

## RIGHTS OF THE INTERNALLY DISPLACED PERSON'S IN INDIA: A CASE ANALYSIS

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### Introduction

Human rights are "basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status."<sup>1</sup> These rights can exist in both national and international law as natural rights or legal rights. In India, 'human rights' has been defined in Section 2(d) of the Protection of Human Rights Act, 1993 as:

The rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.

To summarise, human rights refer to the fundamental rights that humans have simply by virtue of being human, and which no authority can create or revoke.<sup>2</sup> The observation of the Constitution Bench of the Hon'ble Supreme Court in *M. Nagaraj v. Union of India*<sup>3</sup> the Apex Court observed:<sup>4</sup>

Regarding fundamental rights as a gift from the state to its citizens is a misconception. Individuals have essential human

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<sup>1</sup> "Displacement and Human Rights: Reflections on UN Practice," *Human Rights Quarterly*, August (1998).

<sup>2</sup> Balakrishnan Rajagopal, , World Commission on Dams Human Rights and Development, *Thematic Review Vol.4 Working Paper* (2000).

<sup>3</sup> (2006) 8 SCC 212.

<sup>4</sup> *Id.*, para 20.

rights that exist regardless of any Constitution because they are members of the human race.

Internally Displaced Persons (IDPs) are persons who have been displaced from their country but have not crossed a border to seek safety, according to the United Nations High Commissioner for Refugees (UNHCR). They, unlike migrants, are on the run in their own country. Natural catastrophes, climate change, development efforts, or violence and war can all cause displacement.

According to estimates, there will be 55 million internally displaced persons worldwide by the end of 2020, with 48 million relocated as a result of conflict and violence. There are 9,29,318 displaced individuals in India. As of December 2020, the number of IDPs displaced by violence and war was at 4,73,000.

People who have been internally displaced fall into three categories: those who have been displaced as a result of natural disasters, those who have been displaced as a result of development activities such as dam construction, and those who have been displaced as a result of instances of violence and conflict.

The first two categories are covered by legislation in India: The Land Acquisition Act of 2013, and the Disaster Management Act of 2005. However, there is no equivalent law in India for the third group of displaced individuals.

State governments, with the cooperation of the Centre, carry out rehabilitation of displaced communities through different rehabilitation and assistance initiatives.

There are now seven sub-schemes under an umbrella scheme named "Relief and Rehabilitation of Migrants and Repatriates" with a total budget of Rs 1,452 crores from 2021-22 to 2025-26.

These include financial aid and other services for families of civilian victims of terrorist violence such as militancy, insurgency, communal, left-wing extremist violence, cross-border fire, and so on.

Since independence, India has seen outbreaks of violent clashes among communities, resulting in large-scale displacement — the exodus of Kashmiri Pandits in 1989, violence in the Northeast, including the Nellie massacre in 1983, the exodus of Bru tribes from Mizoram in 1997, the Gujarat riots of 2002, the anti-Sikh riots of 1984, the Muzaffarnagar riots of 2013, and the recent clashes in Northeast Delhi — the list of internally displaced people awaiting justice goes on.

### **Legal Response to the IDP'S in Kashmir**

#### **Background to the conflict in Kashmir**

From the time of 1947, when the Indian subcontinent was partitioned into two independent states i.e. India and Pakistan, since then Kashmir is a part of many conflicts. After the Instrument of Accession was signed by Maharaja Hari Singh of

princely state of Kashmir, it came under the Indian control. Now, the state of Jammu and Kashmir includes the province of Ladakh, and the most displaced part is the province of Kashmir valley, and the people have mostly shifted to the third province of Jammu.<sup>5</sup>

Even though Kashmiri Pandits were very less in number in the Valley, but the role of this community was not insignificant in the society.<sup>6</sup> They are known to be the traditional land owners who belonged to the highly educated class, working with the courts and even the administrations and thus were a prominent and highly held group in the valley. But due to conflicts in the late 1980's it led to their forced displacement, challenging their identity and many other things.<sup>7</sup>

To safeguard the properties of the displaced Kashmiri Pandits that were left behind, in the year 1997, two laws were enacted by the Jammu and Kashmir government and also to limit distress sales which are as follows:

- The J&K Migrants Immovable Property (Preservation, Protection and Restraint of Distress Sales) Act<sup>8</sup> and

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<sup>5</sup> *Roots in Kashmir Tug Hindus Home*, New York Times (NYT), available at: <http://www.nytimes.com/2010/06/06/world/asia/06kashmir.html?src=me>, (Visited on March 2, 2022).

