

VIOLENCE-INDUCED INTERNALLY DISPLACED PERSONS: THEIR RIGHTS AND THE CORRESPONDING DUTIES OF THE STATE

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ABSTRACT

The problem of internal displacement of people due to instances of violence, is a major issue that is spread across the nation. Communities which have been so displaced forcefully live in dire conditions with no or inadequate access to their basic rights. The absence of any legislation or policy that specifically protects such communities only adds to their vulnerability. However, being bona fide citizens of India, persons of such communities hold the same fundamental legal rights as any other Indian citizen and the State is duty-bound to ensure their protection as well as welfare.

Giving a very brief introduction into the jural relation between rights and duties as explained by Hohfeld, this paper will introduce the concept of internal displacement and how the law regarding forceful internal displacement evolved in the international sphere. The paper would lay down the rights available to IDP communities, with special reference to IDPs displaced due to violence, under various international laws and conventions. Similarities in the Indian Constitution with the international law, the Fundamental Rights available to such communities along with the additional duty of the State towards these communities on the basis of the Directive Principles will also be discussed. It will further suggest ways forward for giving the IDP communities of the State the rights they deserve.

Keywords: Community, Rights, Duty, IDP, Constitution, Hohfeld etc.

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I. INTRODUCTION

It is a universally accepted fact that every human has certain basic rights which they are free to enjoy equally irrespective of their race, nationality, religion, sex, ethnic origin, language and so on. These rights are available to everyone simply on the basis of being human and as such, are called 'Human Rights'.¹

By their very nature human rights are available to every individual, including an Internally Displaced Person (IDP). It is the duty of the nation state to ensure that its citizens are free to enjoy their human rights without any discrimination or discrepancies. The Hon'ble Supreme Court of India too has upheld this view and in the matter of *M. Nagaraj & Ors. Vs. Union of India & Ors.*² has observed that,

"It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race."

If the State fails to protect the human rights of its citizens, this responsibility shifts to the international community. However, protection of its IDP population has always been considered as a matter of the internal affairs of a nation. As such, international law and assistance from international organizations are dependent on the domestic policies of a nation. In lieu of the lack of adequate domestic laws protecting their rights in many countries, this has resulted in unnecessary continued suffering of the IDP population worldwide.

Internal displacement of people, simply defined, refers to a situation when the population of a region is forced to relocate, due to any uncontrollable factor, from their native region to another region but within the territorial borders of their home country. The causative factor behind such a displacement plays an important role in determining the domain in which the issue falls. While internal displacement due to violence falls in the category of Civil and Political Rights, other causes of internal displacement such as natural disasters or developmental projects brings the issue into the category of Socio-Economic Rights.³ However, irrespective of the cause, the

¹ Dr. H.T.C. Lalrinchhana, MJS, "Rights of Internally Displaced Persons (IDP) With Reference to The Guiding Principles Of IDP", available at: <http://djaizawl.nic.in/article.html> (visited on April 01, 2023).

²(2006) 8 SCC 212

³Centre for Social Justice, A study on internally displaced persons of india- mapping and citizenship rights (2013), available at: https://www.centreforsocialjustice.net/wp-content/uploads/2015/12/A_Study_on_Internally_Displaced_Persons_of_India.pdf (Visited on March 15, 2023)

duty to protect such Internally Displaced Persons (IDPs) and provide them relief falls on the State as a whole.

In the case of India, the Internal Displacement Management Center⁴ (IDMC) reports that around 1.8 million people were internally displaced due to violence between the years 2008 to 2021. This forms a significant part of the population of the country and as such, is a major issue for the State. Adding to the problem is the absence of any specific law that lays down the rights available to this violence induced internally displaced persons. However, by the very virtue of being human, such communities are entitled to certain natural and human rights. There are multiple international conventions and laws, both hard and soft, which offer these rights and protection to such communities. When such laws and conventions are assimilated into the Indian Constitution, they become the legal rights of the citizens, including those who have been displaced internally due to violence.

