REAFFIRMING JUSTICIABILITY

Judgements on the Human Right to Adequate Housing from the High Court of Delhi

HOUSING AND LAND RIGHTS NETWORK
Habitat International Coalition – South Asia

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Introduction

In the year 2010, the High Court of Delhi passed two significant judgements — *Sudama Singh and Others vs. Government of Delhi and Anr.*, and *PK Koul vs. Estate Officer and Anr. and Ors.* — upholding the human right to adequate housing, and the right to resettlement and rehabilitation.

Housing and Land Rights Network (HLRN) considers both these judgements to be very important precedents in Indian case law. They hold great relevance in protecting the human right to adequate housing in India as well as internationally. The judgements, therefore, need to be widely disseminated, read, understood, cited and implemented. With this objective, HLRN has prepared a brief analysis of both judgements, highlighting their main contributions. This is followed by the entire text of both judgements, with an added emphasis on relevant sections.

HLRN believes it is essential to publicise these judgements and promote their enforcement in Delhi as well as in other cities across India where forced evictions without due process and adequate rehabilitation, and in violation of human rights, continue to accelerate under the guise of creating 'slum-free cities,' and 'city beautification' and 'urban renewal' measures.

HIGHLIGHTS OF THE JUDGEMENTS OF THE HIGH COURT OF DELHI

Sudama Singh and Others vs. Government of Delhi and Anr.

(W.P. (C) Nos. 8904/2009, 7735/2007, 7317/2009 and 9246/2009)

The case, *Sudama Singh and Others vs. Government of Delhi and Anr.*, involved four writ petitions filed under Article 226 of the Constitution of India seeking intervention of the High Court to relocate and rehabilitate the petitioners residing at various slum clusters in Delhi. The petition sought relocation to a suitable place and provision of alternative land with ownership rights pursuant to demolition of their "jhuggies" (hutments). The writ petitions dealt with the issue of the right to housing and the 'right to way', and were collectively addressed by the High Court.

The judgement delivered by a two-judge bench of Justice A. P. Shah and Justice S. Muralidhar on 13 February 2010 is noteworthy for several reasons. In particular, it deals with the following important issues:

1. Human Right to Adequate Housing

On various occasions, the judgement recognises the right to shelter/adequate housing and emphasises the importance of its realisation in the Indian context. It:

a) Establishes that the right to adequate housing must be read into the Fundamental Rights of the Constitution of India (paragraph 52).

b) Emphasises that, "Adequate housing serves as the crucible for human well-being and development, bringing together elements related to ecology, sustained and sustainable development. It also serves as the basic unit of human settlements and as an indicator of the duality of life of a city or a country's inhabitants" (paragraph 26).

c) Refers to global standards, based on international legal instruments, thereby reminding the Government of India of its international legal obligations and reiterating its duty to respect, protect and fulfill the right to adequate housing as a human right. In particular, the judgement mentions the following international instruments and guidelines that protect the human right to adequate housing: *Universal Declaration of Human Rights* (1948), *International Covenant on Economic, Social and Cultural Rights (*1966*), General Comment 7* of the *UN Committee on Economic, Social and Cultural Rights (*1991*), Habitat I Vancouver Declaration (*1976*), Global Strategy for Shelter to the Year 2000, Habitat Agenda, Commission on Human Rights Resolution on Forced Evictions, Agenda 21,* and *Concluding Observations of the UN Committee on Economic, Social and Cultural Rights* (2008) (paragraphs 27–34).

d) Provides a holistic understanding of the right to housing by stating, in paragraph 29, that: *"... international declarations on the implementation of housing rights would include emphasis on the physical structure such as the provision of drinking water, sewer facilities, access to credit, land and building materials as well as the de jure recognition of security and tenure and other related issues."*

e) Uses as legal precedent, previous judgements of the Honourable Supreme Court of India, which have upheld the right to housing (paragraphs 37–42 and paragraph 165) as well as relevant judgements from international case law recognising the human right to adequate housing (paragraphs 53–54).

f) Reiterates the important human rights principle of 'indivisibility of rights' – which stresses that all human rights are inter-related and linked, and must be addressed together. The judgement thus collectively addresses the rights to adequate housing, work/livelihood, health, education, water, security and freedom of residence and movement.

2. Forced Evictions and the Right to Resettlement and Rehabilitation

In their judgement, Justice A. P. Shah and Justice S. Muralidhar discuss important principles and issues regarding forced evictions and resettlement. In particular, the judgement:

a) Establishes that forced evictions without adequate resettlement and rehabilitation violate a 'bundle of rights,' and highlights the adverse impacts of forced evictions (paragraph 44): *"Considerations of fairness require special concern where these settled slum dwellers face threat of being uprooted. Even though their jhuggi clusters may be required to be legally removed for public projects, but the consequences can be just as devastating when they are uprooted from their decades long settled position. What very often is overlooked is that when a family living in a Jhuggi is forcibly evicted, each member loses a "bundle" of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity."*

b) Quotes relevant provisions of the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*[1] (paragraph 35) – which call for human rights standards to be adhered to in case of an eviction/relocation.

c) Unequivocally states that rehabilitation and protection of human rights of evicted communities is a duty of the state (paragraph 62).

d) Stresses the need for due process to be carried out before and during an eviction (paragraph 59).

e) Mentions that, *"The relocation has to be a meaningful exercise consistent with the rights to life, livelihood and dignity of such jhuggi dweller"* (paragraph 57).

f) Calls for the creation of adequate relocation sites with civic amenities before eviction and stresses the responsibility of the state in providing an adequate standard of living. *"The government will be failing in its statutory and constitutional obligation if it fails to identify spaces equipped infrastructurally with the civic amenities that can ensure a decent living to those being relocated prior to initiating the moves for eviction"* (paragraph 55).

g) Calls for relocation sites to be located close to original sites of residence in order to protect the right to livelihood/work (paragraph 60).

h) Reproaches the state for the inadequacy of resettlement sites, including their location outside cities (paragraph 60): "*The further concern is the lack of basic amenities at the relocated site. It is not uncommon that in the garb of evicting slums and "beautifying" the city, the State agencies in fact end up creating more slums, the only difference is that this time it is away from the gaze of the city dwellers. The relocated sites are invariably 30-40 kilometers away from a city centre. The situation in these relocated sites, for instance in Narela and Bhawana, are deplorable. The lack of basic amenities like drinking water, water for bathing and washing, sanitation, lack of access to affordable public transport, lack of schools and health care sectors, compound the problem for a jhuggi dweller at the relocated site. The places of their livelihood invariably continue to be located within the city. Naturally, therefore, their lives are worse off after forced eviction."*

1 The Guidelines were presented by the United Nations (UN) Special Rapporteur on Adequate Housing to the UN Human Rights Council in 2008. They are available at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf. For more information, including the text and potential uses of the Guidelines, see *Handbook on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement*, Housing and Land Rights Network, New Delhi, 2011. Available at: www.hic-sarp.org. Translations of the UN Guidelines in Hindi, Bengali, Oriya, Gujarati and Telugu are also available at this site. Translations in Marathi and Urdu can be obtained by writing to: info@hic-sarp.org.

i) Reiterates that eviction without relocation amounts to a gross violation of fundamental rights (paragraph 52): *"The denial of the benefit of the rehabilitation to the petitioners violates their right to shelter guaranteed under Article 21 of the Constitution. In these circumstances, removal of their jhuggies without ensuring their relocation would amount to gross violation of their Fundamental Rights."*

j) Affirms that settlements/slums cannot be demolished and not resettled merely because their residents are living on '*Right of Way*' – especially as this contradicts existing state policy (paragraphs 50–52): *"…the stand of the respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the "Right of Way" is completely contrary to the State's policy which governs relocation and rehabilitation of slum dwellers. State's policy for resettlement nowhere exempts persons, who are otherwise eligible for benefit of the said policy, merely on the ground that the land on which they are settled is required for "Right of Way". The respondents have failed to produce any such policy which provides for exclusion of the slum dwellers on the ground that they are living on "Right of Way". We find force in the submission of the petitioners that even if there is any such policy, it may be for those jhuggi dwellers, who deliberately set up their jhuggies on some existing road, footpath etc, but surely this policy cannot be applied to jhuggi dwellers who have been living on open land for several decades and it is only now discovered that they are settled on a land marked for a road under the Master Plan though when they started living on the said land there was no existing road"* (paragraph 50).