<sup>6</sup> Sumantra Bose, *Kashmir: roots of conflict, paths to peace*. Harvard University Press. (2005).

<sup>7</sup> Reuters, (5 August 2010), Q+A - What's happening in troubled Kashmir? available at: <http://in.reuters.com/article/idINIndia-50646920100805>, (visited on March 1, 2022).

<sup>8</sup> The Jammu and Kashmir migrant immovable property (preservation, protection and restraint on distress sales) Act, 1997. (Act XIV of 1997).

➤ The J&K Migrants (Stay of Proceedings) Act.<sup>9</sup>

### **State Legislation to protect the rights of the Displaced Persons**

As already being mentioned above there are two state legislations which were enacted namely:

- a) The J&K Migrants Immovable Property (Preservation, Protection and Restraint of Distress Sales) Act<sup>10</sup> and
- b) The J&K Migrants (Stay of Proceedings) Act.<sup>11</sup>

The detailed analyses of the above two are as follows:

### **Rights Protected under the Act**

- Right to Reside:

During the violent strife in Jammu and Kashmir in 1989-90, a substantial number of Kashmiri Pandit and Punjabi Hindu families migrated to Jammu and other parts of the nation, abandoning their immovable assets in the Kashmir valley. The J&K government gave necessary instructions to its field authorities, particularly the District Administration, from time to time in order to conserve and defend these unattended properties.<sup>12</sup>

- Right to keep property and get fair deal in case of sale:

However, due to the lack of a clear Act or Rule in this area, the field agencies were limited in their ability to monitor and prosecute any crimes committed in relation to these properties. It

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<sup>9</sup> Act of 1997.

<sup>10</sup> The Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. (Act XIV of 1997).

<sup>11</sup> Act of 1997.

<sup>12</sup> Available at: <http://www.achrweb.org/reports/india/AR08/jammu.html> (Visited on March 2, 2022).

was also widely reported that Kashmiri migrants in the Valley were selling their immovable property through middlemen, giving the impression that these assets were being sold under duress.<sup>13</sup>

### **Judicial Delineation in Relation to Kashmiri Migrants**

Indian judiciary has given beneficial, liberal and purposive interpretation to various articles (Article 21, 14, 19 etc.) of the Constitution of India to protect the rights of the displaced persons, either due to development or due to conflict. As development-oriented displacement is not part of this discussion, it is necessary that the judicial approach be limited to conflict related displacement. The courts have delivered a few judgements and orders to protect the interest and rights of Kashmiri Pandits. The researcher here in this chapter would be analysing two relevant cases and a decision of the National Human Rights Commission.

#### **Case 1. P.K. Koul v. Estate Officer<sup>14</sup>**

The plight of Kashmiri Pandits who have abandoned their homes in the valley is frequently disregarded in Kashmiri politics. In a landmark decision on November 30, 2010, the Delhi High Court upheld the right to shelter of Kashmiri Pandits who were transferred from Jammu and Kashmir to Delhi and posted in local

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<sup>13</sup> *Ibid.*

<sup>14</sup> W.P.(C) No.15239/2004, Single Judge Bench, hereinafter referred as *P. K. Koul Case*.

offices of central organisations and departments, but were asked to vacate their government allotted houses due to superannuation.<sup>15</sup>

