

## PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS AND DISPLACED PEOPLE: ROLE OF JUDICIARY

**Dr. Sandeep Kumar Singh**

Assistant Professor  
Faculty of Law,  
Deen Dayal Upadhyaya Gorakhpur University  
Gorakhpur, Uttar Pradesh, India

**Ashish Nath Tiwari**

Assistant Professor  
Faculty of Law,  
Deen Dayal Upadhyaya Gorakhpur University  
Gorakhpur, Uttar Pradesh, India

### Abstract

*This abstract examines how important the judiciary is to protecting the human rights of migrants and internally displaced people, highlighting its role as an impartial arbiter to guarantee equitable treatment and access to justice, especially when official acts violate such rights. The judiciary is ultimately responsible for protecting people's human rights. By interpreting the fundamental rights and expanding their extent, it has acknowledged other unlisted rights in addition to defending the rights listed in the Constitution. A major concern is the preservation of displaced and migrant populations' human rights, and the judiciary is essential to making sure these rights are respected. Additionally, due to their vulnerable situation, migrants are entitled to various protections and human rights. living origin, sex, religion, or any other status, in all areas of employment, such as employment, working conditions, and advancement, as well as in obtaining housing, healthcare, and essential services. The judiciary is an independent and unbiased entity that acts as a vital check on possible abuses by governmental actors. It also offers a forum for redress and guarantees that everyone is treated with respect and dignity, regardless of their displacement or immigration status. The specific ways that the judiciary can support the defence of human rights will be discussed in this abstract. These include the interpretation of national and international laws, the creation of legal precedents that support the rights of migrants and displaced people, and judicial review of executive actions and legislation. This abstract will look at the various ways that the judiciary can help protect human rights, such as by interpreting national and international laws, reviewing legislation and executive actions, and creating precedents that support the rights of displaced and migrant populations. The abstract will also examine the*

*difficulties the judiciary faces in this field, including the complexity of international law, political meddling, and resource limitations, and it will suggest ways to improve the judiciary's ability to defend the human rights of migrants and internally displaced people.*

**Key Words: Human Rights, Migrants, Migrants people, Displaced People**

## INTRODUCTION

Initially, mass displacement situations are humanitarian emergencies that endanger the displaced people's physical existence and well-being. The primary goal of the immediate response is to help individuals and groups of people who have been forced to leave their homes and communities in search of safety elsewhere by protecting them and helping them find sufficient shelter, food, and medical care. But the involuntary relocation of people, both within and outside of their own nations, is a complicated phenomenon with aspects beyond humanitarianism.

Mass displacement, for example, can have detrimental developmental effects on governance, poverty alleviation, and economic growth that need to be addressed. Peace and justice are closely related to responses to displacement and the protection of displaced people.

In an attempt to create a shared understanding of justice and accountability measures as essential components of all-encompassing responses to conflict-induced displacement, including initiatives to achieve voluntary, dignified, just, and long-lasting solutions to displacement, this essay examines the relationship between justice and displacement. It will also discuss how different transitional justice-related justice and accountability measures have recognized and addressed the concerns of displaced people worldwide and attempted to involve displacement victims. However, it will start by giving a quick synopsis of forced relocation, with an emphasis on the

Internally displaced people, referred to as IDPs, have been forced to flee their homes by conflict, violence, persecution or disasters, however, they remain within the borders of their own country.

There were 67.8 million internally displaced people at the end of June 2025, the most recent reporting period. They accounted for the majority of the world's forcibly displaced population (58 per cent).

IDPs are among the most vulnerable people in the world, and many are trapped in protracted displacement for years or even decades. Uprooted from their homes and livelihoods, they often face dangerous conditions and continue to face risks even after fleeing for safety. National governments have the primary responsibility to protect and assist their displaced citizens and residents, but they may be unable or unwilling to do so.

When IDPs do settle, places of refuge may lack adequate shelter, food, clean water or health care. Even where such services exist, the sudden influx of people can overwhelm them. It can

be difficult for displaced people to find work, leaving them without an income to support themselves and their families.