3. State Responsibility

The judgement reminds the state of its legal responsibilities with regard to provision of housing and resettlement by:

a) Referring to relevant provisions from the Master Plan for Delhi (MPD) – 2021 related to relocation and rehabilitation (paragraph 46).

b) Establishing the legally binding nature of Master Plans by citing supporting judgements from different High Courts in India (paragraphs 47–49).

c) Citing the Delhi Government Cabinet Decision No. 510, dated 10 May 2000, which framed policy guidelines for relocation of JJ (*Jhuggi Jhopri)* clusters, and specifically quoting the provision that, "No large scale removal of *jhuggies* should be resorted to without any specific use for the cleared site."

d) Requiring the state to construct housing and provide adequate resettlement before the eviction (paragraph 55): *"It must be remembered that the MPD-2021 clearly identifies the relocation of slum dwellers as one of the priorities for the government. Spaces have been earmarked for housing of the economically weaker sections. The government will be failing in its statutory and constitutional obligation if it fails to identify spaces equipped infrastructurally with the civic amenities that can ensure a decent living to those being relocated prior to initiating the moves for eviction."*

e) Calling for meaningful consultation with the affected persons (paragraphs 55 and 62).

f) Reiterating that, *"The State's constitutional and statutory obligation is to ensure that if the jhuggi dweller is forcibly evicted and relocated, such jhuggi dweller is not worse off..."* (paragraph 57) .

g) Ordering that: "*The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the jhuggies, are available at the site of relocation*" (paragraph 62).

h) Emphasising the state's obligation to abide by international covenants, regardless of financial resources (paragraph 32).

4. Urbanisation, Urban Poverty and Housing in India

The judgement sets the context of the current case by reflecting on urban poverty trends and the housing situation in India by:

a) Referring to relevant reports to highlight different dimensions of urban poverty, including: the severity of the situation of inadequate housing and evictions; lack of access to basic services, education and adequate healthcare; and, structural factors resulting in the creation of slums and informal housing settlements in urban India (paragraphs 43–44).

b) Emphasising the critical living conditions of the homeless (paragraph 43).

c) Recognising the important contribution of the urban poor to the city and the economy:

"*Most of these persons living in the slums earn their livelihood as daily wage labourers… The support service provided by these persons (whom the Master Plan describes as "city service personnel") are indispensable to any affluent or even middle class household. The city would simply come to halt without the labour provided by these people…"* (paragraph 44).

"They are the citizens who help rest of the city to live a decent life, they deserve protection and the respect of the rights to life and dignity which the Constitution guarantees them" (paragraph 61).

"This Court would like to emphasise that the context of the MPD, jhuggi dwellers are not to be treated as "secondary" citizens. They are entitled to no less an access to basic survival needs as any other citizen" (paragraph 57).

5. Procedural and Administrative Shortfalls

The judgement reflects on specific lacunae with regard to administrative procedures and suggests solutions to overcome them.

a) It highlights the problem of the lack of an adequate protocol for conducting surveys of slum dwellers, including the absence of criteria regarding documentation and information (paragraph 56).

b) It suggests the digitization of vital documents since these documents are often destroyed during a slum demolition. This makes it very difficult for residents to prove their residence and thereby eligibility for rehabilitation by the state. In paragraph 58 the judgement states: *"These documents are literally a matter of life for a jhuggi dweller, since most relocation schemes require proof of residence before a "cut-off date". If these documents are either forcefully snatched away or destroyed (and very often they are) then the jhuggi dweller is unable to establish entitlement to resettlement. Therefore, the exercise of conducting a survey has to be very carefully undertaken and with great deal of responsibility keeping in view the desperate need of the jhuggi dweller for an alternative accommodation."*

In its final order, the judgement unequivocally asserts that the decision of the Delhi government not to rehabilitate slum dwellers because they are living on 'right of way' is, "illegal and unconstitutional." It calls for relocation after consultation with the affected families in a

"meaningful manner." It further mandates the provision of basic services "consistent with the rights to life and dignity of each of the citizens" at the relocation site (paragraph 62).

P.K. Koul vs. Estate Officer and Anr. and Ors. (November 30, 2010)

(W. P. (C) No. 15239/2004 & CM No. 11011/2004)

In this case, several displaced persons of the Kashmiri Pandit community residing in Delhi, who were Central Government employees, filed writ petitions seeking protection against forcible eviction of the quarters occupied by them on the ground that it is the only roof available to them.

The petitioners stated that they are permanent residents of Jammu and Kashmir, and have no desire whatsoever to reside in Delhi. However, on account of the prevailing circumstances and the inability of the Government to secure their lives and properties in their home state, they are unable to return to the state. Their properties and only homes in the valley have either been destroyed or occupied. Passage of time has brought no change in the conditions prevalent in the state of Jammu and Kashmir. The petitioners remain unable to return to their own homes.

Justice Gita Mittal, in her judgement on this case, upheld the human right to adequate housing and made several important observations. This judgement is an important legal precedent for the housing rights movement, as it raises the following issues:

1. Human Right to Adequate Housing

In various parts of the judgement, the right to shelter/housing has been recognised and its interpretation has also been elaborated upon. The judgement:

a) Recognises the 'right to shelter' as a Fundamental Right (paragraph 54) and asserts that, *"The right to shelter of every person has been recognized as an essential concomitant of right to life under Article 21 of the Constitution of India"* (paragraph 56). It also states that, *"The expansion and interpretation by the courts has affirmatively established a positive right to housing and shelter for every person as part of the fundamental right"* (paragraph 182).

b) Affirms that, *"shelter and housing is a basic human right of every individual"* (paragraph 43).

c) Emphasises the importance of 'adequate housing' by stating that, *"In order to be meaningful, the shelter which is envisaged has to be in an environment which is safe and secure, not only from the elements, but from the larger threats and dangers which have been created by mankind"* (paragraph 234).

d) Lists previous judgements of the Honourable Supreme Court of India, which have upheld the right to housing (paragraphs 25, 26, 27, 169, 170, 172,) stressing that, *"The Supreme Court held that the right to shelter is a fundamental right available to every citizen of India. It was also read into the right to life guaranteed under Article 21 of the Constitution to make it more meaningful"* (paragraph 26).

e) Mentions the Sudama Singh judgement of the High Court of Delhi (discussed above) and its relevance (paragraphs 31, 165, 172).

f) Reiterates India's international legal obligations and commitments to protect the right to adequate housing (*International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights*, and the *International Convention for the Elimination of All Forms of Racial Discrimination*) (paragraph 30).

g) Lists various United Nations (UN) declarations, conventions, guidelines and other soft law provisions—including the *Declaration of Social Progress and Development*, *Vancouver Declaration on Human Settlements*, and the *Declaration on the Right to Development* — which protect the human right to adequate housing (paragraph 31).

h) Highlights the importance of international law and standards in India (paragraph 42): "*The international human rights law thus establishes a legal obligation for ensuring minimum welfare guarantees. The conventions, treaties and declarations as well as the guiding principles manifest the international consensus that every nation has a duty to ensure and provide these guarantees including, inter alia shelter and basic general assistance to every person on its soils.*"

i) Refers to judgements of the Supreme Court of India that uphold international law (paragraphs 45–50 and paragraphs 52–53).

j) Mentions that the 'right to shelter' is covered under Article 2(1)(d) of India's *Protection of Human Rights Act, 1993* (paragraph 56).

k) Establishes the integral link between the right to housing and the right to work /livelihood (paragraph 29).

l) Reiterates the Fundamental Right to reside and settle in any part of the country – Article 19 (e) of the Constitution of India (paragraph 49).

m) Emphasises the important element of dignity that is closely linked to the right to housing (paragraph 219).

2. Forced Evictions and Internal Displacement

The judgement condemns the practice of forced evictions and makes several references and recommendations related to internally displaced persons, and requirements for resettlement and rehabilitation. In particular, it:

a) Recognises the dire situation of the petitioners and establishes that, *"the threat of forcible eviction would result in violation of the fundamental and basic human rights of the petitioners and, therefore, is unconstitutional, without jurisdiction and completely illegal"* (paragraph 60).

b) Quotes the UN Commission on Human Rights, which, "stated that forced evictions are a gross violation of human rights" (paragraph 228).

c) Refers to *General Comment 7* (on forced evictions) of the UN Committee on Economic, Social and Cultural Rights (CESCR) as well as the Concluding Observations of CESCR on India, related to forced evictions and homelessness (paragraph 32).

d) Defines internally displaced persons and describes their situation (paragraph 35): *"… there are growing instances internationally of persons and even communities who are compelled to abandon homes on account of threat of imminent violence or stand forcibly evicted by use of violence and*

*compelled to relocate to other places even within their own country. They cannot return to their homes within the boundaries of their own countries in the face of the continuing threat of persecution and danger to their properties.... In international parlance, persons compelled to relocate within the boundaries of their own countries stand categorised as "**Internally Displaced Persons**" (abbreviated as "**IDP**s" hereafter)."*

e) Refers to the *UN Guiding Principles on Internal Displacement* and cites relevant paragraphs related to the protection of the rights of internally displaced persons (IDPs) in India (paragraph 39). It further recognises that in the absence of national legislation on IDPs, the Government of India must uphold the *UN Guiding Principles* (paragraphs 50–51).

f) Cites relevant sections of the *Public Premises Act,* 1971 related to proceedings for eviction, including the need for appropriate notice in writing (paragraph 86), and also provides judicial interpretation of the expression "unauthorised occupation" in Section 2(g) of the *Public Premises Act,* 1971 (paragraphs 87–89).

g) Unequivocally states in paragraph 172 that: *"The forcible removal of pavement and slum dwellers by the agencies of the state without their resettlement or rehabilitation has been repeatedly deprecated by the courts in the plethora of judgments on the subject."*

h) States that: *"The International Community has long recognised forced eviction as a serious matter and it has been reported repeatedly that clearance operations should take place only when conservation arrangements and rehabilitation are not feasible, relocation measures stand made"* (paragraph 228).

