligation under international law. Human rights are freedoms and entitlements that every individual should enjoy without any discrimination.

The three mentioned international laws are considered the principal sources of protection for the internally displaced persons. Together with refugee law, they provide the basis for articulating further protection procedures. Though these bodies of law are conceptually distinct, they have 'influenced' and 'informed' each other and have contributed to a corpus of laws that could be applied to the problems experienced by the IDPs (Sen, 1998).

#### **4.1.1 PROTECTION UNDER INTERNATIONAL HUMAN RIGHTS LAW**

Unlike refugees, who were covered by an 'established' regime of protection, the internally displaced persons since they remain within the borders of their country cannot benefit from it. However, the expression 'internally displaced persons' is not mentioned in any international legal instruments, it necessarily does not mean that they are not entitled to enjoy legal protection under existing international law (Phoung, 2005). Refugee law applies only when an international border is crossed, humanitarian law applies in a situation of armed conflicts and human rights law proclaim broad guarantees for the fundamental rights of all human beings.

International human rights law, which consists of both customary and treaty law, guarantees these rights and obliges states to respect, protect and fulfill the human rights of all persons without discrimination of any kind, such as, on the ground of age, gender, ethnic origin, language, religion, national or social origin, birth, sex or other status, including on the grounds of being or having been internally displaced (Global Protection Cluster, 2010). This law is applicable both in times of peace and in situations of armed conflict, also provides important protection to IDPs. It aims both to prevent displacement and to ensure basic rights should it occur. The prohibition on torture, cruel inhuman or degrading treatment or punishment, and the right to peaceful enjoyment of property and to home and family life are of particular importance for the protection of displacement. The right to personal safety and to home as well as right to food, shelter, education and access to work offer vital protection during displacement. Many of these rights are also relevance to the issue of return (ICRC, 2002).

The first key human rights instrument adopted by the United Nations was the Universal Declaration of Human Rights (UDHR) in the year 1948. This is a milestone document in the history of human rights. It establishes the main civil, political, economic, social and cultural rights to which all persons are entitled without any kind of discrimination. The Universal Declaration of Human Rights along with two Covenants, i.e., International Covenant on Economic, Social, and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), together constitute what is regarded as the “International Bill of Rights”. Although none of these human rights instruments specifically address internal displacement, they do cover a range of risks that IDPs often face and reinforce protection for particular group of persons who tend to be disproportionately affected by displacement (Op. Cit. 2010, pp. 22).

The other key international human rights instruments that care for the protection and promotion of the welfare of the IDPs are: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT). It defines and prohibits torture under all circumstances. It also stipulates that state cannot transfer a person to another state if there are grounds for believing that he/she will be tortured. International Convention on the elimination of All forms of Racial Discrimination, 1965 (ICERD), prohibits racial discrimination when a person or group is treated differently

because of race, colour, descent, national origin or ethnic origin with the aim or effect of denying their human rights and fundamental freedom. Again, the International Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (ICPPCG), defines genocide as an acts committed with the intent to destroy in, whole or in part, a national, ethnic, racial or religious group and declares it as a crime, whether committed in time of peace or war.

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), on the other hand sets a framework for national action for ensuring women, enjoy on an equal footing with men, their rights in all fields including employment, education, and administration of property and for ensuring the protection of women in all sorts of physical violence. The Convention on the Rights of the Child, 1989 (CRC), along with Optional Protocol on the sale of Children, Child Prostitution and child Pornography, 2000 and Optional Protocol on the Involvement of Children in Armed Conflict, 2000, is a comprehensive code to protect the rights and best interests of children under 18 years of age. It obliges the state to take measures to ensure protection, care, psychological recovery and social reintegration of children affected by armed conflict including separated children. It also prohibits the involvement of children in armed conflict, compulsory recruitment, and direct use in hostilities of persons less than 18 years of age.

Further, the Convention of the Rights of Persons with Disabilities, 2006 (CPD), ensures and reaffirms human rights and emphasizes their particular importance to persons living with disabilities. It provide guidance to the States on ways to ensure that those with disabilities, including survivors of land mines and explosives remnants of war, can exercise their rights on a full an equal basis with others. Next is the International Convention for the Protection of All Persons against Enforced Disappearances 2006 (CED), which defines and prohibits enforced disappearance under any circumstances and obliges the States to prevent such acts, to prosecute and punish or extradite those responsible, and provide reparations for victims and their families.

Again the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182) 1999 obliges the States to take all necessary measures to eliminate the worst forms of child

labour, such as slavery, trafficking, prostitution or forced labour, including recruitment of children less than 18 years for use in armed conflict. The International Convention on the Protection of All Migrant Workers 1990 (CMW), provides a framework for the protection of human rights of migrant workers during all stages of migration process; before departure, during transit and in the country of employment. The rights of Indigenous and Tribal Peoples (ILO Convention No. 169) 1989 sets a framework for ensuring indigenous and tribal peoples enjoy their rights on an equal footing with other persons. These rights specifically addresses the issue of the relocation of peoples, establishing conditions and guarantees to be fulfilled for this to be law (Ibid, 2010, pp. 23).

Thus the human rights law also applies to the internally displaced persons since it applies to all individuals without any distinction and discrimination and in almost all circumstances. When humanitarian law is not applicable, human rights law becomes the only source of legal protection and ensures that the human rights of internally displaced persons are respected (Phoung, 2005, pp. 42). The purpose of human rights instruments is to protect individuals from abuses from the state which cannot treat their citizens as they wish with impunity. Reaffirming human rights protection for internally displaced persons thus amounts to reminding the states of the fact that IDPs should benefit from the same protection as anyone else in the country.

States have a responsibility to ensure the full and equal enjoyment of human rights of all individuals on their territory or under their jurisdiction. The state has three dimensions of responsibility to respect, protect and full fill human rights which extends to all authorities of the State, including the military and the police, and all public authorities, whether at national, regional or local level. A State is obliged to take steps 'to the maximum to its available resources with a view to achieving progressively the full realization' of such rights. State must at minimum; ensure access to rights essential to survival needs such as food, water, shelter, medical services and sanitation; and also request international assistances when state resources are insufficient and should also provide extra protection for these vulnerable populations.

#### **4.1.2 PROTECTION UNDER INTERNATIONAL HUMANITARIAN LAWS**

International Humanitarian Law can be defined as that part of international law which is designed to ensure respect for general principles of humanity in situations of international armed conflict, and (to a lesser extent) to internal conflict. The international humanitarian law grows from the customary international law, early efforts at codifications, and treaties adopted at the Hague Peace Conference of 1899 and 1907, it has its principal source in the four Geneva Conventions of 1949 and the two 1977 Protocol Additional to these conventions (UNO, 2001). International humanitarian law predates both refugee law and international human rights law. It is applicable during all situations of international and non-international armed conflict, aims to protect persons who do not or no longer takes part in hostilities, and to regulate the means and methods of warfare (UNHCR, 2006).