### **INTERNALLY DISPLACED PERSON (IDP) DEFINITION AND MEANING**

The United Nations Guiding Principles on Internal Displacement describe internally displaced persons (IDPs) as: *"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 violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border."*

There is no legally accepted definition of the term "migrant" at the international level. According to the United Nations' International Organization for Migration (IOM), it refers to *"any person who has resided away from his or her place of usual residence, whether within a country or across an international border, regardless of the person's legal status; whether the movement is involuntary or voluntary; what the causes for the movement are; or, what the length of the stay is."* However, it is common to include certain categories of short-term migrants, such as seasonal agricultural workers, who migrate at planting or harvest time.

### **WHAT IS THE DIFFERENCE BETWEEN AN IDP AND A REFUGEE?**

According to the 1951 Convention on the Status of Refugees, a "refugee" is a person who, *"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."* Subsequent international instruments (such as the Cartagena Declaration on Refugees and the Convention Governing the Specific Aspects of Refugee Problems in Africa) have expanded this definition for some states to persons fleeing the general effects of armed conflict and/or natural disaster.

A crucial requirement to be considered a "refugee" is crossing an international border. Persons forcibly displaced from their homes who cannot or choose not to cross a border, therefore, are not considered refugees, even if they share many of the same circumstances and challenges as those who do. Unlike refugees, these internally displaced persons do not have a special status in international law with rights specific to their situation. The term "internally displaced person" is merely descriptive.

A refugee is someone who is outside their country and cannot return without risking their life or freedom due to conflict or persecution. Refugees are entitled to certain rights and protections under international law.

An IDP has been forced to flee their home to escape conflict, persecution or disasters, however, they have not crossed an international border and remain inside their country. Their

national government is responsible for their protection. They should be afforded the same rights and freedoms as citizens and habitual residents of their country.

Displacement can often be a continuum: A person displaced within their country (an IDP) may cross an international border to seek safety once they are able to do so, or if the situation further deteriorates, at which point they may become a refugee. Likewise, a refugee may also cross back into their country but not return to their area of origin and so be classified as an IDP.

### **WHAT CHALLENGES DO INTERNALLY DISPLACED PERSONS FACE?**

People forced to flee or leave their homes - particularly in situations of armed conflict - are generally subject to heightened vulnerability in a number of areas. Displaced persons suffer significantly higher rates of mortality than the general population. They also remain at high risk of physical attack, sexual assault and abduction, and frequently are deprived of adequate shelter, food and health services.

The overwhelming majority of internally displaced persons are women and children who are especially at risk of abuse of their basic rights. More often than refugees, the internally displaced tend to remain close to or become trapped in zones of conflict, caught in the cross-fire and at risk of being used as pawns, targets or human shields by the belligerents.

### **WHAT RIGHTS DO INTERNALLY DISPLACED PERSONS HAVE?**

Like all human beings, internally displaced persons enjoy human rights that are articulated by international human rights instruments and customary law. In situations of armed conflict, moreover, they enjoy the same rights as other civilians to the various protections provided by international humanitarian law.

The Guiding Principles on Internal Displacement, created in 1998, restate and compile existing international human rights and humanitarian law germane to the internally displaced and also attempt to clarify grey areas and gaps in the various instruments with regard to situations of particular interest to the internally displaced.

The Guiding Principles note that arbitrary displacement in the first instance is prohibited (Principles 5-7). Once persons have been displaced, they retain a broad range of economic, social, cultural, civil and political rights, including the right to basic humanitarian assistance (such as food, medicine, shelter), the right to be protected from physical violence, the right to education, freedom of movement and residence, political rights such as the right to participate in public affairs and the right to participate in economic activities (Principles 10-23). Displaced persons also have the right to assistance from competent authorities in voluntary, dignified and safe return, resettlement or local integration, including help in recovering lost property and possessions. When restitution is not possible, the Guiding Principles call for compensation or just reparation (Principles 28-30).

## THE GLOBAL PHENOMENON OF CONFLICT-INDUCED INTERNAL DISPLACEMENT<sup>1</sup>

At the end of 2025, 42 million people were forced or otherwise obliged to flee their homes and communities on account of conflict, violence, mass atrocities and human rights violations. In addition to the global refugee population, which is estimated at 16 million people, this population comprised of an additional 26 million individuals displaced within the borders of their own countries. These people, who we classify as internally displaced persons, or IDPs, can be found in at least 50 countries around the world at present, making internal displacement truly a global phenomenon.