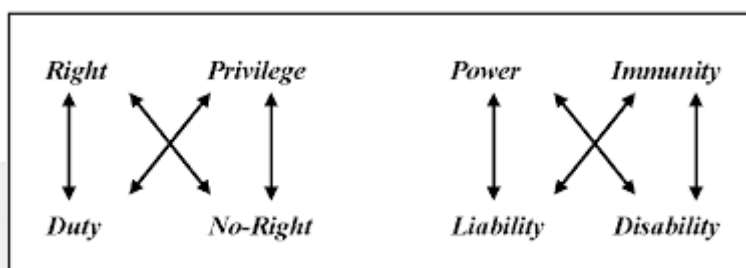
This paper analyses the rights available to those communities in India which have been internally displaced due to violence and the corresponding duty on the State to protect them, in light of the absence of a specific law for their protection. Part I of the paper gives a very brief introduction into the Hohfeldian concept 'rights' and its jural correlative- 'duty'. Part II of the paper introduces the concept of internal displacement and the evolution of the law regarding internal displacement in the international sphere. Part III of the paper lays down the rights available to an IDP under the Guiding Principles on Internal Displacement. Provisions in the Constitution of India - the Fundamental Rights available to such communities along with the duty of the State towards these communities on the basis of the Directive Principles, is also discussed in this part. Part IV concludes the paper by summarizing the issue and providing suggestions.

Part I

⁴Internal Displacement Management Centre, Country Profile India, available at: <https://www.internal-displacement.org/countries/india#displacement-data> (Visited on April 12, 2023)

II. HOHFELDIAN CONCEPT OF JURAL RELATIONS

The term 'right' is something that appears very frequently whenever there is a legal discourse. However, it remains one of the most difficult terms to explain and has frequently been used synonymously with other terms such as power, immunity and privilege. To find a solution to this problem, the eminent jurist Hohfeld tried to separate them into different legal interests by using the method of jural correlatives and jural opposites. He then went on to demonstrate the jural relations of different legal interests between individuals, which can be explained as below:⁵



In the above table, jural correlatives are connected by vertical arrows, while jural opposites are connected by diagonal arrows. Simply stated, jural correlatives are where:

- If X has a right then it imposes a correlative duty on Y,
- If X has a privilege then Y has 'no-right',
- If X has a power then it imposes a liability of Y, and,
- If X has an immunity, then Y has the correlative disability.

Jural opposites, as the term suggests, signify opposing relations between legal interests. Thus,

- Right is the absence of 'no-right' in oneself.
- Liberty is the absence of duty in oneself.
- Power is the absence of disability in oneself.

⁵ Wesley Newcomb Hohfeld "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," 23 *The Yale Law Journal*, pp. 16–59 (1913) available at: <https://doi.org/10.2307/785533> (visited on April 21, 2023).

- Immunity is the absence of liability in oneself.

Thus, as per Hohfeld, 'rights' are legal interests that impose a correlative duty on another. By using such a correlative, the term 'right' was limited to its appropriate meaning and implied that a legal right will always carry a corresponding legal duty. The holder of a legal right is legally protected from interference in the enjoyment of their right by another. Additionally, law also ensures that the right-holder receives their due aid or recompense from another. In this way, Hohfeld equated the word 'right' with the term 'claim'.

Keeping this in mind, it cannot be denied that an IDP is also someone who is a right-holder and thus, the corresponding duty to protect their rights falls on the State. A State is legally obliged to take equal care of its IDP citizens as it does for its other non-IDP citizens.

Part II

III. THE ISSUE OF INTERNAL DISPLACEMENT OF PEOPLE

One of the greatest human tragedies that has emerged especially after the Cold War ended is the issue of internal displacement of people all over the world. Displacement is evidence by itself of vulnerability since those displaced face a bleak future with no recourse to traditional coping mechanisms while being dispossessed of their daily life, home, regular means of earning a livelihood. The situation is more severe for those forced into an "exodus within borders" since they barely have any protection within domestic laws or even the international legal system. However, internal displacement is considered as the domestic affair of a country, any international organization seeking to aid such internally displaced people must attain the permission of the government of that nation i.e. the very authorities who may have had a hand in the displacement. Thus, IDPs continue to suffer from scarcity of basic necessities such as food/ water, shelter, education, security of life, etc.⁶ resulting in a violation of their natural and human rights. This defeats the very purpose of the law of a State, which aims to maintain law and order in the society and protect the rights of its citizens.