If IDPs are in a State that is involved in an armed conflict then, provided they are not taking an active part in the hostilities, they are considered civilians and, as such, are entitled to the protection afforded to civilians. It also expressly prohibits compelling civilians to leave their place of residence unless either their security are imperative military necessity render this essential. The general rules of international humanitarian law that protect civilians, if respected can prevent displacement or, should it occur, offer protection during displacement. The following rules are of particular relevance:

- a) Those prohibiting parties to a conflict from targeting civilians and civilian properties or conducting hostilities in an indiscriminate manner;
- b) The prohibition on starvation of the civilian population and on the destruction of objects indispensable to its survival;
- c) The prohibition on collective punishment – which often take the form of destruction of dwellings;
- d) The rules requiring parties to a conflict to allow relief consignments to reach civilian population in need.



These rules play an important role in preventing displacement, as it is often their violations which is the root cause of displacement (ICRC, Op. Cit. 2002). Fundamental to the international humanitarian law is the distinction between the civilian populations, persons who do not directly take part in hostilities, and combatants. The parties to a conflict must at all times distinguish between civilians and combatants, in order to spare the civilian populations and civilian property. The civilian population shall not be an object of attack; attacks shall be directed solely against military objectives. It also obliges other neutral States to work to ensure that the parties to a given conflict respect this law. This can be accomplished through advocacy, capacity building, support to humanitarian operations, and prosecution or extradition of those responsible for violations of law. In a landmark resolution in April 2000, the Security Council for the first time identified violations of international humanitarian law and human rights as a threat to peace. It reaffirmed its grave concern at the harmful and widespread impact of armed conflict on civilians as well as its intention to provide adequate mandates and resources to peacekeeping missions in order to protect civilian victims of conflict, the majority of who are IDPs (GPC, 2010, pp. 31).

Civilians often become increasingly vulnerable when they are displaced, whatever the cause of their displacement, including natural disaster. IDPs are deprived, often brutally, of their ordinary living environment in terms of security, community support, the ability to earn a livelihood and access to food, water and shelter. These directly threaten their ability to meet their most basic needs, all the more so when families are split apart or when family members are killed or go missing. Therefore, as all vulnerable people, IDPs are entitled to assistance and protection as required. It is of paramount importance to take account of all their needs at every stage of the displacement, particularly in the area of protection (ICRC Position on Internally Displaced Persons (IDPs), 2006).

### 4.1.3 PROTECTION UNDER INTERNATIONAL CRIMINAL LAW

International criminal law is relatively new and still scant branch of international law. Apart from piracy only war crimes were traditionally considered international crimes, thus, incurring individual criminal responsibility. It was at the end of the Second World War that first triggered the development of new categories of crimes. The recent establishment of the International Criminal Court (ICC) has been another driving force for the development of a body of international criminal rules. According to the International Criminal Court Statute which came into force on 1 July 2002, the court has jurisdiction over genocides, crimes against humanity and (for the purpose of this work, of less relevance) the crime of aggression (Kiessling, 2006).

International crime consists of violations of international customary laws as well as treaties and conventions. A violation of international humanitarian law and human rights law is regarded to be war crime thus entails individual criminal responsibility of the perpetrator under the international law. Under the circumstances the national authorities have an obligation to criminalize violations of those laws in their respective national legislation and to prosecute and punish those responsible before national courts and tribunals.

The Statute of the International Criminal Court (ICC), as mentioned, considered number of crimes as international concern and which can be investigated and prosecuted by the court, of which the court has jurisdiction over it are:

- a) War Crimes: The war crimes includes grave breaches of Geneva Conventions and serious violations of international humanitarian law and cover a wide range of acts, such as – willful killing, torture and inhuman treatment, rape and sexual slavery, starvation of civilians, recruitment of children in armed forces or armed groups under 15 years of age, launching attacks against the civilian populations or civilian objects and ordering the displacement of civilian populations unless required for the security of civilians or military imperatives.
- b) Crimes Against Humanity: The acts is committed as part of a widespread or systematic attack directed against a civilian populations whether in times of war

or peace; e.g. murder, extermination, enslavement, deportation or forcible transfer of population, arbitrary imprisonment, or other severe deprivation of liberty, rape and sexual violence, persecution, enforced disappearance and other inhuman acts intentionally causing great suffering or serious injury to bodily, mental or physical health.

- c) Genocide: Genocide, which are acts committed with the intent to destroy in whole or in part, a national, ethnical, racial or religious groups. E.g. Killings, inflicting serious body or mental harm, imposing conditions of life calculated to bring about the group's destruction, preventing births, and forcibly transferring children to another group (GPC, 2010, pp. 32).

Thus the outrages perpetrated against displaced persons in times of armed conflict are not just prohibited by international humanitarian and human rights law but also punishable under international criminal law. In declaring certain acts that contravene fundamental obligation of international humanitarian and human rights law criminal and by making them punishable, international criminal law can serve as powerful deterrent when it comes to the perpetration of such acts. It is in this way that reinforces the protection that the two other bodies of law provide for IDPs and thus, contribute to the protection (Kiessling, 2006, pp.16).

#### **4.1.4 PROTECTION UNDER INTERNATIONAL REFUGEE LAW**

Internally displaced persons and refugees are essentially created by the same root cause: armed conflict and human rights abuses. The harsh reality is that the situations suffered by IDPs and refugees are very similar, making their protection needs almost identical. Therefore, there are debates among the scholar, civil societies and world bodies that internally displaced persons should be afforded the same protection as refugees (Jornrud, 2012). Like refugees, the IDPs also faced problems with their security, accessing humanitarian assistances and human rights protection. But such displaced persons do not have the legal rights to humanitarian provisions and protection during displacement situation.

In the case of refugees - who fled across borders- the international community has the responsibility take action. Towards the end of the Second World War, in 1950, the Office of the United Nations High Commissioner for Refugees (UNHCR) was created and in 1951, the Refugee Convention was adopted. This made it possible to persons subject to persecution in their own countries to find refuge on the territory of a foreign state. But this system of international protection and assistance are for those who crossed borders and did not extend to persons forcibly displaced and at risk within their own countries. They remained under the jurisdiction of their own governments and are largely beyond the reach of international community (Liao, 2009). Without sufficient legal protection and security from their own country and from the international community IDPs community remains one of the most vulnerable groups in terms of human rights abuses and other vulnerabilities than refugees.

The fact that refugee law does not apply to internally displaced persons does not mean that this body of law is completely irrelevant to the protection of IDPs. As mentioned the problems encountered by IDPs are very much similar to those of the refugees, refugee law can serve as a point of reference and might also inspire standard setting for internally displaced persons (Bhagwan, 2013). In view of the growing linkages between refugee problems and internal displacement, UNHCR is committed to greater engagement with the IDPs within the parameters of its principles and prerequisites for operational involvement. The internally displaced persons require not only humanitarian assistance but also protection against further displacement and also protection of their human rights while they are displaced and following their return. Together with internationally recognized human rights and humanitarian law UNHCR extend protection and assistance to IDPs with the cognizance of the national laws (Subedi, 2009).

While UNHCR's statute makes no reference to IDPs, it recognizes that the High Commissioner may, in addition to the work with refugees, 'engage in such activities as the General Assembly may determine, within the limits of the resources placed at its disposals'. However on the basis of the agency's expertise in the field of displacement over a period of several decades, a series of UN General Assembly resolution have acknowledge UNHCR's particular humanitarian works and encourage its involvement

in situations of internal displacement. The interest, arising from the office's humanitarian mandate, places upon UNHCR a responsibility to:

- a) Advocated on behalf of the IDPs;
- b) Mobilize support for them;
- c) Take the lead to protect and assist them in certain situations.