At least 11.6 million people are internally displaced within the borders of their own countries in Africa, which is home to the majority of the world's IDPs. In actuality, this region is home to three of the five greatest IDP populations in the world. Countries like Sudan (4.9 million IDPs), the Democratic Republic of the Congo (1.4 million IDPs), and Somalia (1.3 million IDPs) are on this unlucky list. The Central African Republic, Cote d'Ivoire, Kenya, and Uganda are now experiencing mass displacement in Africa as a result of conflict and violence.

Africans are not the only people facing internal displacement brought on by violence. There are currently 4.5 million internally displaced people (IDPs) in the Americas, the vast majority of whom are in Colombia, which has the second-largest IDP population in the world due to decades of internal armed conflict and violence associated with drug trafficking. Additionally, hundreds of thousands of people are internally displaced in Peru, Guatemala, and Mexico.

Moving eastward, there are currently over 3.9 million internally displaced persons in the Middle East. There are still around 2.8 million internally displaced people in Iraq. After the US-led invasion, sectarian bloodshed has forced about two-thirds of the 2.8 million people to flee their homes. There are also internally displaced people in Israel, Palestine, Syria, and Lebanon, many of whom have been there for decades. Additionally, there are now more than 100,000 IDPs across the Arabian Peninsula as a result of recent political violence and turmoil in Yemen.

Numerous other nations throughout the world also have sizable populations of displaced people. This includes numerous South and South-East Asian nations, like Sri Lanka and the Philippines, where the overall number of displaced people rose by about 200,000 and 600,000, respectively, in 2008. During counterinsurgency operations in the Swat Valley and its environs in 2009, almost two million Pakistanis were displaced. Due to turmoil and bloodshed, many hundred thousand Afghans, including many previous refugees, have also been displaced in neighbouring Afghanistan. There are also complicated displacement

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<sup>1</sup>Displacement data cited in this section is available in Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2008* (April 2009), and United Nations High Commissioner for Human Rights (UNHCR), *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* (16 June 2009).

situations in neighbouring Bangladesh and India, where thousands of people have been displaced due to a combination of social and ethnic problems.

## INTERNATIONAL CONVENTIONS

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Articles 7, 8, 10, 11, 12, 18, 22, 24, 25, 26, 27, 28, 29, and 30.

- (a) The Migration for Employment Convention (Revised) (No. 97), Article 6
- (b) The Migrant Workers (Supplementary Provisions) Convention (No. 143)
- (c) The Universal Declaration of Human Rights: Articles 1, 10, 12, and 13
- (d) The International Covenant on Economic, Social and Cultural Rights: Articles 6, 7, 8, 9, 10, 11
- (e) The International Covenant on Civil and Political Rights: Articles 8, 13, 14, 21, 22, 26, and 27
- (f) The Convention on the Elimination of All Forms of Discrimination Against Women: Article 11
- (g) The Convention on the Elimination of All Forms of Racial Discrimination, Article 5
- (h) The Convention on the Rights of the Child. Articles 7, 9, 10, 15, 27, 28, 29, 30, and 32
- (i) The ILO Forced Labour Convention (No. 29), Article 1
- (j) The ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87), Article 2
- (k) The ILO Equal Remuneration Convention (No. 100), Article 2
- (l) The ILO Discrimination (Employment and Occupation) Convention (No. 111), Article 2
- (m) The ILO Minimum Age Convention (No. 38). Articles 1, 2, and 3

### **Some rights of migrants and refugees under International Humanitarian Law include:**

- (a) Freedom from torture or inhumane treatment
- (b) Freedom of opinion and expression
- (c) Freedom of thought, conscience, and religion
- (d) Freedom from discrimination
- (e) Right to asylum
- (f) Right to family
- (g) Non-Refoulement
- (h) Right to health
- (i) Right to life
- (j) Equality and non-discrimination
- (k) Protection against arbitrary arrest and detention
- (l) Protection against torture or inhumane treatment
- (m) Prohibition against collective expulsion
- (n) Procedural safeguards in individual expulsion proceedings
- (o) Family rights