However, since the last few decades, the international community has woken up to the plight of IDPs. Efforts have been made and are being continued, to offer them basic

⁶Thomas G. Weiss and David A. Korn, *Internal Displacement Conceptualization and its consequences* 2 (Routledge, Abingdon, 2006).

protection and improve their situation. A new principle has emerged, “sovereignty as responsibility”, which holds that it is the duty of the national government to protect the human rights of its people, including IDPs, as part of its statehood; and when the government is unwilling/ unable to do so, it falls on the international community to protect the vulnerable community.⁷

IV. EVOLUTION OF INTERNATIONAL LAW ON INTERNAL DISPLACEMENT

The phenomenon of forceful internal displacement put forth a unique challenge before the international society. On the one hand was the doctrine of “responsibility to protect” the citizens of a country facing human rights abuse while on the other hand was the “principle of sovereignty” of nations and the “policy of non-interference” in the domestic affairs of a state. The severity of scope and intensity of the problem however, forced the international community to recognize the enormity of the predicament as well as call for prudent action.⁸

In 1992, the United Nations Secretary General submitted before the “Commission on Human Rights (CHR)” an analytical report regarding IDPs. Thereafter, by resolution 1992/73, the Secretary General was authorized to appoint a “Representative of the Secretary-General (RSG) on internally displaced persons” Francis M. Deng, who was charged with exploring the issue in detail, including examining the existing international laws as well as their applicability in protecting internally displaced people and providing them relief. He was replaced by Walter Kälin in 2004.⁹

Accordingly, the RSG directed his focus at formulating apposite institutional and normative frameworks which would protect the interest of and provide assistance to IDPs. From its outset, one of the primary goals of the undertaking was to frame, if not ‘hard’ laws, then at the very least a set of ‘soft’ laws that would guide those who aim to protect and assist IDPs. However, the reaction of the international community including Governments and humanitarian organizations was defensive. Their concerns were considered and addressed by the RSG who realized the need for identifying the existing protections offered by

⁷*Id at 3.*

⁸ Roberta Cohen and Francis Mading Deng, *Masses in Flight: The Global Crisis of Internal Displacement* ix, xix (Brookings Institution Press, Washington, D.C., 1998).

⁹UN Commission on Human Rights, *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*, 11 February 1998, E/CN.4/1998/53/Add.2, available at: <https://www.refworld.org/docid/3d4f95e11.html> (visited on April 05, 2023).

international law to IDPs as a first step. Thus, under the guidance of Professor Manfred Nowak and Professor Robert Goldman, two distinct and substantial approaches were produced- “*A Compilation of International Legal Norms Applicable to Internally Displaced Persons*” and “*Internally Displaced Persons and International Law: A Legal Analysis Based on the Needs of Internally Displaced Persons*” respectively. While the former was a rights-based approach the latter was a needs –based approach to the issue. Both studies were then presented and their inherent differences highlighted at a Legal Roundtable in Vienna in October 1994. Subsequently, Professor Walter Kälin was tasked with merging the two approaches. This merged document titled “*Compilation and Analysis of Legal Norms*” was presented by Mr. Deng to the CHR in 1996. As per the findings of this compilation it became clear that though existing international law offered provisions for IDPs, it failed in many areas to provide them with sufficient protection. 17 areas with legal imprecision and 8 areas with a clear lacuna in the law were identified. Recommendations were offered to combat such loopholes.¹⁰

These recommendations again faced a lot of opposition and criticisms from the international society. However, after a lengthy series of negotiations over a span of two years what emerged were the “*Guiding principles on internal displacement*” (GPID).

1. Guiding Principles On Internal Displacement, 1998 (GPID)

Adopted in the fifty-fourth session of the Commission on Human Rights, the GPID are a set of soft laws that provide a framework for addressing the rights of IDPs throughout the world from a needs-based approach. Consistent with both “*International Humanitarian Law*” and “*International Human Rights Law*” the Principles compile existing international law regarding IDPs in one document while also clarifying and addressing the loopholes and ambiguity present in such existing law. One of the prime contributions of the GPID is the definition of IDP provided as:

“internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized

¹⁰Thomas G. Weiss and David A. Korn, *Internal Displacement Conceptualization and its consequences* 51 (Routledge, Abingdon, 2006).

violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."¹¹

Although the focus of the definition is particularly on victims of war, the language used is such that other causes leading to internal displacement are also covered under it. It has been highlighted that the term 'in particular' was used not to draw attention to war-victims but to emphasize that the factors listed in the given definition are non-exhaustive¹².

Internally displaced persons suffer from a host of issues specific to the condition including but not limited to separation of the family, loss of documents, restricted movement in camps and property loss. The Guiding Principles address all these issues by identifying and incorporating the corresponding human rights. Thus, the GPID covers the following broad rights¹³:

- To integrity and physical security;
- To basic necessities;
- Relating to other political and civil issues;
- Relating to other social, cultural and economic needs.