Within the UN agency, UNHCR has taken on the broadest assistance and protection role for the IDPs. Its long experience with refugees and its comprehensive mandate, encompassing both protection and assistance, makes it an obvious candidate for dealing with the IDPs (Ibid, pp. 123-124).

As millions of internally displaced persons live in dire conditions without sufficient care and protection and are often spending long years in the camp in a protracted displacement. The UNHCR aims to engage in IDP situations in a predictable, coherent and sustainable manner and to ensure that protection is central to humanitarian action. As the Global lead to three clusters – Protection, shelter, and Camp Coordination and Camp Management (CCCM), the Office is a major responder to internal displacement. It seeks to derive a holistic and integrated approach to the assistance and protection needs of conflict-affected IDPs and their host communities, but also communities unable to access their basic needs and rights and those in hard-to-reach, besieged areas and enclaves. UNHCR is also regularly called upon for analysis, advice, advocacy and support across a broad spectrum of protection issues that arise in humanitarian crisis (UNHCR, 2018).

Lastly, the UNHCR seeks to reduce the situations of forced displacement through advice, advocacy and encourage states and other parties to create the conditions which are conducive to the protection of human rights and the peaceful resolution of disputes. In the line of the same objectives, the Office actively seeks to consolidate the reintegration of persons of concern, thereby averting the recurrence of displacement-producing situations. In its efforts to protect persons of concern, the organization works in partnership with governments, regional organizations, IGOs and NGOs. By virtue of their activities the UNHCR strives to promote the purpose and principle of the UN Charter: mainly by contributing to activities which promote international peace and

security, developing friendly relations among nations and encouraging respect for human rights and fundamental freedoms (OSCE & UNHCR, 2014). Thus UNHCR is a body which seeks to protect not only the refugees but also the internally displaced persons by cooperating with different agencies worldwide.

#### **4.1.5 OTHER INTERNATIONAL SPECIALIZED BODY WORKING FOR IDPS PROTECTION**

Other than the mention International bodies of laws there are many other specialized International Agencies or Organizations within the UN Systems that are specially designed for the protection and promotion of the rights of IDPs.

##### **a) INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)**

The International Committee of the Red Cross (ICRC) was established in 1863 and is an impartial, neutral and independent organization whose exclusive humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. Their main work is based on the Geneva Convention of 1949 and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence. The committee endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles (ICRC, 2017).

In situations of armed conflict, the ICRC seeks to give priority to those who are in most urgent need in accordance with the principle of impartiality. The ICRC always considers an Internally Displaced Persons to be first and foremost a civilian and thus benefiting the displaced persons in many ways such as – food, water, medical

assistance, hygiene and sanitation, restoration of family link, micro-economic initiatives etc. The ICRC has developed a multidisciplinary approach in order to respond to the basic needs of all civilians including IDPs. In compliance with the International Humanitarian Law (IHL) the ICRC helps IDPs by monitoring its response to the different phases of displacement: a) displacement as such; b) arrival and temporary settlement; c) long term settlement in camps; d) final settlement (other than in the place of origin); and e) return to the place of origin. In its humanitarian response, the ICRC always seeks to strike a balance between action undertaken to meet the specific needs of IDPs and more general efforts aimed at broader segments of the populations (ICRC Position on Internally Displaced Persons (IDPs), 2006).

## **b) SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS**

The Special Rapporteur on the Human Rights of the IDPs is appointed by the Human Rights Council of the United Nations. These special independent experts are given to individuals working on behalf of UN within the scope of ‘special procedure’ mechanism who have a specific country or thematic mandate from the United Nations Human Rights Council. The mandate by the UN has been to ‘examine, monitor, advise and publish report’ on human rights problems through ‘activities undertaken by special procedures, including responding to individual complaints, psychological operations, and manipulation via the controlled media and academia, conducting studies, providing advice on technical cooperation at the country level and engaging in general promotional activities. The Special Rapporteur can greatly assist States in preparing their IDP laws or national frameworks on IDPs. In particular the Special Rapporteur can: a) assist in building political consensus by visiting the country and meeting with government officials and key stakeholders; b) raise the profile of an internal displacement situation domestically, regionally and internationally; c) capacity and knowledge building on law and policy making; d) provide legal advice and technical support to all branches of the state in preparing and implementing an IDP law (Asplet, 2013).

Besides, the present Special Rapporteur on the Human Rights of IDPs Ms. Cecilia Jimenez-Damary has decided to prioritize in joining forces with several partners working on internal displacement in the development of a multi-stakeholders 'Plan of Action' for Advancing Prevention, Protection, and Solutions for IDPs for the next three years – 2018 – 2020 on the following thematic issues:

- a) Strengthening the participation of IDPs in response to internal displacement;
- b) Ensuring the inclusion of IDPs in transitional justice mechanism and peace processes as part of durable solutions;
- c) Improving the protection of IDPs children;
- d) Enhancing the role of national human rights institutions and other relevant human rights actors in the protection of IDPs;
- e) Addressing neglected drivers of displacement, including development projects and generalized violence.

As 2018 is the 20<sup>th</sup> anniversary of the UN Guiding Principles on Internal Displacement (GP20), a global GP20 campaign has also been set up to raise awareness of the global phenomenon on internal displacement and highlights the situation of the IDPs (OHCHR). Thus IDPs are very much taken care of through this institution.

### **c) THE INTER-PARLIAMENTARY UNION (IPU)**

The Inter-Parliamentary Union is a Global Inter-Parliamentary Institution established in 1889. It is an international organization of the parliaments of sovereign States which is a forum for political multilateral negotiations. It has 178 countries as members and 12 regional parliamentary assemblies are associate members. The IPU has been given the status of Permanent Observer at the United Nations General Assembly (UNGA). Its primary purpose is to promote inter-parliamentary dialogue in working towards peace, cooperation and the establishment of representative democracy. The IPU can help countries in developing an IDP law by: a) fostering contacts, coordination and the exchange of experiences with parliaments that have developed or are developing an IDP law or policy; b) facilitating connections with regional parliamentary bodies; c)



providing information to and supporting countries and parliamentary human rights committees in particular in their efforts to comply with human rights and humanitarian law obligations (Asplet, 2013, Op. Cit. pp. 100).

**d) INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)**

The International Organization for Migration (IOM) is a leading inter-governmental organization established in the year 1951, and is specialized in the field of migration and works closely with governmental, intergovernmental, and non-governmental partners. To IOM migrant includes both those who migrate internally and internationally. The main works of IOM is to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and IDPs.

The IOM works on four broad areas of migration managements: a) migration and development; b) facilitating migration; c) regulating migration; and forced migration. Besides the above given works, IOM focused on the issue of promotion of international migration law, policy debate and guidance, protections of migrants' rights, migration health and the gender dimension of migration (IOM, 2018).