3. Right to Remedy: Resettlement, Rehabilitation, Compensation and Return

The judgement details specific provisions relating to just resettlement, rehabilitation and compensation. In particular, it:

a) Draws attention to the relevant provisions of the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement* (paragraph 30) related to resettlement and rehabilitation.

b) Calls for rehabilitation sites to be ready before an eviction takes place (paragraph 172): *"Placing reliance on the obligations under the international instruments, the courts have repeatedly stated that adequate and reasonable facilities for resettlement and effective steps taken for rehabilitation have to be made available before forcible eviction."*

c) Stresses the need for comprehensive resettlement such as economic rehabilitation and affordable housing schemes (paragraph 238): "*Compensation to these petitioners which could be considered appropriate and perfect thus would have to include comprehensive resettlement such as economic rehabilitation and affordable housing schemes which have been clearly envisaged by the respondents. Several other measures towards meaningful rehabilitation essential in terms of the Guiding Principles have not even entered the respondents' consideration." And in paragraph 232, further mentions, "So far as compensation is concerned, it is again well settled that the same would not be monetary alone..."* and *"Resettlement and reintegration are an essential part of the rehabilitation of IDPs."*

d) Highlights the important principle of 'just reparation' (paragraph 241): "... *In case rehabilitation is not possible then the respondents have no option but to ensure meaningful and reasonable resettlement in the above terms. To mitigate effects of the displacement from home, hearth and property, the respondents are thus legally obliged to provide at least reasonable shelter as part of the proportional compensation to the petitioners for violation of their basic and fundamental rights.*

Such 'just reparation' would constitute part of "reasonable compensation" and would be a step towards suitable rehabilitation of the petitioners."

e) Raises the very important issue of access to land for all on an 'equitable basis' stating that this is supported in international guidelines and instruments (paragraph 248).

f) Stresses that, *"Displacement as that of the present petitioners clearly reflects the imperative to take a holistic view and for the decision makers to take a 'minimum-needs' based approach where ensuring basic human rights and social welfare are concerned"* (paragraph 193).

g) Mentions that, *"The petitioners are entitled to exemplary costs from the respondents inasmuch as the threat of forcible eviction by the process resorted to by the respondents impacts the fundamental rights of the petitioners"* (paragraph 257).

h) Brings to light the failure of the state to provide adequate rehabilitation: *"The essence of the policy of rehabilitation and resettlement, so far as the petitioners is concerned has not only been given a complete go by but the respondents are completely denying all liability for the same*" (paragraph 196).

i) Refers to relevant judgements of the Supreme Court of India related to displacement and resettlement (paragraphs 239–240).

j) Reiterates a rights-based approach to resettlement (paragraph 193): "*Displacement as that of the present petitioners clearly reflects the imperative to take a holistic view and for the decision makers to take a 'minimum-needs' based approach where ensuring basic human rights and social welfare are concerned."*

k) Underscores the 'right to return' as well as the need to discuss issues of safety and security of migrants who agreed or attempted to return (paragraphs 95–96).

l) Draws attention to the principle of 'non-refoulement' (paragraph 107): *"Forcing the petitioners who are IDPs to return to the area where they were persecuted violates the principle of non-refoulement which is the principle in international law forbidding the expulsion of a refuge into an area where such person might be again subjected to persecution."*

4. Current Situation and Trends

In her judgement, Justice Gita Mittal brings to light certain important trends and problems related to housing and urban planning. In particular, she:

a) Highlights the specific conditions and plight of displaced Kashmiri Pandits in India (paragraph 92–93).

b) Raises the issue of forced evictions in Delhi and the role of the state in abetting it, by stating in paragraph 195 that, *"Experience and examples abound in this city and the aforenoticed judicial precedents of forcible evictions relating to slums and jhuggi dwellers. Defenceless and disadvantaged citizens are forcibly evicted from their shelters which are then destroyed. And then, the long arm of the state, gives a hyper technical interpretation to legal definitions, takes the shield of statutory provisions and implements what is touted as the "rule of law" in removal of "encroachments" by the disadvantaged."*

c) Reflects on the trend in Delhi of regularising a range of illegal constructions but not those of the poor/ disadvantaged (paragraph 195).

d) Recognises that, *"homelessness may result from several causes including natural disasters; development projects, economic deprivation as well as human rights violations"* (paragraph 34).

5. State Responsibility

The judgement by Justice Gita Mittal emphatically underscores state responsibility by:

a) Reiterating that, *"It is the constitutional duty of the state to protect human rights and the fundamental rights of all persons."* And further citing relevant judgements of the Supreme Court of India expounding this responsibility (paragraph 175).

b) Reminding government authorities, *"…of their primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, which includes their right to safety as well as protection against forcible return and resettlement in a place where their life, safety, liberty and or health would be ensured"* (paragraph 44).

c) Stressing that, *"...due process clause in the Constitution mandates ensuring that the state provides a humane standard of living to its citizens"* (paragraph 123).

d) Reaffirming state responsibility towards providing adequate rehabilitation (paragraph 241): "*Looked at from any angle, the respondents cannot avoid their constitutional obligation of protecting the life and liberty of the petitioners and ensuring shelter to these victims of criminal acts who stand displaced from their home for no fault of theirs, primarily on account of failure of the respondents to protect their Constitutional rights."*

e) Highlighting the inability of the state to protect the fundamental and basic human rights of the petitioners (paragraph 110).

f) Raising the very important issue of 'intra-state displacement' in India, which it calls a responsibility of the central government (paragraph 179), and further reiterating that, *"IDPs, who are citizens of the same country, certainly cannot be treated differently and compelled to return to violent situations"* (paragraph 128).

g) Discussing the positive obligation of the state to compensate petitioners in reparation of effects of harm caused by a third party (paragraph 231): "*In view of the harm inflicted by a third party against which the state could offer no protection in the present cases, a positive obligation is also imposed upon the state to compensate the petitioners in reparation of the effects of the harm caused by the third party."*

h) Drawing attention to the issue of financial stringency of the state by also listing previous judgements of the Supreme Court of India, which have upheld that financial stringency is not a ground for not issuing requisite directions when a question of violation of fundamental rights arises (paragraphs 185–192).

i) Stressing that, *"The respondents have a positive duty to provide basic necessities to its citizens..."* (paragraph 219).

6. Role of the Courts

The judgement reflects on certain duties and responsibilities of the courts by:

a) Stating that, *"The courts have a constitutional duty and international legal obligations to ensure the right of every person to be free from want of basic essentials"* (paragraph 219).

b) Referring to several judgements of the Supreme Court of India, which have clarified the role of the courts in dealing with infringement of fundamental rights, while reflecting on appropriate remedy.

c) Emphasising the role of courts in delivering justice (paragraph 230).

d) Underscoring the obligation and objectives of the judiciary and emphasising the *Beijing Statement of Principles for the Independence of the Judiciary*, which have been upheld in former judgements of the Supreme Court as well (paragraph 207).

Conclusion

Given the significance of these two judgements of the High Court of Delhi in protecting the human right to adequate housing in India and their relevance as global precedents, *Housing and Land Rights Network* (HLRN) is publishing these judgements—in their entirety—for wide dissemination and use. HLRN believes that elements of these judgements could be used in framing laws and policies on affordable housing, urbanisation, planning, slums, resettlement and rehabilitation across India. There is an urgent need for the government to implement not just progressive court orders aimed at upholding human rights but also to implement national and international law, which these judgements have also referred to and upheld.

Housing and Land Rights Network would also like to take this opportunity to publicly congratulate the High Court of Delhi for these progressive judgements as well as the many civil society groups that contributed to the affidavits. We hope that the state and central governments will work at multiple levels to implement the judgements and uphold the human rights to adequate housing, freedom of movement and residence, resettlement, participation, livelihood/work, health, and education in India.