The Guiding Principles cover all the different stages of internal displacement¹⁴:

- i. Pre-displacement (Principles 5-9):- offering protection from being displaced unlawfully: Under these principles, the Central as well as the State government were obliged to take all necessary steps to prevent the internal displacement of their citizens. Principle 9 in particular confers a special duty on the state to protect indigenous minority communities from being displaced.

¹¹UN Commission on Human Rights, *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*, 11 February 1998, E/CN.4/1998/53/Add.2, available at: <https://www.refworld.org/docid/3d4f95e11.html> (visited on April 05, 2023)

¹²Thomas G. Weiss and David A. Korn, *Internal Displacement Conceptualization and its consequences* 64 (Routledge, Abingdon, 2006).

¹³Global Protection Cluster (GPC), *Handbook for the Protection of Internally Displaced Persons*, (2010), available at: <https://www.refworld.org/docid/4790cbc02.html> (visited on April 05, 2023).

¹⁴*Ibid.*

- ii. *During displacement (Principles 10-23)*:- offering protection and aid during the course of displacement: These principles require that the displaced community be offered at least the basic protection and necessities of life for the duration of their displacement. The responsibility falls on the government to do so.
- iii. *Acceptable long-term solutions (Principles 28-30)*: - possibility of returning home: If not, then integration of the community either in the place where they are displaced or in another more suitable area where they are resettled. Under principle 28, the IDPs are entitled to be repatriated and rehabilitated at the earliest. It falls upon the competent authorities to resolve the issue as soon as possible such that the displaced community may go back home.

What must be noted is that India is one of the nations to not recognize the GPID, excusing itself by holding that the framework was developed without intergovernmental negotiations.¹⁵ Stating that such an intervention would ultimately violate its sovereignty India too shares the notion that international aid is just a way for powerful nations to assert control over weaker nations. So much so, that despite failure on part of the government in addressing the issue successfully, the aid offered by international organizations has often been refused by India.¹⁶

V. INDIAN SCENARIO

India being a dualist country and opposed to the GPID, the state of the IDP population in the country is abysmal. The country's treatment towards its displaced community varies from region to region. Furthermore, the country is reluctant to accept foreign aid for this matter by maintaining that there is no such issue in India and insists that unprotected IDPs "can only be found in those countries where there is no effective State or where the State has collapsed¹⁷." There are no separate laws for the protection of the IDP population nor is there any federal agency to monitor displacement in the country, leading to their

¹⁵Aakash Chandran, "India and Internally Displaced Persons" *Live Law*, November 6, 2017, available at: <https://www.livelaw.in/india-internally-displaced-persons-idps/> (visited on April 15, 2023).

¹⁶United Nations High Commissioner for Refugees, *The State of the World's Refugees: Human Displacement in the New Millennium*, 153-167 (Oxford University Press, Oxford, 2006).

¹⁷Brookings-Bern Project on Internal Displacement, *Some Reflections on National and International Responsibility in Situations of Internal Displacement* by Roberta Cohen, March 01, 2004, available at: <https://www.refworld.org/docid/4c5153ae2.html> (visited on March 23, 2023)

continued marginalization by society in general. The only protections they have are in the form of constitutional provisions.

6.1. Constitution of India

The Constituent Assembly adopted the Constitution of India on 26th November, 1949 and it entered into force on 26th January, 1950. Since then, the Constitution of India, has been deemed the supreme law of the land and it is from this that all other laws of the country originate. It is the Constitution that sets down how the country is to be governed and how the citizens/habitual residents of the country are to be treated.

The Constitution bestows upon its citizens certain universal, inalienable rights in the form of six fundamental rights. Contained under Part III (Article 12 to 35), any violation of these rights can be directly brought before the Supreme Court of India under Article 32 of the Constitution. Being universal in nature, these rights are equally applicable and enjoyable by all the citizens of the country. The practice of Judicial Activism has further clarified and expanded the scope of the Fundamental Rights and, in many cases, has held the State responsible for ensuring that its citizens are able to enjoy these rights.

Despite the lack of any separate legislation pertaining to the legal responsibility of the State towards its violence induced IDP population, the Preamble to the Constitution, the Fundamental Rights and the "Directive Principles of State Policy " under Part IV provides basic protection to the vulnerable communities. These provisions not only bestow legal rights upon all citizens but also put the corresponding duty on the State to protect these rights.