**e) THE INTER-AGENCY STANDING COMMITTEE (IASC)**

The Inter-Agency Standing Committee (IASC) was established in June 1992 in response to the UN General Assembly Resolution 46/182 to strength the humanitarian assistance. The IASC is the primary mechanism for inter-agency coordination of humanitarian assistance a unique forum involving the key UN and non-UN humanitarian partners. The IASC main emphasis is that of the protection of IDPs which

must of concerns to all humanitarian/development agencies. The IASC brings out its Policy Paper for the Protection of Internally Displaced Persons in December, 1999, identifying fourteen strategic areas to focus on in order to build a protective environment and to integrate protection features into operational response and remedial measures.

The IASC main focus areas are advocacy, prevention, and preparedness including the promotion of the UN Guiding Principles. It calls for integrated training activities to strengthen the national and local capacities. It also emphasis the need for systematic efforts to support community-based protection and to develop protection strategies for women, children and other vulnerable groups in the society. It also underlines the central concerns of ensuring the protection of the IDPs with finding durable solutions. It recalls the importance of coordinated programming, monitoring and reporting. (Inter Agency Standing Committee, 1999).

#### **f) THE UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)**

The United Nations Development Programme (UNDP) plays a crucial role in the resettlement phase of IDPs. It is the largest provider of economic and social development assistance to countries around the world. The UNDP sustainable human development role begins to grow wherever the target ability of IDPs fade primarily in -

- a) Facilitating joint planning of different interventions well beforehand, to ensure that development activities are sufficiently synchronized with relief;
- b) Supporting development of the communities that the displaced have rejoined;
- c) Implementing rehabilitation activities in the displaced communities of return in order to facilitate their sustainable reintegration; and
- d) Provide local capacity building support to local entities to enable them to take an active role in the reintegration and resettlement process (Ibid, 1999, pp. 17).

Besides the mentioned specialized agencies working for the protection and assistance of the IDPs there are numerous number of other specialized agencies within the UN and outside UN who are also working for the IDPs, such as United Nations International Children Emergency Fund (UNICEF), Office of the High Commissioner for Human Rights (OHCHR), Office for Coordination of Humanitarian Affairs (OCHA), World Food Programme (WFP), Food and Agriculture Organizations (FAO), World Health Organization, International Labour Organization (ILO) and others. Further, outside the UN System there are several other specialized INGOs who are also working issues related to IDPs such as – Internal Displacement Monitoring Centre (IDMC), Brookings-LSE Project on Internal Displacement, Norwegian Refugee Council, Oxford Committee Famine Relief (OXFAM), Lutheran World Relief (LWR), Catholic Agency for World Development, US Committee for Refugees, Save the Children Alliance, Human Rights Watch, Medicines sans Frontiers, World Vision and many others who are also tirelessly working on hosts of issues relating to human rights protection of vulnerable population including refugees and IDPs.

## **4.2 DEVELOPMENT OF GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

The Guiding Principles on Internal Displacement (GPID) has its origin in the year 1998, introduced by the UN Representatives on IDPs, Mr. Francis Deng in response to the weakness of the law to protect the displaced peoples. The Guiding Principles is a set of non-binding legal norms that deals with the protection of IDPs. The Guiding Principles consolidate into one document with all the international norms relevant to IDPs; otherwise disperse in many different instruments. Although as mentioned earlier, not a legally binding document the principles reflect and are consistent with existing international human rights and humanitarian law (Cohen, 1998).

The lack of proper legal protection mechanism and institutions together with serious structural flaws in international humanitarian and human rights system to protect IDPs has led to the massive humanitarian crisis in the 1990s. As the number of IDPs has

surpassed the number of refugees during the period the later has a legal framework and a special institution to protect them but for the later none exists although the gravity of suffering is same to both. It was in this context in the year 1992, at the request of the Commission on Human Rights, the Secretary-General of the United Nations appointed a Representative on internally displaced persons to study the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent of the coverage accorded them within existing international institutions arrangements and ways in which their protection and assistance could be improved, including through dialogue with governments and other pertinent actors (Deng, 1998).

The Representative of the Secretary-General on IDPs, Francis Deng following his appointment in 1992, began working on a legal framework as a basis for action on behalf of the displaced persons under the direction of the representative by a team of international legal experts in collaboration with international organizations, regional bodies and NGOs. Right from the beginning, development of a set of legal standards was one of the main goals of the NGOs, international experts and lawyers who sought actions by the United Nations to assist and protect the internally peoples. Deng after the discussion with the legal experts and NGOs in 1993, submitted the report titled “Comprehensive Study on the Human Rights Issues Relating to Internally Displaced Persons” to the Commission on Human Rights, in which he recommended that “it would be useful to prepare a compilation of the existing international standards which are most relevant to the protection of the rights of IDPs... such a compilation would be of a great value to governments and international bodies. The CHR acknowledges the recommendation of Deng nothing that “to develop general guiding principles to govern the treatment of IDPs as a task requiring further attention and study” (Bhagwan, 2013, pp. 37).

The process of drafting Guiding Principles came to an end in an “Expert Consultation on the Guiding Principles on Internal Displacement” hosted by the Austrian government in Vienna in January 1998. The meeting brought together 50 participants from United Nations together with the Organization of African Union (OAU), the Inter-American Institute of Human Rights, the Organization for Security and Co-operation in Europe (OSCE), NGOs, and scholars in the field of international

human rights, humanitarian and refugee law from Europe, the Americas and Africa. Finally the document on Guiding Principles on Internal Displacement came into existence comprising 30 principles (Bhagwan, 2013, pp. 41). Since then the Guiding Principles has become one of the most applied principles especially in dealing with the protection of displaced persons worldwide and many of the countries have acknowledge this principles as state policy to protect their displaced citizens.

#### **4.2.1 GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

The Guiding Principles which came into existence after almost a half decade of engagement and involvement of international lawyers and experts from all over the world, including regional organizations, UN bodies and NGOs, represents normative standard for efforts to address internal displacements. Since then it has been gaining importance as international standard of protecting internally displaced persons and has been highlighted by number of international bodies. In 2005, heads of state and government leaders at the World Summit unanimously recognized the Guiding Principles as an “important international framework for the protection of IDPs”. The UN General Assembly and the UN Human Rights Council have also unanimously reaffirmed this recognition. The principles have also been recognized by many regional bodies such as Council of Europe, the Organization of American States and the African Union. Moreover, an increasing number of States are also developing their national laws and policies on internal displacement based on Guiding Principles (Asplet, 2013).

Together with many regional organizations a number of individual States have also spoken positively regarding the contribution of the Guiding Principles in protecting the internally displaced persons. During the Sixty-seventh session of the Commission on Human Rights (2001), the representative of Georgia make a statement that the Principles were a useful instrument for protecting the rights of internally displaced persons and also informed the house that efforts were also made by their government to bring national laws in the line with the standard contained in the Guiding Principles. Similarly, a representative of Angola, Burundi, Switzerland and Austria also

acknowledges the importance of the Guiding Principles in responding to internal displacement. At the same time the representative of India while recalling its comments from Commission's previous session also acknowledge that the principles in spite of being not legally binding, can be of useful guidelines for States during crisis situation and when in need (UN Human Rights Council, 2001).