Those representing the Central Government in the Kashmir valley, particularly those representing intelligence agencies, paramilitary and defence forces, as well as the Government media, the petitioners claimed, became prime targets of the militants, with lists of such people being published and circulated in the localities. As a result, the Indian government made emergency measures to evacuate such officials in order to preserve their lives. The writ petitions were filed to prevent them from being forcibly evicted from the quarters they were occupying, claiming that it was their only option for a roof. Because of the present situation and the government's incapacity to protect their lives and property, they are unable to return to their home state. Their dwellings, which were the only ones in the valley, were either burned down or occupied. Their properties, which were the valley's only homes, were either destroyed or occupied. They were reduced to the status of refugees' in their own country, with nowhere to go and no support from the state, with the only difference being that they were evicted within their own country rather than being displaced to another.<sup>16</sup>

The Union of India stated that government employees were required to use public venues as a condition of employment.

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<sup>15</sup> Monika Mandal, 'Internal Displacement in India: Status, Condition & Prospects of Return'. 33 *Refugee Watch* 33 (2009).

<sup>16</sup> *P. K. Koul Case*, para 12, 14, 15, 16, 19, 21.

Because such connections terminate when a government employee retires or dies, expert counsel firmly contends that the petitioners have no right to inhabit the official residence when they retire. It is further claimed that the petitioners have no right or entitlement to any type of accommodation from the respondents. According to the submission, the petitioners' judgments are in compliance with the terms of the Act of 1971 and judicial precedents on the topic and cannot be questioned on any legally tenable basis.<sup>17</sup>

All citizens of India have the right to stay and reside in any region of the country, according to Article 19(1)(e) of the Indian Constitution. Article 21, on the other hand, specifies that no one shall be deprived of his life or personal liberty unless in compliance with the processes specified by law. In this case, the High Court emphasised multiple Supreme Court precedents declaring that food, shelter, and clothing are the bare minimum of human rights. The court reaffirmed its earlier enlargement of the right to residence and settlement, stating that it is a Fundamental Right under Article 19(1)(e) and a component of the indivisible meaningful right to life under Article 21 of the Indian Constitution.<sup>18</sup>

Invoking United Nations human rights norms, the High Court concluded that international human rights law imposes a legal responsibility to ensure minimal welfare guarantees. The

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<sup>17</sup> Para 26, 27, 29, 30, 31, 32, 34.

<sup>18</sup> Para 289, 290, 294, 295, 296, 297.



agreements, accords, and declarations, as well as the guiding principles, demonstrate the worldwide consensus that every government has a duty to provide and provide these guarantees, which include, among other things, housing and basic general aid to everyone on its territory.<sup>19</sup>

The existing international accords, as well as the Guideline Principles for IDPs, recognise that shelter and housing is a basic human right of every individual, and that is the bare minimum requirement should be provided to internally displaced people. These principles also emphasise all displaced persons rights and place a primary duty and responsibilities on the national authorities concerned to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, including protection against forcible return and resettlement in a place where their life, safety, liberty or health would be insured. The Guiding Principles were created as a result of a protracted collaborative effort.<sup>20</sup>

The High Court debated whether the principles described above were binding on Indian courts. A catena of binding Supreme Court precedents has authoritatively assessed and thoroughly resolved the scope, procedure, and applicability of international conventions and treaties in the interpretation and extension of rights. The Supreme Court laid forth the following

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<sup>19</sup> *P. K. Koul Case*, para 302, 304, 305.

<sup>20</sup> *Para* 310, 312, 313, 314.

guidelines on the application of international conventions and treaties in India in Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd., an authoritative judgement.<sup>21</sup>

In interpreting the domestic/municipal laws, this court has extensively made use of International law inter alia for the following purposes: (i) As a means of interpretation; (ii) Justification or fortification of a stance taken; (iii) To fulfil spirit of international obligation which India has entered into, when they are not in conflict with the existing domestic law; (iv) To reflect international changes and reflect the wider civilization; (v) To provide a relief contained in a covenant, but not in a national law; (vi) To fill gaps in law.