6.1.1. Preamble

The Preamble contains, in sum, the aims & objectives as well as the underlying philosophy of the Indian Constitution. Any provision of the Constitution is to be interpreted in light of the Preamble. This has been upheld by the Apex court in *Re. Berubari Union*¹⁸ where the court held the Preamble to be "*a key to open the mind of the framers of the Constitution*" and again in *Kesavananda Bharati*¹⁹ where it was stated that "*the Preamble of our Constitution is of extreme importance and the Constitution*

¹⁸(1960) 3 SCR 250.

¹⁹AIR 1973 SC 1461

should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.”

The Preamble also enshrines the legislative intent of the Constitution which is for India to be a “Welfare State”. This is supported by the terminology of the Preamble, which includes the words “*Sovereign Socialist Secular Democratic Republic.*” Furthermore, “*Justice, Liberty, Equality and Fraternity*” lay down the objectives of the Constitution. Thus, protection of the well-being of its citizens is a core principle of the Indian Constitution.²⁰

However, despite being covered under the legislative intent laid down in the Preamble by virtue of being Indian citizens, the violence induced IDPs of the country do not enjoy any of the rights available to them.

6.1.2. Article 21 [Protection of life and personal liberty]-

Article 21 protects the life and liberty of an individual, be it the citizens of the country or visiting aliens. As such, Article 21 can be held to be the most important of all the fundamental rights enshrined in the Constitution without the existence of which all other rights will become pointless.

The phrase “procedure established by law” implies that only the State has the power to curtail this right and that too only according to the procedure that has been laid down by the law. This also implies that a claim under Article 21 lies only against the State and not any private individual.

A simple interpretation of Article 21 shows that this provision secures two core human rights:

- The “right to life”, and
- The “right to personal liberty”.

²⁰Palak Goel, “Preamble to the Constitution of India” *ipleaders* (2018), available at: <https://blog.ipleaders.in/preamble-to-the-constitution-of-india/> (visited on April 01, 2023)

6.1.2A. Right to life and Judicial activism

The term 'life' does not merely mean being alive and breathing. As per the interpretation of the Supreme Court, it is far more than plain animal existence²¹ or a mechanical drudgery throughout life. 'Life' encompasses living with human dignity²², a source of livelihood, clean environment, health, the right to protect one's culture, tradition, heritage and all other factors that make a person's life worth living and meaningful²³. Following the path of judicial activism, non-arbitrariness, reasonableness and principles of Natural Justice, the definition and scope of the 'Right to Life' has been expanded by the courts to include numerous other rights that are necessary for leading a complete and fulfilling life.

I. RIGHT TO LIVE WITH HUMAN DIGNITY

That the "right to life" includes the "right to live with human dignity" has been a major contribution of the Indian judiciary. This interpretation was first introduced by the Apex Court in *Maneka Gandhi v. Union of India*²⁴ and then further elaborated in *Francis Coralie v. Union Territory of Delhi*²⁵ whereby the court observed:

"The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self."

Going by this observation of what constitutes human dignity, in the case of those displaced due to violence, they are living in conditions that do not allow them to live a dignified life. They do not have access to any of the bare necessities of life that have been held by the Apex court to be intrinsic to living a life with human dignity. Violence induced IDP communities across the nation are living in dire conditions. Members of these communities, especially the children, suffer from malnutrition. Lack of proper educational facilities

²¹*Kharak Singh v. State of Uttar Pradesh* AIR 1963 SC 1295

²²*Maneka Gandhi v. Union of India* 1978 AIR 597

²³*Sunil Batra v. Delhi Administration* AIR 1978 SC 1675

²⁴1978 AIR 597

²⁵1981 AIR 746

results in most of the children being unable to even write their names, which severely limits their employment prospects in the future. As for the freedom to freely move and mingle with others, they are shunned by the local residents and live in fear for their lives.

II. RIGHT TO LIVELIHOOD

It is not possible for a person to live without having any means of supporting themselves. The right to livelihood therefore becomes an intrinsic part of the right to life. Professing this view in the matter of *Olga Tellis v. Bombay Municipal Corporation*²⁶ more popularly known as the “pavement dwellers case” the Supreme Court held that:

“...An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood....The state may not by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge the deprivation as offending the right to life conferred in Article 21.... That, which alone makes it impossible to live, leave aside what makes life livable, must be deemed to be an integral part of the right to life. Deprive a person from his right to livelihood and you shall have deprived him of his life.”