The Guiding Principles on Internal Displacement has brought together and overview of the rights of internally displaced persons and the responsibilities of national authority and non-state actors. As it has received wide international acceptance today the Guiding Principles has been recognized by States as 'an important international framework for the protection of IDPs' as well as a 'tool' and 'standard' to guide governments, international organizations and all other relevant actors in situations of internal displacement (GPC, 2010, pp. 32). Major UN allied organizations such as UNHCR, UNICEF, World Food Programme (WFP), ICRC and International Organization for Migration (IOM) has also acknowledges the importance of the Guiding Principles and emphasis the needs of the principles to their work.

The Guiding Principles, having thirty principles in number, provide guidance to all actors that deal with the internally displaced, whether governments, insurgent groups, international organizations, or NGOs (Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, 2004), and also provide a definition of an IDP and a comprehensive standard of what protection should mean during internal displacement (GPC, 2010, pp. 32). The principles apply in all phases of internal displacement; such as:

- a) The pre-displacement phase, providing protection from unlawful displacement;
- b) Protection and assistance during displacement; and
- c) Durable solutions, namely return, local interaction at the place of displacement or resettlement in another part of the country and reintegration.

Broadly speaking the principles offers standards for protection against arbitrary displacement, innovatively enunciating a right not to be arbitrarily displaced. Secondly, they set forth standards for protection during displacement, tailoring the full range of civil, political, economic, social and cultural rights to the specific needs of IDPs. Lastly,

the principles offer standards for protection during return, resettlement and reintegration. Overall, the Guiding Principles provide a comprehensive international minimum standard for the treatment and protection of the rights of IDPs (Cohen, 2004, Op. Cit. pp. 465).

The Guiding Principles on Internal Displacement having altogether 30 principles in all have been divided into five broad sections relating to protection, return, rehabilitation and reintegration of IDPs.

Section I - General Principles which is discussed under Principles 1 to 4. The general principles talks about the primary responsibilities of the National authorities to protect and assist IDPs within their jurisdiction. It also discusses about the enjoyment of equal rights and freedoms as other persons in their country without any discrimination. Furthermore, it talks about the provision of special attention to certain IDPs such as unaccompanied minors, expectant mothers, mothers with young children, female heads-of-households, persons with disabilities and older persons.

Section II – Principles Relating to Protection from Arbitrary Displacement (Principles 5-9): The section-II articulates a right of the persons not to be unlawfully displaced and spells out the situations in which displacement is absolutely prohibited.

Section III – Principles Relating to Protection and Assistance during Displacement (Principles 10 - 23): In this section it has been discussed that every person, including IDPs, should enjoy a broad range of civil, political, economic, social and cultural rights, including the rights:

- a) To life and to protection against acts of violence and torture, sexual and gender-based violence, land mines and recruitment of children into armed forces or groups and their participations in hostilities;
- b) To safe access to essential food, potable water, basic shelter, appropriate clothing, medical services and proper sanitation;
- c) To freedom of movement, including in and out of IDP camps;
- d) To seek asylum in another country;
- e) To personal documentation;
- f) To respect for family life and unity;

- g) To education and training, equally women and girls;
- h) To employment and participation in economic activities;
- i) To vote and participate in government and public offices;
- j) To property and possessions, etc.

Section IV – Principles Relating to Access to Humanitarian Assistance (Principles 24 - 27): The Section – IV discusses about the rights of the international organizations to offer services and to enjoy rapid and unimpeded access to the displaced, when the State authorities are unable or unwilling to provide assistance to IDPs. It also discuss about the provision of humanitarian assistance in consistent with the principles of humanity and impartiality and without discrimination. Further, it discuss about the responsibility of humanitarian actors to take into account and work to address both the assistance and the protection concerns of IDPs.

Section V – Principles Relating to Return, Resettlement and Reintegration (Principles 28 - 30): It discuss about the responsibilities of the competent authority to establish conditions, as well as provide the means and access to a durable solutions to displacement which includes the right to:

- a) Return to their place of origin, integrate locally at the displacement site, or resettle elsewhere in the country voluntarily, safely and in dignity;
- b) Participate in the planning associated with their return or resettlement and reintegration;
- c) Return of lost property or where not possible, compensation; and
- d) Equal access to public services.

Thus the Guiding Principles on Internal Displacement are comprehensive and more than enough to protect the rights of the IDPs if implemented tooth and nail. The principles provide a complete framework for the identification of protection concerns and planning, implementing, and monitoring protection activities in situations of internal displacement. It helps governments, international agencies, NGOs and IDPs themselves to promote and protect the rights of the IDPs (GPC, 2010, Op. Cit. p. 34).



## **4.2.2 APPLICATION OF GUIDING PRINCIPLES AT NATIONAL AND REGIONAL LEVEL**

The fundamental tenets of the United Nations Guiding Principles on Internal Displacement is that the State has the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction as the Principle 3 (1) clearly mentions. Each and every State has the obligation to protect and assist the internally displaced based on the existing international law, including settled rules of international human rights law and in situations of armed conflict, international humanitarian law. As the Principle 1 of the Guiding Principles clearly mention that the IDPs shall enjoy, in full, equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced. Therefore, State must take action, by all necessary means to give effect to their international legal obligations at the national level.

States are encouraged to strengthen the legal frameworks for the protection of IDPs and to promote the Guiding Principles on Internal Displacement through national legislation. The UN Secretary-General's report- 'In Larger Freedom: Towards Development, Security and Human Rights for All' (UN General Assembly, 2005), has emphasized the countries to address all situations of internal displacement effectively and thus urges Member States to accept the Guiding Principles on Internal Displacement as the basic international norm for protection of IDPs and commit themselves to promotion and adoption of the principles through national legislation. This would certainly be an important in strengthening the Guiding Principles as an important tool for advocating and strengthening the human rights of IDPs (Kalin, The Role of the Guiding Principles on Internal Displacement, 2005). Several countries as mention elsewhere which includes Angola, Burundi, Colombia, Peru, Philippines, Sri Lanka, Uganda and Turkey have made explicit references to the Guiding Principles in their strategies, policies or even laws on internal displacement. Many other countries are following their lead and are in the process of developing or revising their displacement related laws and policies (Kalin, 2006).

Moreover, several regional bodies and intergovernmental organizations have also rallied behind the Guiding Principles; among them are - The Organization of African Union (OAU) which has formally acknowledged the principles, The Economic Community of West African States (ECOWAS) while acknowledging the principles and calling its member states to disseminate and apply them, A ministerial declaration of the Intergovernmental Authority of Development (IGAD), has called the principles as “useful tool” in development of national policies on internal displacement. The Organization for Security and Cooperation in Europe (OSCE) has recognized the principles as “a useful framework” in addressing internal displacement. The Parliamentary Assembly of the Council of Europe has also urged its member states to incorporate the principles into their domestic laws. (Kalin, *The Future of Guiding Principles on Internal Displacement*, 2006).

Thus the Guiding Principles on Internal Displacement has been a major source of ‘soft law’ which has filled the major gap in the international protection system for the displaced people. The Guiding Principles with world wide acceptance has been able to make a difference in the lives of the millions of displaced people worldwide since its inception.

