

3. PROTECTION OF PEOPLE DISPLACED FROM INDIA'S SINKING ISLANDS: A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

In this article, the authors comment on the interlinkages between human rights and the protection of people on sinking islands in India. Currently, at least two islands in India – Sagar and Ghoramara are on the brink of disappearance due to rising sea levels and coastal erosion in the region. The complete sinking or disappearance of these islands will displace the current residents of these islands. Currently, there is a lack of a relocation or rehabilitation policy to protect people affected by sea-level rise or climate change. The rising sea levels and a lack of policy negatively impact the human rights of the residents of these islands. Against these facts, the authors in this article explore the human rights guaranteed under part III of the Constitution of India that may be applied to protect people displaced from Sagar and Ghoramara. One of the ways to protect these residents is by relocating or resettling them in mainland India in a place that is not prone to hazards. The right to life and equality guaranteed by the Constitution have been previously applied to protect people displaced by other disasters like earthquakes and tsunamis. Given their historical application and success, these two fundamental (human) rights can be applied to protect people from sinking islands without a central policy or law to protect the residents of Sagar and Ghoramara.

Key words: sinking islands, human rights, climate refugees, displacement, climate change policy, India

INTRODUCTION

The Indian and Bangladesh Delta is one of the most climate-vulnerable regions in the world (Cazcarro et. al., 2018). The islands here have either sunk due to rising sea-levels (Kapoor, 2018), or are slowly but continuously sinking and are on the verge of disappearing. Lohachara is one of the islands that has already been erased from the global map (Gosh et. al., 2014). A recorded number of 374 inhabitants of Lohachara island were forced to move to other places (Gosh et. al., 2014). It is predicted that sister islands namely “Sagar” (Bera et. al., 2021) and “Ghoramara” are next in line to disappear due to sea-level rise (Rudra, 2014). While the disappearing islands raise many questions related to legal and policy frameworks, one specific question is linked with people whose homes disappear as a consequence of the island disappearing. While sea-level rise has been a continuous phenomenon in the Bengal Delta region since the early 1980s, there have not been any significant policies governing relocation and rehabilitation of people in the region (Bhardwaj and Renganath, 2022).

In the absence of a sea-level rise related relocation or rehabilitation policy in India, there are several human rights which are negatively affected due to poor implementation of human rights norms by the state. The author enlists and comments on various human rights that are at threat due to the absence of a policy framework for climate-change-induced displaced persons in India.

HUMAN RIGHTS OF THE CLIMATE-INDUCED MIGRANTS IN INDIA

Indian citizens have the right to a healthy environment not only for the current generation but also for the future generation, covered within the ambit of the principle of inter-generational equity (Fermento Resorts, 2009). The right to a healthy environment is a fundamental human right part of the right to life covered under Article 21 of the Constitution of India

(M.C. Mehta, 2004). To protect the human right to healthy environment of its citizens, the government has a Constitutional duty to protect the rights of its citizens (Centre for Public Interest Litigation, 2012).

Under international frameworks, the international organizations state that the states have an 'affirmative' duty to protect people from the adverse effects of climate change. For climate-change-induced displaced persons from Lohachara, Sagar and Ghoramara, the United Nations High Commissioner for Refugees has issued a Guidance document to protect the internally displaced persons (IDPs) in the context of disasters (UNHCR, 2021). These guidelines are based on the universally-recognized human rights with a vision that human rights can guide the protection plans for such IDPs (UNHCR, 2021). The guidelines also acknowledge the responsibility of states to protect people from violations of human rights and disasters (UNHCR, 2021). The guidelines acknowledge that people who are forced to move due to climate change or disasters have human rights such as their right to practice culture and traditions, their right to participate, their right to livelihood, their right to adequate housing, and their right to basic services, all of which are adversely affected (UNHCR, 2021). Therefore, adopting a human-rights based approach for the protection of these displaced persons may be a good holistic approach from a judicial point of view. The implementation of these human rights approaches is not very effective and remains a general challenge in India, especially in the context of climate change related issues (Jolly and Menon, 2019).