Livelihood is an important part of life. It is not possible for any individual to survive without having a means of supporting themselves financially and otherwise. Taking away the livelihood of a person is akin to taking away their life. Even if the State is not responsible for providing employment to every person, it must ensure that such opportunities exist and are accessible by all eligible members of the society. If a person is deprived of livelihood based on considerations which are unfair, unjust and unreasonable, he/she can challenge it in the court.

When they were forced to flee from their homes, violence induced IDPs had to leave behind all their material possessions and also their land. Now they are settled in relief camps and villages but without any land to cultivate and no prospective employment opportunities as well. Most of them are forced to work as daily laborers, the communities are dependent on whatever meager minor forest products they can find to sustain themselves. Despite being

²⁶AIR 1986 SC 180

one of the most vulnerable sections of the society, the State has done nothing to provide them with a means of livelihood.

III. RIGHT TO SHELTER

It is the right of every human being to have for themselves an adequate shelter. Shelter does not merely refer to having four walls and a roof. It refers to a decent accommodation which is conducive to the person's mental, physical and intellectual growth. Defining the term further, the Apex Court in *Chameli Singh v. State of U.P.*²⁷ observed:

“Shelter for a human being, therefore, is not mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being”

Most internally displaced communities live in paltry shelters, which are generally located in remote areas with no proper means of communication and no access to civic amenities. Suffering from inadequate housing, unhygienic and sometimes open toilets, lack of potable water or electricity as well as the mostly hostile terrain where they are being forced to live, the right to shelter of these communities clearly stands violated.

IV. RIGHT TO SOCIAL SECURITY AND PROTECTION OF FAMILY

It is the right of every individual and their family to lead a life that is socially secure. Thus the right to life includes Socio-Economic Justice as envisioned in the Preamble to the Indian Constitution²⁸. Commenting on the duty of the State to protect its citizens, the Supreme Court in the matter of *N.H.R.C. v. State of Arunachal Pradesh*²⁹ (popularly known as the Chakmas Case) observed:

²⁷1996 AIR 1051

²⁸*Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose* AIR (1992)573

²⁹AIR (1996) 1234

“The State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law.”

In many cases, these communities face constant threats to their life and security. Even in their host state, these communities live under the threat of eviction by the state authorities or harassment by locals of the host state. Thus, they are unable to live in peace.

V. RIGHT TO HEALTH AND MEDICAL CARE

In a plethora of cases, the Supreme Court has held that a “right to health and medical care” is a part of the right to life. A healthy body forms the foundation for all other human activities³⁰. It is the responsibility of the State to ensure that its citizens are provided with opportunities and facilities for achieving “at least the minimum standard of health, economic security and civilized living³¹”. It is the duty of the State to preserve the life of its citizens³². No state, hospital or medical professional can refuse treatment of a patient based solely on financial or procedural constraints³³. While acknowledging that resources are indeed limited, the courts have held that the State is obliged to provide such resources, to the extent possible³⁴, to uphold the right to health and medical care of the people³⁵.

Medical care for violence induced IDPs is almost non-existent. In most cases, they do not even have access to primary health centers or pharmacies, while hospitals are located far away. There have been instances where NGOs or concerned doctors have conducted medical camps in shelter camps for IDPs, but these are few and far between to be of much help to the displaced communities.

³⁰*Vincent v. Union of India* 1987 AIR 990

³¹*Consumer Education and Research Centre v. Union of India* AIR (1995) 922

³²*Parmananda Katara v. Union of India* AIR (1989) 2039

³³*Pravat Kumar Mukherjee v. Ruby General Hospital & Others II* (2005) CPJ 35 NC

³⁴*State of Punjab v. Ram Lubhaya Bagga* AIR 1998 SC 1703

³⁵*Paschim Banga Khet Mazdoor Samity v. State of West Bengal* 1996 SCC (4) 37

6.1.2B. Right to Personal Liberty

‘Personal Liberty’ as a concept has a far reaching implication under Indian law. It is not limited to the mere absence of bodily restraint of a person. Personal liberty under Article 21 signifies every right/privilege that is essential for a free man/ woman to pursue their happiness and well-being. It is the intrinsic right of a person to “*be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures*”³⁶.”