### **4.3 INTERNAL DISPLACEMENT AND NATIONAL POLICY IN INDIA: LEGAL FRAMEWORK**

As mentioned elsewhere, a growing number of nations in the world have acknowledged and enacted laws, policies and other strategies for the protection of internally displaced. However, despite the fact that India is a home of thousands of internally displaced persons, still Indian state has not been able to acknowledge Guiding Principles on Internal Displacement and efforts to incorporate the Guiding Principles into national laws is limited to ad hoc and piecemeal basis (Lama, 2000). India has neither national policy nor institutional legal framework concerning the protection of internally displaced persons. However, the Constitutions of India (Part-III) guarantees

its citizens the fundamental rights, which becomes the source of protection to every citizen including IDPs, whenever their rights are violated.

The fundamental rights enshrined in the Constitution of India guarantees rights to every citizen irrespective of their movement from their homes or habitual place of residence. Some of the important rights guaranteed by the Constitution of India are Article-14 which talks about the right to equality before law. On the other hand Article-15 prohibits discrimination on grounds of religion, race, caste, sex and place of birth. Article-16 guarantees every citizen the right to equality in matters of public employment. Article-19 provides the right to freedom of speech and expression, assembly, form association and move freely anywhere in India and practice profession. Article 21 provides the basis for securing right to life. Further, in addition to the mentioned fundamental rights there are certain direction to the states incorporated in the Directive Principles of the State Policy- such as Article-39 which directs the state to ensure its citizens with right to an adequate means of livelihood and Article-41 imposes responsibility on the state to make effective provision to secure the right to work, education and to public assistance etc. Therefore, every citizen including IDPs can approach the court of law under Article-32 of the Constitution of India to seek justice of the violation of their fundamental rights.

#### **4.3.1 NATIONAL POLICY ON RESETTLEMENT AND REHABILITATION 2003**

As noted that the Indian Government does not have any long term policy to deal with the internal displacement especially in regards to conflict induced displacement. However, Indian government did have some centuries old laws pertaining to development induced displacement until 2013. As displacement, until recently, remained a non-issue in the public policy discourse the only National Law regarding displacement is the Land Acquisition Act of 1894. It was the act enacted by the British which governs the process of land acquisition in India for some public purpose by a government agency from individual land owners after paying a government-agency-

determined compensation to cover the losses incurred by the land owners for surrendering their land to the agency. The legislation which has been regarded as one of the draconian laws enacted during the British regime has been retained in its much original form by the Government of India after Independence (Bandyopadhyay & Subedi, 2012).

Under the law the state has tremendous power to acquire land without any open to contestation. The Act is arbitrary which lead to a great deal of dissatisfaction on the issue of – quantum of compensation, delays of payments including corruption amongst the official dealings with the matter, etc. The Act only talks about the issue of compensation of the land acquired but no mention about resettlement or rehabilitation of the displaced people whose land has been taken, the concept of resettlement and rehabilitation was hardly conceptualized during that time (Iyer, 2007). As the Land Acquisition Act of 1894 was confined to only payment of compensation and construction of houses with the barest of amenities for dislocation people to the relocation site, the affected people has to fend by themselves through their own efforts. The government did not felt obliged to arrange for income restoration, development of infrastructure, provision of core amenities, social building and environment of the broken community (Saxena, 2008).

Since 1984, the acquisition of land for ‘public purpose’ has been extended to ‘private sector companies’ for which the demand for land has expanded enormously. Earlier there was little or no resistance because of the fact that industrial project were largely located in ‘backward’ tribal areas as a result of resource concentration, cheaper cost of acquisition and the powerlessness of the affected and the displaced tribal communities to put up a sustained campaigned against the acquisition of land. However, of late the prospects of acquisition of land for Special Economic Zone (SEZ) has been extended to developed areas of agriculture in the vicinity of urban centers, as a result of which the mainstream peasantry commanding greater clout in politics has also been affected which has become more and more vocal about the land acquisition. Further the concerted agitations against acquisition of land across the country threaten to derail the dream mega projects which have been line up with the external investment. Faced with the strong opposition from peasants and pressure from social activists, NGOs, and civil

societies against the land acquisition policy and outdated nature of the land acquisition laws the government has responded by proposing amendments to the Land Acquisition Act of 1894 (Saxena, Development, Displacement, and Resistance: The Law and the Policy on Land Acquisition, 2008).

Thus over a period of time the Government of India began to recognize that policies more than compensation for the land and property acquired was the need of the hour, and the debate over resettlement and rehabilitation began to emerge. The idea of drafting a national policy on rehabilitation to be applicable to all future development-related-displacement was mooted in the mid 1980s and was under consideration which has undergone drafting and revision of the policy for many years. Finally, with the surprise of many a National Policy on Resettlement and Rehabilitation (NPRR) 2003 was notified towards the last days of National Democratic Alliance (NDA) government in 17<sup>th</sup> February, 2004 (Iyer, 2007). However, NPRR 2003 was finalized in a hurriedly manner with no consultation with the civil society groups, the displaced persons (DP) or the project affected persons (PAPs), otherwise normal practice since decades (Fernandes, 2008).

The main objective of the NPRR 2003 is to minimize displacement to the maximum extent possible and where displacement is inevitable, utmost care to be taken in terms of resettlement and rehabilitation of the project affected persons. However, the National Policy on Resettlement and Rehabilitation will apply only to the projects that displace 500 or more families in the plains and 250 or more in the hills or schedule areas. The policy clearly mentioned about the maximum number of families but fails to mention about the minimum number of families for the policy to apply. The impression is that if the project displaces less than 500 families in plains and less than 250 in hills or schedule areas the families displaced will not be entitled to the benefits of the policy.

### **4.3.2 THE DRAFT NATIONAL POLICY ON RESETTLEMENT AND REHABILITATION 2006**

The Draft Rehabilitation Policy of 2006 comes out as a result of the shortcomings raised to the National Policy on Resettlement and Rehabilitation 2003. The policy tried to improve on the 2003 NPRR, by recognizing that the monetary compensation is inadequate to get over the trauma. It also goes beyond the NPRR 2003 by acknowledging that resettlement and rehabilitation should be fundamental to the development process. It speaks in particular of the need to rehabilitate ‘those who do not have legal or recognized rights over the land on which they are critically dependent’ especially those who cannot continue their occupation once the land is taken. Thus, the policy includes displaced persons such as – landless labourers, petty business persons and others. The policy also makes social impact assessment (SIA) mandatory and thus recognizes that the displaced persons (DPs) or project affected persons (PAPs) pay a social cost. The policy adds that where many of the DPs are tribals, ‘a tribal development plan has to be put in place’. Further, the policy adds for a definite time frame for the implementation and wants grievance redressal mechanism to be put in place.

Thus most of the Draft Principles 2006 have improved compared to the NPRR 2003. However, after showing concern for the development and welfare of the displaced persons, the state retains the power to displace its own people and acquired their properties without their consent. The policy talks about rehabilitation as fundamental to the project but does not recognized it as a rights of the displaced persons. Like NPRR 2003 the policy document too acknowledge the need to minimize displacement, however does not make any specification of doing it (Ibid, 2008). The call for the ‘active participation’ of the DPs/PAPs in the process of resettlement and rehabilitation package has not been reflected in the policy document (Bandyopadhyay & Subedi, 2012). They have been excluded from the discussion on minimizing displacement or other pertinent decisions concerning the project and land acquisition. The policy provides guidelines to undertake environment assessment impact (EAI) and social impact assessment (SIA) on the project which physically displaces of 400 or more

families in the plains and 200 or more families in the schedule areas and hills and desert development blocks. What happens to the project that displaces less than 400 families in the plains and 200 in the hills and schedule areas and desert development blocks is another short coming of the draft policy.