While the core human rights standards apply equally to migrants and non-migrants, regardless of their legal status in a country, and prohibit discrimination on the basis of national origin, there are exceptions to these rules.<sup>2</sup> International Convention on the Elimination of All Forms of Racial Discrimination, arts. 1(2) and (3). International human rights law does allow States to treat citizens and non-citizens differently if the difference in treatment serves a legitimate State objective and is proportional to its achievement.<sup>3</sup>

In *A. v. Australia*, the Human Rights Committee found Australia had violated the right to liberty under Article 9 of the ICCPR by arbitrarily detaining the applicant, a migrant and Cambodian national who arrived to Australia by boat. He alleged that he was arbitrarily detained in Australia while his application for refugee status was pending. His detention was arbitrary, he argued, because there was no legitimate reason to detain him; at the time of filing his application, his detention had lasted for over three and a half years; and there was no available judicial review of his detention. The Human Rights Committee found that the State's justifications for detention – that the applicant was a flight risk and had entered the country illegally – were insufficient to keep the applicant in detention for a total of four years in violation of the rights to liberty and security of Article 9(1) of the ICCPR. Additionally, the Committee found that the State's restricted ability under recently passed legislation to review the lawfulness of detention of migrants was in violation of Article 9(4).<sup>4</sup>

In *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights held that Article 3 of the European Convention on Human Rights, which prohibits torture and cruel, inhuman, or degrading treatment, places an obligation on State parties not to expel migrants to a country where the State party is aware that the migrants face risk of the treatment prohibited under Article 3. The 24 applicants, who are nationals of Somalia and Eritrea and were sent by Italian police to Libya, alleged that the Italian authorities returned them to a country where they were likely to face torture or cruel, inhuman, or degrading treatment within the country and likely to be repatriated back to their countries of origin where they would also likely face similar treatment. Because the Italian authorities knew the applicants were likely to be exposed to treatment as described under Article 3 both within Libya and in their home countries, which they were likely be sent back to once in Libya, the European Court held that Italy violated Article 3 of the Convention.<sup>5</sup>

In *Good v. Botswana*, the African Commission on Human and Peoples' Rights held that the inability to challenge an order of removal in the judicial system is a violation of the right to fair trial and right of non-nationals to be expelled according to the law. The complainant is a national of Australia who was working in Botswana when the President ordered him removed from the country after he wrote and published an article critical of the government. National legislation prohibited the domestic courts from hearing an appeal of an executive order of removal. The African Commission found violations of articles 7(1) and 12(4) of the African

<sup>2</sup>General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986;

<sup>3</sup>Committee on Elimination of Racial Discrimination (CERD), General Recommendation No. 30: Discrimination against non-citizens, UN D

<sup>4</sup>Human Rights Committee, *A. v. Australia*, Communication No. 560/1993, Views of 3 April 1997, UN Doc. CCPR/C/59/D/560/1993.

<sup>5</sup>ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], no. 2776/09, ECHR 2012, Judgment of 23 February 2012.

Charter on Human and Peoples' Rights, which guarantees the right to have one's cause heard by a competent tribunal and the right of non-nationals to only be expelled in accordance with the law. Furthermore, because the deportation orders, which were carried out the same day as the court's ruling that it could not hear the complainant's case, did not take into account the complainant's family and the mutual support they derive from one another, the removal of the complainant violated his right to family life under Article 18.<sup>6</sup>

In *Ramón Martínez Villareal (United States)*, the Inter-American Commission on Human Rights found that the United States violated the rights to due process and a fair trial under the American Declaration on the Rights and Duties of Man because the State failed to inform the applicant, who was convicted of a crime in the United States, of his right to consular relations. The Inter-American Commission referenced the obligations under Article 36 of the Vienna Convention on Consular Relations to inform the rights under the American Declaration. Article 36 of the Vienna Convention requires a state party to inform a non-national who has been arrested or detained that they have a right to communication with the consular office of their home State. A lack of communication with the consular office could result, the Commission noted, in due process violations due to factors including a lack of familiarity with the State's judicial system or a language barrier.<sup>7</sup>

## INDIAN PERSPECTIVE

The primary obstacle faced by immigrants, however, is obtaining citizenship in their new nation and gaining access to their basic rights. These problems are typically resolved by immigration-specific laws and policies that specify the requirements and procedures for obtaining citizenship. However, the Indian Constitution's provisions control immigration rules throughout the Indian subcontinent. Part II of the Constitution's Articles 5 through 11 address citizenship and define a citizen as an individual who resides in India or has Indian ancestry.