RIGHT TO LIFE OF CLIMATE-CHANGE IDPS

Article 21 of the Indian Constitution guarantees right to life to all citizens in India (Pathak, 2019). It includes the right to life and personal liberty free from arbitrary deprivation of the ambit and scope of this right (Pathak, 2019). Within the overarching right to life, there are several other rights encompassed within it. For example, right to food (Court on its own

motion, 2020), right to water (Subhash Kumar, 1991), right to adequate housing (Sudama Singh, 2010), and right to a healthy environment (Charan Lal Sahu, 1989) amongst others. These fundamental rights have not been derived or implemented in India in the context of climate change and rarely in the context of IDPs. The people of Sagar, Ghoramara and Lohachara are IDPs who are fleeing their country of origin due to a slow onset of disasters, i.e. sea-level rise (Bhardwaj and Renganath, 2022). India has previously known conflict-induced IDPs—Kashmiri Pandits—and development-induced IDPs as well, the most well-known being the Narmada Dam IDPs (Bhardwaj and Renganath, 2022). There are judicial decisions that have discussed their human rights and protection frameworks (Rattan Lal Raina, 2014). The Narmada Bachao Andolan Case (Narmada Bachao Aandolan, 2000) discusses the fundamental rights of the displaced person, specifically in the context of Article 21. While doing so, the court recognized the need to read international treaties and covenants concerning human rights to interpret the fundamental (human) rights guaranteed by the Constitution. In Narmada Bachao Aandolan (2000), the court stated:

'tribal populations shall not be removed from their lands without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security or in the interest of national economic development. It was further stated that the said Convention provided that in such cases where removal of this population is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of lands previously occupied by them, suitable to provide for their present needs and future development.'

If this rule is to be applied in the context of those fleeing climate change and sea-level rise, two challenges arise. Firstly, there are no laws or regulations currently existing in India that can govern displacement due to climate change or sea-level rise. Secondly, the rule that the quality of land should be equal to the lands previously occupied by them is misleading in the context

of people fleeing or affected by sea-level rise. If at all, there has to be a relocation framework for such people, they should be relocated to areas that are not affected by sea-level rise. This would imply better quality of lands and not equal quality of lands.

In Rattan Lal Raina (2014), case Article 21 was discussed as the bedrock of constitutional guarantees, consisting of the right to live with dignity. The landlessness, joblessness, homelessness, marginalization, food insecurity, loss of purchasing power and social disintegration that follows displacement, renders people to live life in deprivation of dignity (Jaiswal, 2019).

Right to life comes with several branches of fundamental rights, one of which is the right to water. In the international case of *Ioanne Tietiota*, the science that sea-level rise can cause salination of soil and sources of drinking water, thereby interfering with an individual's right to life was discussed extensively (Bhardwaj, 2021). In India, the application of right to life under Article 21 has been expanded to include, right to relief and rehabilitation of people affected due to disasters (Bipinchandra, 2002). There is however, no specific case law discussing the application of article 21 on people forced to migrate due to disasters or climate change; in the *Kashmiri Sikh Community v. State of J & K 2019*, the High Court of Jammu and Kashmir applied the Prime Minister's Package for Return and Rehabilitation announced in the year 2008 and the Rules of 2009 which applied to Kashmiri migrants. For the purpose of these rules, IDPs meant a person registered with the Relief and Rehabilitation Commissioner Migrant. It means, for IDPs, relief and rehabilitation are core to their protection and specifically of the protection of Article 21, and this interpretation can apply for people displaced due to conflicts and disasters both. The Indian court has also applied 'Guiding Principles on Internal Displacements' in the context of India. In the Case of *J. L. Koul & Ors. v. State of J& K 2009* and *Union of India & Ors. v. Vijay Mam 2011*, the Supreme Court has agreed with the guideline that all IDPs have a right to an adequate standard of living.