### **4.3.3 NATIONAL REHABILITATION AND RESETTLEMENT POLICY 2007**

The wide spread condemnation of the repressive State action forced the Government of India to review the National Rehabilitation Policy of the earlier one. The revised national policy known as the National Rehabilitation and Resettlement Policy 2007 has been notified by the Central Government. Accordingly the policy has been given a statutory backing and subsequently the bill was introduced in the Lok Sabha in 2007. Consequently, the National Rehabilitation and Resettlement Policy 2007 were implemented throughout the country from 31<sup>st</sup> October 2007. The earlier National Policy on Resettlement and Rehabilitation failed to assess the adverse impact on the affected families in terms of – economic, environment, social, and cultural in a participatory and transparent manner. Keeping in mind the above circumstances the National Policy on Rehabilitation and Resettlement 2007 focuses on the objectives given below:-

The first is the order listed aims at minimizing large scale displacement as far as possible; however the theory of Eminent Domain for defending the compulsory acquisition of private land required for a public purpose has been retained. The second objective is to undertake, as far as possible, to acquired waste land, degraded land or un-irrigated land so as to protect the multiple cropped land. The need for considering alternatives that will minimize acquisition of the area, particularly the agricultural land and displacement has also been spell out. The policy talks of providing adequate rehabilitation packages with the active participation of the displaced persons. It also provide for accommodating the special needs for SCs and STs. The most prominent objectives laid down in the policy is to provide to the displaced persons a better

standard of living than enjoyed before and sustainable income. The government also considers it imperative that the rehabilitation concerns are integrated with development planning rather than pursued in an ad hoc manner. Thus the policy hopes to establish harmonious relationship between the body requiring land and the affected displaced families through these efforts (Saxena, 2008, Op. Cit. pp. 6).

Another important objective of the policy is that it will be applicable not only to the persons affected by the acquisition of land for projects of public purpose, but also to involuntary displacement of a permanent nature due to any cause. It benefits not only those whose land and property is acquired but also the families whose source of livelihood is adversely affected; like – any tenure holder, tenant, lessee, agricultural and non-agricultural labourers, landless persons, rural artisans and small traders (Bandyopadhyay & Subedi, 2012, Op. Cit. pp. 151). Although, the policy is not free from criticism because of the many flaws and lack of strong commitment on the part of suffering of displaced persons the policy is a comprehensive one in covering a wide range of dimensions of displacement. It is an improvement on the NPRR 2003 and the Draft Policy on R&R 2006. It has attempted to address various shortcomings outlined in various documents earlier.

#### **4.3.4 LAND ACQUISITION RESETTLEMENT AND REHABILITATION ACT (LARR) 2013**

India has witnessed a number of conflicts and controversial pattern of development and land acquisition policy raising the serious questions of rehabilitation and resettlement of the development induced displaced persons or project affected persons. As mention elsewhere the century old Land Acquisition Act of 1894 has been arbitrarily used to acquired land from the poor farmers without proper policy of resettlement and rehabilitation. To provide just and fair compensation and provisions for rehabilitation and resettlement of persons whose land has already been taken or to be taken, the Ministry of Rural Development has proposed the Land Acquisition,



Resettlement and Rehabilitation Bill in 2011 (LARR Bill 2011) in to public domain on 29<sup>th</sup> July 2011 as part of the pre-legislative consultative process.

The act will regulates land acquisition and laid down rules for granting compensation, rehabilitation and resettlement to the affected people. It has a provision to provide fair compensation to those whose land are taken away, bring transparency to the acquisition of land, infrastructural projects under public or private entities and ensures rehabilitation to the affected and displaced persons. On 7<sup>th</sup> September 2011 the Bill was introduced in Lok Sabha. On 29<sup>th</sup> August 2013, the historic Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (earlier known as Land Acquisition, Rehabilitation and Resettlement Bill, 2011) was passed in Lok Sabha and followed by the Rajya Sabha on 4<sup>th</sup> September, 2013. It got the President assent on 27<sup>th</sup> September, 2013. The Act came into force from 1<sup>st</sup> of January, 2014 (Mishra, 2015).

The legislation passed in the Indian Parliament regarded as historic because for the first time it addresses the concerns of displacement caused by land acquisition in a transparent manner with lot of improvements than earlier version of the policies. Further, the Act of 2013 has replaced the century old British Era Land Acquisition Act of 1894 which was based on coercive policy of acquiring land through the power of the State. The State in the name of the principles of 'eminent domain' and 'public purpose' acquired the land not only for public purpose but also for private purpose which has led millions of people displaced, left landless, homeless, and jobless and are silent on rehabilitation and resettlement and durable solution as a result of forcible land acquisition (Naika, 2016). In contrast the LARR 2013 institutes not only novel rules for acquiring land but also legislates the obligation of the project which cause the displacement to resettle affected communities and enable their recovery. The Act also provides, for the first time a measures of protection of human rights of the internally displaced persons (IDPs) – rights trampled upon which was denied to them in the previous displacement. The new Act sets forth for the new economic entitlements for IDPs and new entitlements to information and consultation on the changes that displacement imposes on their work, income and entire existence (Cernea, 2013).

The LARR 2013 has diluted most of the ruthless provisions of land acquisition act of 1894, the fact of the matter is the new act made an deliberate attempt to put in place the building block for easy accessible of land. One of the significant changes in the act is the introduction of mandatory prior consent from the land owner for acquiring land. Secondly, the major change in terms of replacing the administrative coercion for land acquisition with market transaction, and increased finance to those left without land or livelihood. Thirdly, the act also provides for a new national wide institutional architecture for rehabilitation and resettlement (Naika, 2016, Op. Cit. pp. 69). Some of the salient highlights of 'The Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act 2013' (LARR) for general overview are given below:

- a) To address historical injustice the Bill applies retrospectively to cases where no land acquisition award has been made;
- b) Payment of compensations up to four times the market value in rural areas and two times the market value in urban areas;
- c) The Act will be applicable to all strategic acquisition for defense, housing, infrastructure development and residential purpose;
- d) No land can be acquired in Schedule Areas without the consent of the Gram Sabha;
- e) No one shall be vacated from the acquired land until and unless all payments are made and alternative sites for resettlement and rehabilitation are made;
- f) Compensation for livelihood to those persons who are dependent on the land being acquired;
- g) The bill requires consent of 80 per cent of land owners in case of land acquired by private firms and no less than 70 per cent is required under PPP model projects;
- h) To safeguard food security and to prevent arbitrary acquisition the Bill directs State to impose limits on the area under agricultural cultivation that can be acquired;
- i) Social impact assessment (SIA) will be carried out by the competent specialist for each project causing displacement;

- j) On the basis of the SIA report, a special resettlement and rehabilitation plan will be adopted for all the displaced family;
- k) The act has also special provision for the marginalized people, which includes STs and SCs. They will be given specific entitlements and their land are protected through special legal provision;
- l) It also recognizes basic human rights to housing for IDPs. The development projects will provide ownership of house plot and house to each family at the relocation site;
- m) The act has also the provision for establishing an institution for monitoring on displacement, relocation and recovery.