ACTUAL TEXT OF THE JUDGEMENTS

HIGH COURT OF DELHI AT NEW DELHI

\+ **WP (C) Nos. 8904/2009, 7735/2007, 7317/2009 and 9246/2009**

Judgment reserved on: 17.12.2009

% Judgment pronounced on: 11th February, 2010

1. **WP (C) 8904/2009**

SUDAMA SINGH & OTHERS ..... Petitioners

Through: Mr. Prashant Bhushan, Mr. Somesh Rattan and Mr. Rohit Kumar Singh, Advocates.

Versus

GOVERNMENT OF DELHI & ANR. ..... Respondents

Through Mr. Najmi Waziri, Standing Counsel for GNCTD

2. **WP (C) 7735/2007**

MAYA DEVI & OTHERS ..... Petitioners

Through: Ms. Girija Krishan Varma Advocate.

Versus

GOVERNMENT OF DELHI & ORS. ..... Respondents

Through Mr. Najmi Waziri, Standing Counsel for GNCTD

3. **WP (C) 7317/2009**

MAJNU ..... Petitioner

Through: Mr. S.K. Agarwal with Ms. Vandana Misra, Advocate.

Versus

COMMISSIONER MCD & ORS. ..... Respondents

Through Mr. H.S. Phoolka, Sr. Advocate with Mr. Ravi Bassi, Advocate for MCD
Mr. O.P. Saxena, Advocate for Slum & JJ

4. **WP (C) 9246/2009**

MUKANDI LAL CHAUHAN & OTHERS ..... Petitioners

Through: Mr. Divya Jyoti Jaipuria, Advocate.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: Mr. H.S. Phoolka,
Sr. Advocate with Mr. Ravi Bassi,
Advocate for MCD
Mr. Najmi Waziri, Standing Counsel
for GNCTD
Mr. O.P. Saxena, Advocate for Slum & JJ

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of the local papers be allowed to see the judgment ? y
2. To be referred to the Reporter or not ? y
3. Whether the judgment should be reported in the Digest ? y

AJIT PRAKASH SHAH, CJ

INTRODUCTION

1. The writ petitions have been filed under Article 226 of the Constitution of India seeking intervention of this Court to rehabilitate and relocate the petitioners who were residing at various slum clusters in the Capital city to a suitable place and providing them alternative land with ownership rights pursuant to demolition of their 'jhuggies' (hutments). The subject matter in these four writ petitions revolves around questions of great importance, inter alia, right to shelter of the petitioners and those represented by them on one hand, and, on the other, slum cluster being on 'Right of Way' on which basis the agencies of the State seek to oppose them. Therefore, all of them were taken up together for hearing and are being disposed of by this common judgment.

STATE'S POLICY OF RESETTLEMENT OF JHUGGI INHABITANTS

2. Certain background facts, germane to these writ petitions may be noted at the outset. The Government in the year 1990, decided to resettle the then inhabitants of jhuggies in Delhi and a comprehensive survey was conducted by the Civil Supplies Department of Delhi Administration between January and March, 1990, wherein all jhuggi clusters except those residing on road, footpath etc., were identified with the cut-off date of January 31, 1990, pursuant to which a proposal was submitted to the Delhi Administration and the Planning Commission for its 1990-91 Annual Plan. The Municipal Corporation of Delhi mooted a three pronged strategy in its proposal to the Delhi Administration and Planning Commission for Annual Plan, 1990-91, to solve the problem of eligible dwellers which, inter alia, provided:

Strategy-I: Relocation of these Jhuggi households where land owning agencies are in a position to implement the projects on the encroached land pockets as per requirements in larger public interest and they submit request to S&JJ Department for clearance the jhuggi cluster for project implementation and also contribute due share towards the resettlement cost.

Strategy-II: In-situ upgradation of JJ clusters and informal shelters in case of those encroached land pockets where the land owning agencies issue NOCs to Slum & JJ Department for utilization of land. However the utilization of land under this strategy is linked with clearance of the project by the Technical Committee of the DDA.

Strategy-III: Extension of minimum basic Civic amenities for community use under the Scheme of Environmental Improvement in JJ clusters and its component schemes of construction of Pay and Use Janasuvidha complexes containing toilets and baths and also the introduction of mobile toilet vans in the clusters, irrespective of the status of the encroached land till coverage under one of the aforesaid two strategies.

3. The Delhi Government with the approval of Central Government finalized the Rehabilitation and Improvement Scheme, 2000 for Jhuggi Clusters which came into effect from 01.04.2000 and had a cut-off date of 30.11.1998 for the entitlements. The said Scheme was set aside by this Court in the case of ***Wazirpur Bartan Nirmata Sangh v. Union of India,*** reported in ***103 (2003) DLT 654*** but the Supreme Court vide its orders dated 19.02.2003 and 03.03.2003 passed in SLP(C) No. 3166-3167/2003 filed by the Union of India stayed the said order of the High Court. Therefore, the policy is still operative today. The policy for relocation of J.J. clusters w.e.f. 01.04.2000, *inter alia,* provided that slums will be relocated only from project sites where specific requests have been received from the land owning agencies and no large scale removal should be resorted to without any specific use. Relocation land will be identified in Delhi and NCR in consultation with DDA and NCRPB so that it is in conformity with the land use policy under the Master Plan and the NCR Plan. Land to be acquired will be identified by DDA/NCRPB in small pockets near existing residential areas so that the cost of peripheral services is minimized. A target of shifting 10,000 Jhuggies in 2000-2001 was laid down which was to be reviewed each year in April by Delhi Government based on requests received from land owning agencies. Cut-off date for beneficiaries was 30.11.1998 and to verify eligibility, ration cards issued prior to 30.11.1998 was to be taken in account, the name of allottee must also figure in the notified voters list as on 30.11.1998. Keeping in view the scarcity and high cost of land, the plot size for single dwelling unit was kept at 20 sqm (those who are eligible before 31.01.1990) and 15 sqm (eligible between 01.02.1990 to 30.12.1998) with 100% ground coverage. The layout plans, building plans and other development works for relocation settlement were to be prepared by the executing agency, i.e. Slum Department, MCD. Prior to relocation and payment of subsidy by the land owing agency and Delhi Government, a joint survey of the slum cluster was to be carried out by the Dy. Commissioner (Revenue) jointly with the land owning agency and the executing agency. The figure of jhuggies to be relocated was to be determined on the basis of this survey keeping in view the eligibility criteria. A separate revolving fund was also envisaged with the contribution of the beneficiary, the subsidy given by Delhi Government and the subsidy given by the land owing agency which was to be released to the executing agency based on the project estimates. A steering committee under the Chairmanship of the Chief Secretary, Delhi Government was set up for indentifying and prioritizing clusters to be shifted, shifting of identified clusters and for monitoring the execution of each project.

MASTER PLAN FOR DELHI - 2021

4. The latest Master Plan for Delhi-2021 (hereinafter referred to as “the MPD-2021”) as notified on 07.02.2007, has already been enforced. It gives statutory relief to the Slum & JJ Clusters. The

MPD-2021 envisages three fold strategies to deal with rehabilitation or relocation of the existing squatter settlements/jhuggi dwellers. One of the strategies is relocation of the jhuggies dwellers if the land on which their jhuggies exist is required for a public purpose, in which case, the jhuggi dwellers should be relocated/resettled and provided alternative accommodation. It also provides that Resettlement whether in form of in situ-upgradation or relocation, should be based mainly on built-up accommodation of around 25 sq. metres with common areas and facilities. Paras 4.2.3 and 4.2.3.1 of MPD- 2021 under the heading "Housing for Urban Poor" read as under:

"4.2.3 HOUSING FOR URBAN POOR

The category of urban poor for purpose of the Plan would mainly comprise the inhabitants of squatter settlements and informal service providers. Such services could include domestic help, hawkers and vendors, low paid workers in the industrial, commercial and trade/business sectors, etc. These include both existing population and future migrants. In terms of housing requirements of the city, this continues to be the single-biggest challenge and would require a mix of approaches and innovative solutions.

4.2.3.1 Rehabilitation/Relocation of Slum & JJ Clusters

In so far as the existing squatter settlements are concerned, the present three-fold strategy of relocation from areas required for public purpose, in-situ up-gradation at other sites to be selected on the basis of specific parameters and environmental up-gradation to basic minimum standards shall be allowed as an interim measure. Rest of the clusters, till they are covered by either of the first two components of the strategy, should be continued.

During the Plan period 1981-2001, sites and services approach based relocation was employed in which resettlement of squatter slums was done on 18 sqm and 12.5 sqm. plots (transit accommodation) allotted to eligible persons on licence basis. This has led to a number of aberrations and there are several aspects, due to which this approach needs to be progressively abandoned and substituted by an alternate approach. Broadly speaking this alternate approach should have the following components:

(i) Resettlement, whether in the form of in-situ up-gradation or relocation, should be based mainly on built up accommodation of around 25 sqm with common areas and facilities, rather than on the model of horizontal plotted development.
(ii) The concept of land as a resource should be adopted to develop such accommodation with private sector participation and investment, to the extent possible.
(iii) Incentives by way of higher FAR, part commercial use of the land and, if necessary and feasible, Transfer of Development Rights should be provided.
(iv) A cooperative resettlement model with adequate safeguards may be adopted with tenure rights being provided through the institution of Co-operative Societies.
(v) The provision of accommodation should be based on cost with suitable arrangements for funding/financing, keeping in view the aspect of affordability and capacity to pay."