The scholars report that residents of Lohachara island were moved to northern islands, which are at the brink of disaster in the form of inundation today. Neither the legislature nor the judiciary have taken up the cause actively to develop human-rights based frameworks to protect the residents of Lohachara. Parasuraman (1999), reported that in India, generally the displaced persons do not have adequate access to water, food security, education etc., all of which form part of the 'right to life' under Article 21 (Shakeel, 2017). These claims are supported by Mahendra Lama, who cites similar findings for people displaced within India (Mahendra, 2000). The problem of right to clean and drinking water and access to it, is an ongoing challenge for people displaced due to climate change and sea-level rise. While currently, there is a lack of specific studies concerning access to water by those affected or displaced by sea-level rise, any specific study can help bolster the scientific evidences concerning climate-change IDPs and right to water in India.

RIGHT TO EQUALITY OF THE CLIMATE-CHANGE IDPS

The cases of conflict-induced IDPs in India thrive on the right to equality guaranteed by Article 14 of the Indian Constitution. In Rattan Lal's Case of 2014, the court discussed Article 14 in relation to the conflict-induced IDP. Under international law, migrants are generally deprived of the right to equality by most governments, however, this deprivation is based on nationality (Crépeau, and Samaddar, 2011) and is distinct from the discrimination against migrants like IDPs. Within India, there are evidences of discrimination against the Northeast migrants working in Delhi (McDuie-Ra, 2012) and more generally internal migrants from Uttar Pradesh and Bihar also have known to face discrimination (Abbas, 2016). Due to this discrimination, their right to life, right to livelihood and adequate compensation is restricted (McDuie-Ra, 2012). This also hinders economic developments for these internal migrants, leaving them in a vicious cycle of poverty, vulnerability and discrimination (McDuie-Ra, 2012).

Article 39 of the Indian Constitution proclaims that 'the state should direct its policy toward securing, among other things, a right to adequate means of livelihood for men and women equally, and equal pay for equal work for both men and women'(Mehta, 2005). However, in the light of the discrimination that persists against the internal migrants in India, it becomes difficult to implement the right to equality and right to equal pay in India. Those fleeing sea-level rise, particularly from the islands in Bengal, may also face discrimination in mainland India because of the differences in race, language, ethnicity and so on. A 2021 study by Columbia University, highlighted the political biases prevalent in India against internal migrants (Gaikwad and Nellis, 2021). This means that there exists institutionalized discrimination by the state against internal migrants who may not be local in a particular geographical context. For instance, India's Untouchables still face discrimination at several frontiers that can keep people from these groups in a vicious cycle of poverty (Aiyar, 2007). The ambit of the judiciary is limited, and experts have recommended training of judiciary to end discrimination and sensitization of issues to ensure that members of the judiciary are not prejudiced (Sarkin and Koenig, 2009). The layers of inequality in India are complex and include gender-based discrimination, caste-based discrimination, religion-based discrimination, tribe-based discrimination, race-based discrimination, and nationality-based discrimination to name a few; a reminder that the multiplicity of identities in India can lead to multiple complexities in India (Ruwanpura, 2008).

CONCLUSION

This short commentary aims to highlight the human rights involved in the context of climate-change-induced displaced persons. While these rights may be many, most of them can be derived from the Right to Life. Regardless, the protection, rehabilitation and relocation of these displaced persons must be implemented keeping in mind the fundamental human rights that are always at risk for these climate-change-induced IDPs. According to international organisations, a human-rights approach is the most holistic approach to protect IDPs fleeing climate change and sea-level

rise. This approach can lead to stronger standards related to the protection of people who are adversely affected by climate change and their human rights. The author, through this article, does not intend to recommend any policy or legal changes through legislative or judicial action but to present an analysis of the existing framework, developed primarily by the judiciary under Article 21 'right to life' interpretations. There is no denying that almost all human rights can be interlinked with the adverse effects of climate change, however in India, the legislative or jurisprudential aspect linking major human rights with climate change has not been effectively achieved yet. Additionally, people displaced because of climate change or rising sea-levels may find themselves at the crossroads of several human rights violations, however, much has to be achieved regarding strengthening their protection mechanisms as well.

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