The Delhi High Court, following the Vishaka decision on the application of international human rights norms in the absence of domestic legislation, ruled that:

It is noteworthy that there is no specific law, rule, regulation, or instrument providing for the treatment of IDPs or establishing any minimum standards for their protection, rehabilitation, or relocation. The Guiding Principles on Internal Displacement reiterate the very right to shelter constitutionally guaranteed and recognized as a basic human right in the international instruments. These Guidelines thus consolidate and fill gaps in national and international law relating to such

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<sup>21</sup> JT2008(7)SC11, 2008(9)SCALE69.

displaced persons. They also provide a valuable benchmark for what must be ensured as part of the basic human rights security of such persons and would guide consideration of the rights of the present petitioners.<sup>22</sup>

The High Court in the present case also held that:

*Courts are bound to use international human rights covenants, which also stand incorporated into the Protection of Human Rights Act, 1993, as a pillar of support for the rights recognised thereby and to ensure the requisite assistance as well as access to shelter as a positive right so that the bare minimum for those in need is enabled. The petitioners assert such rights in the challenge laid in these writ petitions.*<sup>23</sup>

*According to the High Court, the petitioners belong to a huge group from their community who were forcibly removed from one part of the nation, leaving them homeless and without resources. They lack resources at the site of their move and fear eviction from their current residence. Through their writ petitions, the petitioners seek protection and enforcement of their fundamental right to life, which includes shelter. International accords recognise shelter as a fundamental human right. In terms of IDPs, the Guiding Principles reaffirm the state's rights and obligations. Consideration of the petitioner's rights, then, would include guaranteeing the aims and declarations made in the foregoing international treaties, particularly those adopted by India and reaffirmed by the Guiding Principles for Internally Displaced Persons.*<sup>24</sup>

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<sup>22</sup> *P. K. Koul Case, para 132.*

<sup>23</sup> *Para 130.*

<sup>24</sup> *Ibid.*

The Delhi High Court also observed that:<sup>25</sup>

*The petitioners are not occupying the subject premises because they wish to. They are also not claiming an endless right to occupy the public premises or claiming a title or a right to the relevant property. The petitioners have merely sought protection of their right to shelter till such time, as the respondents are able to ensure their right to life in their home state or make available a reasonable alternative shelter to the petitioners. The respondents have themselves considered such requests and permitted identically placed persons to continue to occupy the allotted accommodation. Such a claim has also been entertained and granted by not only the Supreme Court, but also by this court as well in several precedents noticed hereinabove. The respondents have admitted in their counter affidavit that the petitioners have nowhere else to go.*<sup>26</sup>

The Court also pointed that

*Within the larger group of the IDPs from Kashmir, the petitioners form a special class and are retired government personnel. When the petitioners were forced to relocate, they received government accommodation not only as an incidence of their service, but also on account of their compulsive eviction from their homes. They have also not been able to get any benefit of any of the schemes framed by the government which clearly admit the special needs and entitlement of these displaced persons.*<sup>27</sup>

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<sup>25</sup> Para 134.

<sup>26</sup> P. K. Koul Case, para 140, 141.

<sup>27</sup> Para 152, 155, 156.

*The Delhi High Court ruled that no legal interpretation would be appropriate if it did not take into account the relevant facts and circumstances. There can also be no statutory interpretation that contradicts constitutional safeguards. The current petitioners cannot be compared to or treated in the same way that the respondents would treat any other occupier who has not suffered the same egregious injustices and deprivations as the petitioners and is illegally occupying public land.<sup>28</sup>*

*It, therefore, needs to be decided that the possession by petitioners cannot be understood as “unauthorised occupation” of the quarters within the sense of the word in Section 2(g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.*

This judgement provides a key legal precedent since it covers the following issues:

- 1. The right to shelter/housing has been recognised in several portions of the judgement, and its meaning has also been enlarged on.*
- 2. The judgement criticises the practise of coercive evictions and makes various references and suggestions concerning internally displaced individuals, as well as the needs for resettlement and rehabilitation.*
- 3. The judgement has given analysis of specific provisions which has a special focus on resettlement, rehabilitation and compensation.*

## **6.2 Case: All India Kashmiri Samaj v. Union of India<sup>29</sup>**

The Supreme Court has asked the Centre to file an action taken report on housing, employment and payment of cash

<sup>28</sup> *P. K. Koul Case, para 160, 161.*

<sup>29</sup> Writ petition (civil) NO.534 of 2006.

compensation to Kashmiri Pandits who were forced to leave their land.