PETITIONERS' CASE

5. The petitioners have contended that action of the government authorities in demolishing the slum clusters without ensuring relocation of its poor residents ("Urban Poor") in total violation of their fundamental right to shelter enshrined in right to life under Article 21 of the Constitution. It is contended

that the demolition of the jhuggies without relocation of the inhabitants was also in violation of human rights and various Covenants like Universal Declaration of Human Rights, International Covenant of Economic, Social and Cultural Rights and Resolution No. 1993/77 adopted by Commission of Human Rights entitled 'Forced Evictions and Human Rights'. The petitioners claim to be mainly from the low income groups engaged in peripheral activities in the neighbourhood of their clusters. They are characterized by the term "city service personnel" whose daily chores ensure the health and cleanliness of the households in the neighbourhood where they are employed. There is an element of indispensability of their services for the resident population in the upper-class apartments and households. The petitioners claim to possess various identity proofs such as election i-cards, ration cards etc. issued by the concerned civil authorities. Some surveys have been conducted from time to time for the purpose of identifying persons eligible for rehabilitation and relocation.

6. On the other hand, the main contention of the respondents is that petitioners were occupying land which comes under the category of 'Right of Way' and, therefore are not entitled for any compensation or alternative land under any policy or scheme of the rehabilitation and relocation.

FACTS

Facts peculiar to the writ petitions may be set out as under:-

WRIT PETITION Nos. 8904/2009 & 7735/2007

7. Writ Petition No. 8904/2009 and 7735/2007 involve more or less similar facts and circumstances. The demolition of the petitioner's dwelling was carried out by the concerned government authorities (except for the location of 'Right of Way' involved). In Writ Petition No. 8904/ 2009, the jhuggies of New Sanjay Camp Slum Cluster were demolished on 05.02.2009 for the purpose of constructing an underpass on road no. 13 (Okhla Estate Marg) which goes through Okhla Phase –I and Okhla Phase II. The respondents to the petition are the Government of NCT of Delhi (hereinafter referred to as GNCTD) through its Secretary, PWD and Municipal Corporation of Delhi (MCD) through its Additional Commissioner - Slum & JJ Department, MCD (hereinafter referred to as 'the Slum Department). In Writ Petition No. 7735/2007, the demolitions of Nehru Camp slum cluster was carried out for the purpose of the work of widening of existing National Highway-24 (NH-24) from four lanes to eight lanes. The work on NH 24 was started in August, 2006. The respondents in the petition are GNCTD, PWD and the Slum Department.

8. According to the petitioners, they have been residing at their respective jhuggi clusters for the last many years. These slum clusters were situated on both sides of the road. It is the claim of the petitioners that all the residents of the clusters have proper proof of identity and residence. They are all living well below the poverty line and stand covered within the accepted definitions of the term 'Urban Poor'. They also come within the definition as laid down in the MPD-2021 under the heading "Housing for Urban Poor" in Para 4.2.3. They are and eligible under the Scheme for rehabilitation and relocation. It is submitted that the demolition of the jhuggies was in violation of the Scheme and MPD-2021 which envisages a three-fold strategy to deal with rehabilitation or relocation of the existing squatter/Jhuggi clusters.

9. The petitioners have claimed that the clusters were settled beyond the area required for widening of the relevant roads and were spread over the stretch in length along the roads in question. The agencies demolished the clusters (jhuggies) not only on the marked area of the road constituting the 'Right of Way' but even those which were located beyond. Before presenting the writ petitions, the petitioners petitioned various authorities. Lengthy correspondence and communications were

exchanged between the petitioners and the respondents regarding the extension of time well as clarifications and information under the provisions of Right to Information Act, 2005. The petitioners in Writ Petition No. 7735 of 2007 filed an RTI application with PWD, in response whereof the PWD vide letter dated 21.07.2007 informed them that the total width of land in both sides of the road is called 'Right of Way'. Whenever any new road is constructed, the Government acquires land on both sides of the road equal to the Right of Way of the road. Thus, the end limits of the lands are fixed at the time of initial construction of road and as per the Government policy, no compensation is payable for the encroachers existing in the Right of Way of road. Reference was made to letter No. F8(158)/R/PWD-III/2006-07/1362 dated 18.10.2006.

10. The main stand of the agencies concerned is that alternative land is not required to be allotted to the inhabitants of jhuggies as land comes under the 'Right of Way' in view of the policies governing the relocation and rehabilitation of the slum dwellers. It was submitted on behalf of the petitioners that the MPD - 2021 and the Scheme have been approved by this Court in the later decisions and there is no mention of any exception, such as 'Right of Way' where compensation or alternate plots are not to be given to the Jhuggi dwellers who are on the 'Right of Way'. The petitioners pointed out that the PWD in its reply to RTI Application dated 21.07.2007 has stated that neither the copies of the Policy, Order, Guidelines or Rules indicate what 'Right of Way' is and where it applies nor any such file relating to the policy of 'Right of Way' is available with its office. According to the petitioners, the stand of the PWD with regard to non-allotment of alternative accommodation to the inhabitants of land covered under the 'Right of Way' was completely baseless, arbitrary and discriminatory.

11. During the course of hearing of Writ Petition No. 7735 of 2007 this Court vide its order dated 12th November, 2007 appointed a Court Commissioner to visit the area in question and to submit a report after physically verifying the area and the relevant documents, survey reports produced by the respondents.

WRIT PETITION 9246/2009

12. This writ petition has been filed seeking intervention of this Court to rehabilitate the petitioners belonging to Gadia Lohar Basti at Prem Nagar, New Delhi to a suitable place and providing them with 25 sq.yds. of lands with ownership rights in accordance with the policy of MCD, which is one of the respondents to the present petition.

13. The petitioners are the residents of Gadia Lohar Basti which is a nomadic and scheduled tribe often referred as 'Khanabadosh' who migrated from Rajasthan to Delhi in 1965. The respondents are MCD, the GNTCD and the Slum Department, an implementing agency which initiates action for shifting / relocation of eligible jhuggi clusters upon the receipt of specific request from the concerned land owning / project implementing agency. The Gadia Lohar Basti came into existence in 1965 and the petitioners were residing there since more than 40 years. The petitioners aver that the MCD on 12.01.2009, without prior notice demolished the house structures / jhuggies and irresponsibly displaced more than 200 people without giving them a chance to take their belongings at safe place. The petitioners have strongly relied upon a Resolution dated 12.2.2009 passed by the MCD for rehabilitation of the Gadia Lohar community, pursuant whereto they are eligible to allotment of 25 sq.yds. plots of land along with ownership rights. The petitioners have claimed that such demolitions have resulted in various health hazards and hardships and the demolition of the slum is contrary to the mandate of Draft National Slum Policy, 2001, Resettlement Policy of 1990 and MPD - 2021 and relevant international covenants. Part B, Paragraph 1 of Draft National Slum Policy, 2001 has been quoted which says that "the Policy does not advocate the concept of slum clearance except under strict guidelines set down for resettlement and rehabilitation in respect of certain slums located on

untenable sites." The term 'untenable slums/informal settlements' has been defined in Part C para 4 to say that " A site shall not be declared as untenable unless existence of human habitation on such sites entails undue risk to the safety or health or life of the residents themselves or where habitation on such sites is considered contrary to "public interest". Reliance is also placed on Draft National Urban Housing and Habitat Policy, 2005. The decision of the Supreme Court in ***Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, *(1997) 11 SCC 121*** has also been relied upon wherein the Court observed that "though it is correct to say that roadways and pathways should be kept free of encroachers, should it not be held, in cases where the poor have resided in an area for a long time, that the State ought to frame schemes, and allocate land and resources, for resettling and rehabilitating the urban poor."