The violence induced IDPs do not enjoy ‘personal liberty’ as implied under Article 21. They are not free to pursue their happiness and well being owing to their circumstances and lack of any privileges. Despite being citizens of the country, their liberty has been encroached both directly and indirectly by the inaction of the State and the actions of non-state actors as well as their fellow citizens.

6.1.3. Article 21A [Right to education] -

It cannot be disputed that without a good education a person cannot lead a decent life with human dignity. Thus, it is not only a basic necessity but also an important right of an individual to receive adequate education. The right to education was previously considered a “Directive Principle of State Policy”. However, by the Constitution (Eighty-sixth Amendment) Act, 2002 education was made an express fundamental right under Article 21A.

Subsequently the “Right of Children to Free and Compulsory Education (RTE) Act, 2009” was passed which, along with Article 21A, obliges the State to ensure that every child has access to “free and full-time elementary education” (from first to eighth class). The education so provided must be of reasonable and satisfactory quality and in a formal institution satisfying all the essential standards and norms set out by the RTE Act. The Act also includes provisions for transfer to different schools and regulations regarding the quality of teachers and curriculum.

³⁶*Kharak Singh v. State of Uttar Pradesh* AIR 1963 SC 1295

However, in the cases of communities displaced by violence, the children face both structural and non-structural barriers to pursue education even at the primary level. This clearly goes against the constitutional provisions and also makes their future bleak.

6.1.4. Article 14 [Equality before law]-

Article 14 embodies the “Right to Equality” and is applicable to every person “within the territory of India.” This implies that the right is available to both citizens and non-citizens residing within the boundaries of India. Every person within India is to be treated equally and without any discrimination. This view interpretation of the Article has been constantly upheld by the courts, such as in the matter of *N.H.R.C. v. State of Arunachal Pradesh*³⁷ the Apex Court stated:

“We are a country governed by the Rule of Law. Our Constitution confers contains rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws.”

Article 14 has two main components:

- “Equality before the law, and
- Equal protection of the law”

“Equality before the law” implies that the law is equally applicable to all. It means that no person should hold special privileges over other persons. No individual can be discriminated against based on their race, caste, religion, sex, etc.

“Equal protection of the law” implies “equal treatment in equal circumstances.” This means that amongst those who can be considered social equals or in ‘like’ circumstances, the law would treat them equally. *“Equality is between equals. It is parity of treatment under parity of conditions”*³⁸.

³⁷Roberta Cohen and Francis Mading Deng, *Masses in Flight: The Global Crisis of Internal Displacement* ix, xix (Brookings Institution Press, Washington, D.C., 1998)

³⁸*Indra Sawhney Etc. Etc vs Union Of India* AIR 1993 SC 477

The provision under Article 14 seeks to abolish inequalities arising out of the huge social and economic gap amongst the citizens of India. It does not simply refer to formal equality but rather to “*real and substantive equality*” that would bring about true socio-economic justice³⁹. Contemplating further the vulnerable status of the socially backward classes, the Apex Court in *Indra Sawhney vs Union Of India*⁴⁰ observed that:

“Among others, the concept of equality before the law contemplates minimising the inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, securing adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation.”

However, in the case of displaced communities, this provision is violated in most cases since any legislative relief to the community is left entirely to the discretion of the state concerned. The opinion of the public combined with how well the affected community is organized also plays an important role in their treatment.

6.1.5. Article 29 [Protection of interests of minorities]-

Article 29 ensures that minority and tribal communities have an opportunity to preserve their language and culture from encroachment by others. This right is absolute, which implies that it cannot be made subject to any reasonable restrictions. This makes it a very important right for those communities that have been involuntarily displaced from their homes. For example, if the rehabilitation of such a displaced community is unfavorable to the preservation of their cultural identity, then the community is entitled to challenge such rehabilitation in the court.

6.2. Directive Principles of State Policy

As per the Hohfeldian concept of jural correlatives, every ‘right’ held by someone has a corresponding ‘duty’ on another. Thus, supporting the rights bestowed by Part III of the Constitution i.e. the Fundamental Rights, are the “Directive Principles of State

³⁹*Minerva Mills Ltd. & Ors vs Union Of India & Ors* 1980 AIR 1789

⁴⁰*Indra Sawhney Etc. Etc vs Union Of India* AIR 1993 SC 477

Policy", which put a duty on the State to ensure the welfare of its citizens. The provisions contained in the Directive Principles are un-enforceable in the courts. Nonetheless, they form a core part of the country's governance and as such the State is duty bound to apply them while making laws.