A three-judge bench consisting of Chief Justice S.H. Kapadia and Justices K.S. Radhakrishnan and Swatanter Kumar gave this direction on a public interest petition seeking a white Paper on the plight of Kashmiri Pandits living here and in other parts of the country.

The petition by the All-India Kashmiri Samaj and others wanted the displaced Kashmiris involved in all future meetings, negotiations and agreements being entered into by the government concerning the Kashmir Valley and several other demands were mentioned. It said the Kashmiri Pandits should be declared internally displaced persons as per the principles laid down by the United Nations General Assembly.

Taking into consideration the petitioner's plea, the Chief Justice asked Additional Solicitor-General Indira Jaising to associate leaders of the Kashmiri migrants and file the action taken report in four weeks. Earlier, only Rs.7.5 lakh was being given as compensation to those whose houses were completely destroyed and to those who were willing to return to the Valley and wanted to construct a house; and Rs.2 lakh for those whose houses were partly destroyed.

Given the significance of these two judgments by the High Court of Delhi and the Supreme Court of India in protecting the human right to adequate housing in India, as well as their global

precedents, the Housing and Land Rights Network (HLRN) believes that elements of these judgments could be used in framing laws and policies on affordable housing, urbanisation, planning, slums, resettlement, and rehabilitation throughout India. The government must swiftly implement not just progressive court verdicts aimed at protecting human rights, but also national and international legislation, which these judgments have also alluded to and confirmed in the aforementioned cases.

### **Conclusion**

The conflict in Kashmir valley has lasted more than three decades. The ethnic cleansing and extermination of Kashmiri Pandits marked the beginning of the upheaval in the Kashmir valley in 1989-1990. Ethnic cleansing is an endeavour to establish ethnically homogenous geographic areas by deporting or forcibly displacing members of specific ethnic groups. The United Nations defines ethnic cleansing as the use of force or intimidation to remove people of another ethnic or religious group from a certain region in order to make it ethnically homogenous. Many Muslims in Kashmir joined the so-called liberation struggle and chose to engage in the military battle. In Kashmir, militancy sought to create a religiously (read: Islamically) homogenous valley. In order to reach this degree of homogeneity, the Kashmiri Hindu minority was driven to depart the valley.<sup>30</sup>

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<sup>30</sup> Available at: <http://www.e-ir.info/2013/07/15/protecting-internally-displaced-persons-in-india/> (Visited on March 3, 2022).

Demolition of monuments, tombs, and places of worship, as well as the destruction of any tangible relics of the targeted community, are all examples of ethnic cleansing. When a group of people is targeted for removal from a region, ethnic cleansing may result in death or relocation. Houses belonging to Kashmir's minority Hindu Pandits were set ablaze, and temples were desecrated. Notices were posted on the walls of Pandit homes, urging them to leave the valley or perish.<sup>31</sup>

Genocide might be employed to carry out ethnic cleansing. Genocide is described as the intentional and systematic annihilation of an ethnic, racial, religious, or national group, in whole or in part.<sup>32</sup>

In a decision issued on June 11, 1999, the National Human Rights Commission (NHRC) noted that

Against the stern definition of the Genocide Convention, the Commission is constrained to observe that while acts akin to genocide have occurred with respect to Kashmiri Pandits and that, indeed, in the minds and utterances of some of the militants a genocide-type design may exist, the crimes against the Kashmiri Pandits are near-Genocide and not Genocide.<sup>33</sup>

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<sup>31</sup> *Ibid.*

<sup>32</sup> Article 2 of 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)

<sup>33</sup> Available at: <http://www.rediff.com/news/1999/jun/11jk.htm> (Visited on March 3, 2022).