14. The MCD in its response to the petition submitted that many development projects were being undertaken in order to facilitate the holding of the Commonwealth Games, 2010. In pursuance thereof, a Road Under Bridge (RUB) is being constructed connecting Jawaharlal Nehru Stadium to Tyagraj Stadium under a Joint Venture between the MCD, Railway Department and Central Government. In view of the upcoming Commonwealth Games, it was necessary to connect both the venues. The distance of road between the two stadiums is 1.5 Kms. The existing road connecting the two stadiums is 7 mts. wide which was sought to be widened to 14 mts. and for the purpose, it was necessary to remove all the jhuggies and slum clusters on the pavements which constitute 'Right of Way' of the road. It was pointed out by the MCD that the Gadia Lohar Basti consisted only of 15/16 jhuggies that were removed whereas altogether around 1000 jhuggies were removed in whole length of the road between the two stadiums. It is the stand of the MCD that the demolition was carried out after receiving prior no-objection certificate from the Slum Department and the jhuggi clusters were not notified and covered under any rehabilitation programme of Delhi Government. According to the MCD, there is no existing rehabilitation policy in MCD for rehabilitation of the people removed from encroachments on public land. The present clusters of jhuggies under consideration in this petition constitute encroachment on 'Right of Way'. Therefore, no statutory and constitutional right can be said to have been violated. Responding to the reliance of the petitioners on Resolution passed by the MCD, it was submitted that the Resolution was a private resolution raised by a Councilor, passed by MCD and have no legal sanctity and cannot be legally enforceable. A resolution passed on the basis of a proposal by a Councilor is of no legal consequences unless the Commissioner, MCD adopts or formulates a policy on that resolution. Consequently, the petitioners have no right to claim an allotment of an alternative land based on resolution dated 12.2.2009. In support of this contention reliance was placed on a decision of this Court in WP(C) No. 1662/1988 titled: ***Nirmal Kumar Jain v. MCD***, wherein the Court observed that the MCD Act does not contain any provision which makes it incumbent upo the Commissioner to carry out all the dictates of the Corporation. The entire executive power for the purpose of carrying out the provisions of Delhi Municipal Corporation Act vests with the Commissioner. The petitioners being encroachers on 'Right of Way' were not entitled to any prior notice before demolition action. Reliance was also placed on the decision of this Court in ***Pitampura Sudhar Samiti v. Govt. of NCT of Delhi,*** (Writ Petition Nos. 4125/95 and 531/90 decided on 27.9.2002) and ***Wazirpur Bartan Nirmata Sangh v. UOI, 103 (2003) DLT 654.***

15. A short reply was filed on behalf of the Slum Department, wherein it was submitted that a survey was conducted by the Department determining the eligibility of persons entitled to alternative accommodation on removal of clusters from Kushak Nallah, Prem Nagar. Accordingly, 610 jhuggi units were identified by the concerned land owning agencies out of which none was found eligible or having a mandatory document as per policy of the Government. It was further submitted that as per the survey none of petitioners had shown ration cards as required to be eligible under the 1990 or 1998 category year of the Scheme for allotment of alternative plots. Out of the 18 petitioners, only the names of 11 petitioners had been recorded in the survey, which were placed on record. Consequently,

none of the petitioners were eligible and could be considered for allotment of alternative place under the Scheme.

16. The petitioner in its rejoinder to the reply of respondent – MCD has relied upon various schemes and resettlement policies pertaining to nomadic tribes such as Gadia Lohars. The petitioners have placed on record an unofficial survey of the 92 points by the Slum Department in the year 1990. It is the claim of the petitioners that the respondents erroneously did not cover the Gadia Lohars of Prem Nagar and the petitioners could not be considered for the resettlement schemes.

WRIT PETITION 7317 of 2009

17. In WP (C) 7317 of 2009, the petitioner has prayed for similar reliefs as in WP(C) 9246/2009. In this petition, earlier the petitioner had sought reliefs for himself and for 17 other families of his community though they were not arrayed as petitioners in the petition. However, during the course of hearing, the petitioner confined the relief prayed only to himself and not to the other families.

18. The petitioner was residing at Prem Nagar, New Delhi for more than 45 years. The petitioner amongst other reliefs has prayed for directing the respondents to prohibit demolition activity at the aforesaid Jhuggi cluster and a temple erected by the community and relocate him on an alternative plot of equal size. MCD, the Slum Department and Tantia Constructions are arrayed as respondents in the petition.

19. Petitioner has placed reliance on a resolution dated 23rd January, 2009 passed by the MCD to resettle Gadia Lohar community by allotting them 25 sq. yards plots along with ownership rights. Though the petitioner sought a direction to stop the demolition activity by the respondent as he along with many others of the community is living in the temple premises situated at Prem Nagar, Lohar Basti, New Delhi, but he could not place on record any document to establish ownership of the land where the temple is situated.

20. In reply to the petition, MCD has submitted that neither the petitioner nor other jhuggi dwellers were able to establish their existence on the land under their illegal possession prior to 1998 and, therefore, they are not eligible for rehabilitation as per Rehabilitation Policy of the Slum Department. So far as reliance on resolution dated 23rd January, 2009 is concerned, it was submitted that there is no provision in the MCD Act which binds the Commissioner to give effect to every resolution passed by the Corporation. It was further submitted that the temple in question existed on public land and all other encroachments existed on the site were removed on 12th January, 2009 so as to complete the project of construction of RUB connecting the two Stadiums. During the course of hearing, the respondent MCD stated that on the request of the petitioner, the construction work was stalled so as to enable the petitioner to remove the deities in the temple, which were not removed even thereafter. By order dated 4th March, 2009 the Court acceded to petitioner's request for time to remove the deities from the temple and granted one week's time. The Slum Department has stated that they are only implementing/executing agency and as per the policy of the government they initiated action for shifting/relocation of those jhuggi clusters who have got ration cards of 1990 category or 1998 category and are eligible for 18.0 sq.mtr or 12.5. sq.mtr plot. So far as the petitioner is concerned, he has no ration card of 1990/1998 category. An additional affidavit has also been filed by the Slum Department wherein, as regards the resolution dated 23rd January, 2009, it was stated that the Department cannot enforce this resolution as under the MCD Act there is no provision for relocating jhuggi dwellers who are found squatting on the 'Right of Way'. It was further stated that Commissioner MCD is the statutory authority who acts under the MCD Act in accordance with the powers conferred on him by virtue of the MCD Act. All the resolutions passed by the MCD Deliberative Wing are not

binding on the Commissioner. So far as relocation/rehabilitation of the petitioner is concerned, as per the policy framed by the Delhi Government, the resolution of the MCD Deliberative Wing cannot overrule the policy framed by the Delhi Government and, therefore, relocation/rehabilitation of the petitioner is not possible under the policy framework.

SUBMISSIONS OF PETITIONERS

21. On behalf of the petitioners it was submitted that the decision of the authorities for the demolition of their jhuggi cluster in violation of the government policy / Master Plan Delhi 2021 without making any provision for rehabilitation / relocation for the jhuggi dwellers was clearly arbitrary and discriminatory and has rendered the residents of those jhuggies homeless, seriously affecting their human rights as well as the Fundamental Rights as guaranteed under the Constitution.

22. It was submitted that the stand of the respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the 'Right of Way' is completely contrary to the 2000 Scheme framed by the Delhi Government for rehabilitation of the slum dwellers. In the 2000 Scheme there is no mention of any exception, such as 'Right of Way', to deny the eligible slum dwellers allotment of alternative plots for their rehabilitation. Moreover, the policy of not relocating those who are found on 'Right of Way' may be applicable for those who encroach upon the road, footpath etc. but the same principle cannot be applied to the persons who are residing on a place for several decades and are completely unaware that the place where they are living is earmarked for some road which has to be developed or expanded in future. As long as they were not on existing road / footpath, they cannot be denied the benefit of rehabilitation / relocation. The demolition of jhuggi cluster is also in violation of MPD 2021 which has come into force and has given statutory relief to the Slum & JJ Clusters. The MPD 2021 envisaged three-fold strategies to deal with rehabilitation or relocation of the existing squatter settlement / jhuggi dwellers. One of the strategies is relocation of the jhuggi dwellers if the land on which their jhuggies exist is required for public purpose and in such cases jhuggi dwellers should be relocated / resettled on alternative plot. It further provides that resettlement whether in form of in situ upgradation or relocation, should be based mainly on built-up accommodation of around 25 sq. mtr. with common areas and facilities. In view of this clear provision of relocation in the present Master Plan, it was submitted that the demolition of the petitioners' jhuggies before eligible jhuggi dwellers were relocated or resettled on alternative accommodation was illegal, arbitrary and in clear violation of the MPD-2021.

23. It was submitted that these slum dwellers do not have any other alternative place to live in Delhi as neither do they own any land nor they can afford any rented accommodation in Delhi. All of them had shifted to Delhi to earn their livelihood as there is no work opportunity in their respective native villages and now, the demolition of their jhuggies with no hope for any resettlement will leave them without any shelter. It was submitted that the petitioners have got constitutional right and moreover, they are fully covered under the resettlement policy of the government. In these circumstances, removal of the jhuggi cluster without ensuring proper relocation of its residents would amount to gross violation of their human rights as well as the fundamental right to life guaranteed under Article 21 of the Constitution of India.