Thus the new land acquisition policy in that sense is historic and significant one in protecting IDPs and their human rights especially development related displacement.

#### **4.4 CONCLUSION**

Displacement from one's place of habitual residence and loss of life and property without fair compensation and resettlement itself constitute human rights violations. Displacement in any form carries lots of risk factor including violation of social, cultural, economic, civil and political rights by the State itself and to the host communities where resettlement has been made. Thus protection of human rights especially in a displacement situation, be it conflict induced or development induced displacement has been the most grave concern for the agencies working on IDPs. The bodies of agencies or institutions within the United Nations System and outside United Nations have been working out progressively to address the problems concerning IDPs to reduce and minimize issues related to IDPs during displacement and post-displacement situations.

The UN Agencies are popularizing and advocating the UN Guiding Principles on Internal Displacement to adopt and formulate policies into their domestic policy of the States to deal with all stages of displacement. In the line of UN Guiding Principles

on internal displacement India did response to formulate policy specially to deal with the development/projects induced displacement. Land Acquisition, Resettlement and Rehabilitation Act of 2013 (LARR) is a comprehensive development induced displacement policy of India which has replaced the draconian British era LAA Policy of 1894. However, India does not have any policy on one of the most pertinent issue of conflict induced internal displacement, the displacement which has surpassed the number of refugees worldwide including India itself. Permanent policy on conflict induced displacement is the need of the hour in India at present.

## REFERENCES

- Asplet, M. (2013, November 18). *UNHCR*. Retrieved May 28, 2018, from <http://www.refworld.org/docid/528b1a444.html>
- Bandyopadhyay, R., & Subedi, S. (2012). *Human Rights of the Internally Displaced Persons: Law and Practice*. New Delhi: Paragon International Publishers.
- Bhagwan, K. S. (2013, July 30). Conflict Driven Internally Displaced Persons in Manipur: Legal and Human security Framework. Sikkim, India: Sikkim University (M. Phil Dissertation).
- Cernea, M. M. (2013, October 21). *Brookings Institute*. Retrieved June 10, 2018, from <https://www.brookings.edu/blog/up-front/2013/10/21/progress-in-india-new-legislation-to-protect-persons-internally-displaced-by-development-projects/>
- Cohen, R. (1998, August 2). The Guiding Principles on Internal Displacement: A New Instrument for International Organizations and NGOs. *Forced Migration Review*, 31-33.
- Cohen, R. (2004). The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting. *Global Governance*, 459-480.
- Deng, F. M. (1998, February 11). *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*. Retrieved May 31, 2018, from <http://www.refworld.org/docid/3d4f95e11.html>
- Fernandes, W. (2008). The 2006 Rehabilitation Draft: More of the Same. Kolkata: Mahanirban Calcutta Research Group.
- Global Protection Cluster Working Group. (2009). *Hand Book for the Protection of Internally Displaced Persons*. Geneva: UNHCR.

- Group, G. P. (June 2010). *Hand Book for the Protection of Internally Displaced Persons*. Geneva: Global Protection Cluster.
- Hickel, M. C. (2001). Protection of Internally Displaced Persons Affected by Armed Conflict: Concept and Challenges. *International Review of the Red Cross* , 83 (843), 699-711.
- ICRC. (2006, May 1). Retrieved May 26, 2018, from <http://www.refworld.org/docid/46e943710.html>
- ICRC. (n.d.). *ICRC*. Retrieved June 15, 2018, from <https://www.icrc.org/en/mandate-and-mission>
- ICRC. (2002, August 30). *ICRC*. Retrieved May 24, 2018, from <https://www.icrc.org/eng/resources/documents/misc/5dhd82.htm>
- Inter Agency Standing Committee. (1999, December 1). Retrieved June 19, 2018, from IASC: <https://interagencystandingcommittee.org/focal-points/documents-public/protection-internally-displaced-persons-iasc-policy-paper>
- IOM. (2018). *IOM*. Retrieved June 18, 2018, from <https://www.iom.int/about-iom>
- Iyer, R. R. (2007). Towards a Just Displacement and Rehabilitation Policy. *Economic and Political Weekly* , 3103-3107.
- Jornrud, M. (2012, December 6). Retrieved May 24, 2018, from <http://lup.lub.lu.se/student-papers/record/3159781>
- Kalin, W. (2006). The Future of Guiding Principles on Internal Displacement. *Forced Migration Review* , 5-6.
- Kalin, W. (2005). The Role of the Guiding Principles on Internal Displacement. *Forced Migration Review* , 8-9.
- Kiessling, A. (2006). *The Internally Displaced in International Law-Do They Require Enhanced Protection?* Cape Town: (Doctoral Dissertation, University of Cape Town).

- Lama, M. P. (2000). Internal Displacement in India: Causes, Protection and Dilemmas. *Forced Migration Review* , 8, 24-26.
- Liao, K.-W. (2009). Retrieved May 26, 2018, from <http://openscholarship.wustl.edu/etd/472>
- Mishra, A. (2015, May 5). *www.linkedin.com*. Retrieved June 18, 2018, from <https://www.linkedin.com/pulse/land-acquisition-rehabilitation-resettlement-act-2013-anant-mishra>
- Naika, B. B. (2016). Land Acquisition and Development Induced Displacement: India and International Legal Framework. *ILI Law Review* , 65-77.
- OHCHR. (n.d.). *OHCHR*. Retrieved June 18, 2018, from <https://ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx>
- OSCE & UNHCR. (2014). *Protection Checklist: Addressing Displacement and Protection of Displaced Populations and affected Communities along the Conflict Cycle: A Collaborative Approach*. Geneva: OSCE CPC & UNHCR.
- Phoung, C. (2005). *The International Protection of Internally Displaced Persons*. New York: Cambridge University Press.
- Saxena, K. B. (2008). Development, Displacement, and Resistance: The Law and the Policy on Land Acquisition. *Social Change* , 351-410.
- Saxena, K. B. (2008). *Rehabilitation and Resettlement of the Displaced Persons*. New Delhi: Council for Social Development.
- Sen, S. (1998). Exiled at Home: The International Regime of Internal Displacement. In N. Passas, *International Crimes* (p. 191). London: Routledge.
- Sen, S. (2016). Exiled at Home: The International Regime of Internal Displacement. In N. Passas, *International Crimes* (p. 191). London: Routledge.
- Subedi, S. (2009). *Shodhganga*. Retrieved May 25, 2018, from <Http://Hdl.Handle.Net/10603/150177>

UN General Assembly. (2005). *In Larger Freedom: Towards Development, Security, and Human Rights for All: Report of the Secretary-General*. Geneva: UNO.

UN Human Rights Council. (2001, August 21). *www.un.org*. Retrieved 05 22, 2018, from <http://www.un.org/documents/ga/docs/56/a56168.pdf>

UNHCR. (2018). *Global Appeal 2018-2019*. Geneva: UNHCR.

UNHCR. (2006). *Handbook for the Protection of women and Girls*. Geneva: UNHCR.

UNO. (2001). *Training Manual on Human Rights*. Geneva: OHCHR.