The intent of the constitution-makers was to build India into a 'Welfare State' and this is highlighted by the Directive Principles. They impose welfare obligations upon the State and seek to improve the standard of living of the citizens, including the IDP population of the country.

I. **Article 38** [State to secure a social order for the promotion of welfare of the people]

"(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations⁴¹."

II. **Article 39** [Certain principles of policy to be followed by the State]-

"The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment⁴²."

III. **Article 41** [Right to work, to education and to public assistance in certain cases]-

"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance

⁴¹The Constitution of India, art. 38.

⁴²The Constitution of India, art. 39.

in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want⁴³.”

- IV. **Article 45** [Provision for early childhood care and education to children below the age of six years]

“The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years⁴⁴.”

- V. **Article 46** [Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections]

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation⁴⁵.”

- VI. **Article 47** [Duty of the State to raise the level of nutrition and the standard of living and to improve public health]

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties⁴⁶.”

Implications of these Directive Principles are applicable to every citizen of the country, including the communities which have been internally displaced due to violence in the country. However, IDP communities are not considered when policies are framed under these provisions. They do not enjoy socio-economic equality with the rest of the citizens nor do they have access to livelihood, education, government schemes (regarding employment, health, old age, etc.), adequate nutrition or medical care. Suffice it to say that no Directive Principle was considered by the State when dealing with such communities.

⁴³The Constitution of India, art. 41.

⁴⁴The Constitution of India, art. 45.

⁴⁵The Constitution of India, art. 46.

⁴⁶The Constitution of India, art. 47.

PART IV

VI. CONCLUSION AND SUGGESTIONS

The problem of forced displacement of people is not a new phenomenon. Throughout history, communities of people have been forced to leave behind their homes due to violence, conflict, natural disasters, governmental policies and numerous other reasons. However, it was only after the Second World War that the international community took note of a special category of displaced people i.e. Internally Displaced Persons and took up the challenge of framing laws for their protection and rehabilitation. An internally displaced person is entitled to the same set of rights as any other citizen of their country under both national and international law. Apart from the GPID, rights of IDPs are also protected under:

- International humanitarian law; and
- International human rights law.

However, many nation states are still wary of these instruments, especially the GPID, deeming them nothing more than attempts by the powerful rich nations to interfere with the domestic matters of the weaker poor nations. India is one such country that has not accepted the GPID.

Moreover, there is no specific statutory protection available to the Indian IDP population. The response of the Indian government to its IDP situation is that of apathy and denial. Further adding to the problem is the fact that there is no federal agency to monitor displacement in the country. Thus, treatment of the IDP community of a state depends on the discretion of that state. This coupled with the absence of any statutory legislation leads to a difference in governmental approach towards different IDP communities, sometimes even based on region. While some IDPs are allowed access to basic rights such as free food, education, health, etc. by the government, others are not.

Nevertheless, certain provisions of the Indian Constitution including the Preamble incorporate some of the principles of the International Bill of Human Rights. The principles of Justice, Liberty, Equality and Fraternity enshrined in the Preamble along with the Fundamental Rights and Directive Principles of State Policy give legislative backing to some of the key human rights envisaged by international law. The Constitution of India intrinsically guarantees these rights to all its citizens. In fact, some of the constitutional rights are also available to foreigners

who are within the territorial boundaries of the country. Needless to say that being *bona fide* citizens of India, the entire IDP population of the country is entitled to equal and full protection of India's domestic law and it is the duty of the State to ensure that violence induced IDPs are able to enjoy their rights as Indian citizens.

Internally displaced persons, especially those who faced displacement due to violence, are living in dire conditions with no access to the basic necessities of life. India being a welfare state, it is the responsibility of the government to ensure access to a stable and dignified life to all its citizens, including such IDP communities. Thus, a law specific to such violence induced IDP communities is needed to protect their rights and offer rehabilitation. The Indian government can take guidance from the GPID and incorporate those principles under Article 253 of the Constitution. Moreover, law and order being a state subject, different states can also frame laws or policies that offer protection to such communities at the state level. For this purpose, a thorough study of such communities across the country can be undertaken by the government to better understand the issues faced by them. Various stakeholders can be included in such a study, such as NGOs and researchers who have been actively involved with violence induced IDP communities, as they have a greater understanding and material databases regarding such communities. It would also be beneficial to include members of such IDP communities in the drafting and implementation of any legislation so framed.