Thousands of Kashmiri Pandits have died in exile as a result of environmental changes. Pandits from Kashmir were forced to live in difficult conditions in makeshift camps in Jammu/Delhi. During the summer, the average temperature in Kashmir is in the thirties, whereas it is in the forties in Jammu/Delhi. Consider 45 degrees Celsius and 6-8 people living in a tent. Sunstrokes, anaemia, and other complications arose from the habitat shift, and many people died as a result. Furthermore, fatalities occurred as a result of snake bites, as the slum-like circumstances of the camps served as a breeding habitat for snakes. Some people are still living in camps after 21 years.<sup>34</sup>

For the past years, Kashmiri Pandits have been denied justice. Human rights violations against Kashmiri Pandits must be remedied immediately. Kashmiri Pandits have suffered not just physically but also culturally and mentally. Kashmiri Pandits have been suffering as a result of a political-religious conflict in which they have no role.<sup>35</sup>

The National Human Rights Commission advised the federal and Jammu and Kashmir governments to increase efforts to aid Kashmiri Pandits, but refused to acknowledge that a 'genocide' was being perpetrated against the group in the state. In its ruling on the petition of two Kashmiri Pandit organisations, the

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<sup>34</sup> Dr. K.N.Pandita, NHRC'S verdict on Kashmiri Pandits, *available at*: <http://panunkashmir.org/kashmirsentinel/junejuly1999/6.5.html> (Visited on March 3, 2022).

<sup>35</sup> *Ibid.*

commission expressed its empathy for the Pandits' views that they had not been provided the understanding and relief that they needed and were entitled to.<sup>36</sup>

Although the panel stated that the crimes done against Kashmiri Pandits warranted the harshest censure, it decided that the crimes committed against the group stopped short of genocide. A three-member panel led by NHRC chairperson Justice M N Venkatachaliah overturned the Jammu and Kashmir government's preliminary objection disputing the application of the Protection of Human Rights Act 1993 in the state. According to the ruling, the panel proposed numerous ways to improve understanding and assistance to Kashmiri Pandits during "these trying days." A significant idea was the formation of a high-level panel to explore the practical challenges affecting the Pandits. The committee has been instructed to produce its initial report as soon as feasible and to keep the commission updated on developments on a regular basis.<sup>37</sup>

The National Human Rights Commission, which is monitoring the government's efforts to rehabilitate Pandits in a safe and secure way, expressed optimism that the community will be able to return to the Valley in safety and honour in the not-too-distant future. Furthermore, the Commission stated that it will

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<sup>36</sup> Available at: <http://www.nhrc.nic.in/dispArchive.asp?fno=1537> (Visited on March 3, 2022).

<sup>37</sup> *Ibid.*

continue to closely watch developments in the Pandit case, including the correct listing and preservation of the buildings they left behind, as well as the rehabilitation of the dwellings.<sup>38</sup>

While there were some discrepancies between the statistics supplied by the complainant and the governments, the Commission claimed that almost three lakh Pandits were compelled to depart the Valley owing to violence and insecurity. The panel felt that peace would be restored for everybody in the Valley at some point, and that the essence of such peace would be reconciliation and the restoration of the trust and tolerance that had characterised the Valley for generations.<sup>39</sup>

Thus, based on the above legal judgements, we may conclude that the courts have granted protection to the Kashmiri Pandits minority group who are suffering relocation, but executing it raises various political and economic issues for the individual state. For example, the government should offer suitable rehabilitation facilities, and there is a great demand for this that exceeds what the government can give. As a result, not only the concerned state, but also the Union government, should give assistance for the care and protection of this displaced people. Only then can the Courts' judgements become effective and assist the displaced people.

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<sup>38</sup> Available at: <http://www.e-ir.info/2013/07/15/protecting-internally-displaced-persons-in-india/> (Visited on March 3, 2022).

<sup>39</sup> *Ibid.*