**Article 10** deals with the continuance of foreigners as Indian citizens, subject to any laws enacted thereafter by the legislature. The Indian constitution only recognizes single citizenship throughout the country and does not support dual citizenship. It also declares that a foreign citizen can acquire Indian citizenship through the process of Naturalization (ordinarily residing in India for 14 years) and registration of foreigners with the FRRO (Foreigners Regional Registration Officer) or FRO (Foreigners Registration Officer).

The Indian law follows jus sanguinis (citizenship by blood) as opposed to jus-soli (citizenship by birth).

- (a) Inter-state Migrant Workmen (Regulation of employment and Conditions of Service) Act (1979)
- (b) Child Labour (Prohibition and Regulation) Act (1986)

<sup>6</sup>ACommHPR, *Good v. Botswana*, Communication No. 313/05, 47th Ordinary Session, Judgment of 26 May 2010.

<sup>7</sup>IACHR, Merits Report No. 52/02, Case 11.753, *Ramón Martínez Villareal (United States)*, 10 October 2002.

- (c) Building and Other Construction Workers Workmen (Regulation of employment and Conditions of Service) Act (1996)
- (d) Unorganized Workers Social Security Act (2008)
- (e) Contract Labour (Regulation and Abolition) Act (1970)

In *B D Sharma v. Union of India*,<sup>8</sup> it was ruled that the overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of outsees. They should be rehabilitated as soon as they are uprooted. Further, the court provided a time frame by which the rehabilitation must be complete: before six months of submergence.

Such a time limit fixed by the Court was reiterated in the Narmada's case. In *Narmada Bachao Andolan v. Union of India*<sup>9</sup> it was observed that rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the outsees is hence a logical corollary of Article 21.

Further, in *N.D. Jayal and Another v. Union of India*<sup>10</sup> the court held that the right to development encompasses in its definition the guarantee of fundamental human rights. Thus, the courts have recognised the rights of the outsees to be resettled and right to rehabilitation has been read into Article 21. In Narmada's case a feeble attempt has been made to define rehabilitation as providing a quality to life beyond just food, clothes or shelter. In the light of this construction, it is essential to contextualise the law by analysing its application to the cases of Tehri and Narmada.

## CONCLUSION: DEALING WITH THE PAST AND LOOKING AHEAD

Countries and societies emerging from situations of conflict, violence, and mass atrocities and human rights violations, including the forcible displacement of its citizens, face sizable challenges. Similarly, the protection of displaced persons in these environments and efforts to facilitate their return or resettlement in a voluntary, dignified, secure, and just fashion require considerable attention and effort. Protection is not complete without dealing with the effects of past injustices and addressing the justice-related needs. The justice-related needs include knowing that those responsible for the suffering of the displaced are prosecuted and punished. However, justice in this context should be recognized as much more comprehensive or broader than criminal justice and retribution. Justice in displacement contexts should also have social and restorative dimensions that are aimed at facilitating civic trust and reconciliation as well as respecting the rights of the displaced and restoring their place within society. Responses to displacement should be cognizant of the justice and displacement nexus and should seek to use the norms and institutions of both frameworks in a coherent manner to empower the displaced, facilitate their access to justice, and assist them in rebuilding their lives and creating new futures for themselves and their communities.

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<sup>8</sup>1992 Supp (3) SCC 93.

<sup>9</sup>AIR 2000 SC 3751.

<sup>10</sup>(2004) 9 SCC 362.

Certain objective social conditions at both the rural source and the urban destination influence migration. These circumstances are commonly known as urban pull and rural push factors of migration. The flow of migration, whether inward or outward, is largely determined by the interaction of these push-pull factors. In order to address the issues that migrants and refugees face, quick and decisive action must be made at this difficult and unprecedented period. Even though a lot has been done to increase awareness, we shouldn't be complacent. If the parties had adhered to international humanitarian law, the majority of the displacement that had taken place over the previous few decades could have been avoided in the first place.

Those obliged to flee would suffer less if the parties respected the displaced as civilians of their own rather than treating them as outsiders. Sadly, not much has improved in this area. Humanitarian action can bring some relief but it is up to the state parties to conflicts to respect and protect civilians.