SUBMISSIONS OF RESPONDENTS

24. On behalf of the respondents it was contended that jhuggi and slum dwellers were on the Right of Way and constituted encroachment on public land. There can be no legal right vested in any person on a Right of Way. The petitioners were encroachers on public land and as such they are liable to be removed, especially in view of the project for Common Wealth Games that has to be completed

expeditiously. Even otherwise, it was submitted that it is the function of the statutory authority to remove encroachers on public land especially on the right of way. Unauthorised occupants on the right of way have no legal right to continue. Such unauthorised occupation on public land that constitutes Right of Way cannot create the right in their favour to be allotted alternative site. In support of their submissions, the respondents placed reliance on decision of this Court in ***Pitampura Sudhar Samiti & Another v. Government of NCT of Delhi & Others*** and ***Wazirpur Bartan Nirmata Sangh v. UOI & Ors.,***(supra). It was claimed that these decisions categorically held that no alternative sites are to be provided in future for removal of persons, who are squatting on public land. It has been specifically directed that encroachers and squatters on public land should be removed expeditiously without any pre-requisite requirement of providing them alternative sites before encroachment is removed or cleared. The encroachers on public land / Right of Way are not entitled to any statutory notices before their eviction from such public land / Right of Way. The relocation policy framed by the State Government is not applicable to the petitioners, who are encroachers upon the Right of Way.

THE ISSUES

25. In the light of the above submissions made at the Bar, following points falls for consideration and determination:

- Whether the State Government's policy for relocation and rehabilitation excludes the persons living on Right of Way, although they are otherwise eligible for relocation / rehabilitation as per the Scheme?
- If there is any policy regarding the persons living on Right of Way then what could be the true import of such policy?
- Whether the manner in which the alleged policy is being implemented by the respondents is arbitrary, discriminatory and in violation of Articles 14 and 21 of the Constitution and various international covenants to which India is signatory?

RIGHT TO SHELTER

26. The housing problem can be considered to be universal, since, to date, no country has yet managed to completely meet this basic human need. **Adequate housing serves as the crucible for human well-being and development, bringing together elements related to ecology, sustained and sustainable development. It also serves as the basic unit of human settlements and as an Indicator of the duality of life of a city or a country's inhabitants**. It reflects, among other things, the mobilization of resources and the distribution of space, as well as varied social and organizational aspects of the relationship between Government and society. Unfortunately, in spite of its importance, there exists an enormous housing deficit throughout the world. According to the United Nations, more than one billion people are living in precarious shelter conditions, including those who are "homeless" *(emphasis added by HLRN)*.

INTERNATIONAL CONVENTIONS

27. International concern over the world housing situation has been expressed by Governments themselves in numerous international declarations, conventions and agreements.

28. United Nations General Assembly in 1948 made explicit reference to housing as a fundamental human right. Article 25(1) states:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services."

29. Future international declarations on the implementation of housing rights would include emphasis on the physical structure such as the provision of drinking water, sewer facilities, access to credit, land and building materials as well as the de jure recognition of security and tenure and other relates issues.

30. Thus the process of recognizing human rights began 60 years ago. The rights enshrined in the Universal Declaration became binding obligations in 1966. Article 11 of the International Covenant on Economic, Social and Cultural Rights expanded on Article 25(1) of the Universal Declaration. It further codified the right to housing by stating:

> "The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions."

31. In 1987, the International Year of Shelter for the Homeless,the United Nations spoke of the right of all individuals to:

> "a real home … one which provides protection from the elements; has access to safe water and sanitation; provides for secure tenure and personal safety; and within easy reach of centres for employment, education and health care; and is at a cost which people and society can afford."

32. The Covenant indicates that priority should be given to social welfare and the level of effort should increase over time. **These obligations apply to any State that has ratified the Covenant regardless of the State's economic resources**. Of course, the States would devise their own steps for the realization of these rights in accordance with their own resources. **India has signed and ratified this Covenant and the State is under an obligation to give effect to its provisions** *(emphasis added by HLRN).*

33. The General Comment 7 dated 20th May 1997 on the right to adequate housing (Article 11.1) by the Commission on Economic, Social and Cultural rights reads as follows:

> "(1) In its General Comment No. 4, (1991), the Committee observed that **all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirement of the Covenant** *(emphasis added by HLRN).*
>
> (2) The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to? undertaking major clearance operation should take place only when conservation and rehabilitation are not feasible and relocation measures are made. In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its neighbourhoods, rather than damage or destroy them was recognized. **Agenda 21 stated that people should be protected by law against unfair eviction from their homes or land. In the Habitat Agenda Governments committed themselves to protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and]**

when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided. The Commission on Human Rights has also indicated that forced evictions are a gross violation of human rights." *(emphasis added by HLRN).*

34. The recognized importance of the right to housing over time has led to its ratification and reinforcement through other international declarations, conventions and conferences, in which more precise and complex objectives have been developed. Of these declarations, special note should be made of The Habitat I Vancouver Declaration (1976), the International Year of the Homeless (1987).

SPECIAL RAPPORTEUR'S GUIDELINES ON RELOCATION OF DISPLACED

35. **Annexure-I of the Report of the Special Rapporteur on Adequate Housing lays down basic principles and guidelines on development based evictions and displacement** *(emphasis added by HLRN)***.** Insofar as relocation of the displaced is concerned, the guidelines provide:

> "52. The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.
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> 53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.
>
> 54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically elevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.
>
> 55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include:
>
> (a) security of tenure;
>
> (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate;
>
> (c) affordable housing;
>
> (d) habitable housing providing inhabitants with adequate space, protection from

cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants;

(e) accessibility for disadvantaged groups;

(f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and

(g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

56. In determining the compatibility of resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

(a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;

(b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;

(c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;

(d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;

(e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;

(f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;

(g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;

(h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;

(i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;

(j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and

(k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to host communities at relocation sites."

UN COMMITTEE'S OBSERVATIONS ON INDIA

36. **The UN Committee on Economic, Social and Cultural Rights in May, 2008, in its Concluding Observations on India, called upon the Indian government to address the issue of rising homelessness, including the need for disaggregated data on the homeless** *(emphasis added by HLRN)***.** In particular, it mentioned:

"30. The Committee is concerned about the lack of a national housing policy, which particularly addresses the needs of the disadvantaged and marginalized individuals and groups, including those living in slums who are reportedly growing in numbers, by providing them with low-cost housing units. The Committee also regrets that sufficient information was not provided by the State party on the extent and causes of homelessness in the State party.

The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing, disaggregated by, *inter alia,* sex, caste, ethnicity and religion.

70. The Committee urges the State party to address the acute shortage of affordable housing by adopting a national strategy and a plan of action on adequate housing and building or providing low-cost rental housing units, especially for the disadvantaged and low income groups, including those living in slums. In this connection, the Committee reminds the State party of its obligations under article 11 of the Covenant and refers to its General Comment No. 4 on the right to adequate housing (1991) to guide the Government's housing policies. The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing, disaggregated by, *inter alia,* sex, caste, ethnicity and religion.

71. The **Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and / or offered alternative accommodation, in accordance with the guidelines adopted by the Committee in its General Comment No. 7 on forced evictions (1997). The Committee also recommends that, prior to implementing**

> **development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities.** In this connection, the Committee draws the attention of the State party to its General Comment No. 4 on the right to adequate housing (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions *(emphasis added by HLRN)*.

RIGHT TO SHELTER – CONSTITUTIONAL PERSPECTIVES

37. In a catena of decisions, **the Supreme Court has enlarged the meaning of life under Article 21 of the Constitution to include within its ambit, the right to shelter.** In some of the cases upholding the right to shelter the Court looked at differentiating between a man animal-like existence and a decent human existence thereby emphasizing the need for respected life *(emphasis added by HLRN)*.

38. Upholding the importance of the right to a decent environment and a reasonable accommodation, in ***Shantistar Builders v. Narayan Khimalal Totame,*** (1990) 1 SCC 520 the Court held that, (para 9)

> "The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation, which would allow him to grow in every aspect – physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fireproof accommodation."

39. In ***PG Gupta v. State of Gujarat and Ors***, 1995 Supp.(2) SCC 182, in 1994, the Court went further holding that the Right to shelter in Article 19(1) (g) read with Articles 19(1) (e) and 21 included the right to residence and settlement. **Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The right to residence and settlement was seen as a fundamental right under Article 19(1)(e) and as a facet of inseparable meaningful right to life as available under Article 21** *(emphasis added by HLRN)***.**

40. In ***Chameli Singh V. State of U.P***., (1996) 2 SCC 549 a Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful. It has been held thus: (para 8)

> "In any organized society, right to live as a human being is not ensured by meeting only the animal need of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions, which inhibit his growth. All human rights are designed to achieve this object. **Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society.** All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights" *(emphasis added by HLRN).*

41. Emphasizing further on the right to shelter, the Court in this case held that, (para 8)

> "Shelter for a human being, therefore, is not a 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. **Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right.** As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civic community one should have permanent shelter so as to a physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultural being. Want of decent residence, therefore, frustrate the very object of the constitutional animation of right to equity, economic justice, fundamental right to residence, dignity of person and right to live itself" *(emphasis added by HLRN).*

42. In ***Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*** (supra) (relevant paras 10, 12, 25) Supreme Court observed:

> "… It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful
>
> …….. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but if would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the constitutional objectives."

INDIA: URBAN POVERTY REPORT – 2009

43. The Ministry of Housing and Urban Poverty Alleviation, Government of India, with the support of the United Nations Development Programme (UNDP) have launched India's first-of-its-kind report on the nature and dynamics of urban poverty in the country. The report, "India: Urban Poverty Report-2009", brings together inputs from eminent researchers, academics and civil society representatives.

Key Messages from the Report

The urban population of India is increasing but not as fast as other Asian countries.

India has shared the growth pattern with some of the fastest growing regions in Asia. The country has witnessed around 8 percent growth in GDP in the last couple of years.

India's urban population is increasing at a faster rate than its total population. Urbanisation has been recognized as an important component of economic growth. At 28 percent, the pace of urbanisation, however, has been slow and lower than the average for Asia. The absolute number of people in urban cities and towns, however, has gone up substantially. The researchers expect rate of urbanisation to also increase in the coming years. With over 575 million people, India will have 41 percent of its population living in cities and towns by 2030 from the present level of 286 million.

But this success has been accompanied by poverty in urban areas.

Urban poverty in India remains high, at over 25 percent. Over 80 million poor people live in the cities and towns of India *(emphasis added by HLRN)***.**

This has resulted in the 'Urbanisation of Poverty'

A large number of states report poverty figures in urban areas much above that in rural areas. At the national level, rural poverty is higher than poverty in urban areas but the gap between the two has decreased over the last couple of decades. The incidence of decline of urban poverty has not accelerated with GDP growth. As the urban population in the country is growing, so is urban poverty *(emphasis added by HLRN)*.

The nature of urban poverty poses different problems

Urban poverty poses the problems of housing and shelter, water, sanitation, health, education, social security and livelihoods along with special needs of vulnerable groups like women, children and aged people *(emphasis added by HLRN)***.**

An increase in the slum population is one example

As per 2001 census report the slum population of India in cities and towns with a population of 50,000 and above was 42.6 million, which is 22.6 per cent of the urban population of the states / Union Territories reporting slums. This could also roughly be the size of Spain or Columbia.

11.2 million of the total slum population of the country is in Maharashtra followed by Andhra Pradesh (5.2 million), and Uttar Pradesh (4.4 million). Although the slum population has increased, the number of slums is lower (National Sample Survey Organisation's 58th Round), which makes them more dense. There is higher concentration of slum population in the large urban centres (Census 2001).

Poor in slums do not have access to basic services like sanitation or water

Poor people live in slums which are overcrowded, often polluted and lack basic civic amenities like clean drinking water, sanitation and health facilities. Most of them are involved in informal sector activities where there is constant threat of eviction, removal, confiscation of goods and almost non-existent social security cover. A substantial portion of the benefits provided by public agencies are cornered by middle and upper income households. 54.71 percent of urban slums have no toilet facility. Most free community toilets built by state government or local bodies are rendered unusable because of the lack of maintenance *(emphasis added by HLRN)*.

The homeless live an even more precarious life

As per the 2001 census, the total urban homeless population is 7,78,599 people. Delhi had 3.1 percent of the national level, and Bihar and Tamil Nadu had 1.6 percent and 7.3 percent respectively. Many people interviewed chose the streets because paying rent would mean no savings and therefore no money sent back home and hence the street was the only option for them. Their condition is chiefly linked to their lack of adequate shelter. In Delhi, for over a 100,000 homeless people, the government runs 14 night shelters with a maximum capacity of 2,937 people, which is only 3 percent of the homeless people in the city. Outside, in the walled city of Delhi, private contractors called thijawalahs rent out quilts (winter) and plastic sheets (monsoon) for five rupees a night. Iron cots are rented for 15 rupees a night. 71 percent said they had no friends. In a study of homeless populations, homeless men, women and children in four cities reported that they were beaten by the police at night and driven away from their make-shift homes/ shelters.

Proposed solutions to urban poverty

1. There should be **greater equity in the provision of basic services** as interstate and intercity disparity has acquired alarming proportions.
2. **Small and medium towns, particularly in backward states, should get special assistance from the central / state government** as their economic bases are not strong enough to generate adequate resources.
3. Constitutional amendments for decentralization should be backed up by actual devolution of powers and responsibilities and their use by the municipal bodies.
4. As much of the subsidized amenities have gone to high and middle income colonies, the **restructure of these programmes and schemes is needed to ensure that subsidies are made explicit through strict stipulations, targeted through vulnerable sections of population.**
5. There is good potential for **organising slum communities** as the average size of slum is small.
6. To improve sanitation standards, it is suggested to **construct community toilets** where individual toilets are not possible, **to extend sewerage networks to slum areas and connect toilet outlets with that, and community management of toilets in common places.**
7. Solar, bio-gas and non-conventional energy needs to be promoted for street lights as well as in household energy use wherever possible and feasible. **Complete coverage of slum households through electric connections should be ensured** *(emphasis added by HLRN)***.**

JHUGGIES & JJ CLUSTERS IN DELHI

44. **In the last four decades, on account of pressure on agricultural land and lack of employment opportunities in the rural areas, a large number of people were forced to migrate to large cities like Delhi. However, in cities, their slender means as well as lack of access to legitimate housing, compelled them to live in existing jhuggi clusters or even to create a new one. They turned to big cities like Delhi only because of the huge employment opportunities here but then they are forced to live in jhuggies because there is no place other than that within their means. These jhuggi clusters constitute a major chunk of the total population of the city. Most of these persons living in the slums earn their livelihood as daily wage labourers, selling vegetables and other household items, some of them are rickshaw pullers and only few of them are employed as regular workers in industrial units in the vicinity while women work as domestic maid-servants in nearby houses**. Their children also are either employed as child labour in the city; a few fortunate among them go to the municipal schools in the vicinity. **The**

support service provided by these persons (whom the Master Plan describes as 'city service personnel') are indispensable to any affluent or even middle class household. The city would simply come to halt without the labour provided by these people. Considerations of fairness require special concern where these settled slum dwellers face threat of being uprooted. Even though their jhuggi clusters may be required to be legally removed for public projects, but the consequences can be just as devastating when they are uprooted from their decades long settled position. What very often is overlooked is that when a family living in a Jhuggi is forcibly evicted, each member loses a 'bundle' of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity *(emphasis added by HLRN)***.** In this regard, comments of Professor Bundy on the large number of forced evictions in South Africa, may be noted:

> "There is a sense in which these appalling figures have been cited so often that we are used to them: that we cease to realize their import, their horror – what they mean in terms of degradation, misery, and psychological and physical suffering.

Bundy makes the point that **"trauma, frustration, grief, dull dragging apathy and [the] surrender of the will to live" - are indeed some of the effects of forcible evictions on the human condition. And, the consequences span over multiple areas of social life: frequently it is the case that families are left homeless, their social support structures severed and their welfare services, jobs and educational institutions, rendered inaccessible** *(emphasis added by HLRN)***.** [Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v. City of Johannesburg and Others (2008) ZACC 1:2008 (3) SA 208 (CC):2008(5) BCLR 475 (CC) at para 17].

DELHI GOVERNMENT'S INITIATIVE FOR RELOCATION OF SLUM DWELLERS

45. The Delhi Government vide Cabinet Decision No. 510 dated 10th May, 2000 framed Policy Guidelines for implementation of the Scheme for relocation of JJ clusters and the Policy Guidelines *inter alia* reads as follows:

> "Government of NCT of Delhi
> URBAN DEVELOPMENT DEPARTMENT
> VIKAS BHAVAN: NEW DELHI
> Sub : Policy guidelines for implementation of the Scheme for Relocation of JJ clusters.
> …….

1. Jhuggies will be relocated only from project sites where specific requests have been received from the land owning agencies for cleaning of the project lands.

   No large scale removal of jhuggis should be resorted to without any specific use for the cleared site *(emphasis added by HLRN)***.**

2. Land for relocation of jhuggies will be identified in Delhi and NCR in consultation with the DDA and NCRPB so that it is in conformity with the land use policy laid down under the Master Plan, and the NCR Plan. Land pockets in NCR well connected with the transport system should also be utilised for relocation of JJ dwellers in Delhi.

3. Land will be acquired at the sites identified by the DDA/NCR in small pockets not exceeding 10 acres (4 hectares) near existing residential areas so that cost of provision of peripheral services is minimised.

4. A target of shifting 10,000 jhuggies in 2000-2001 is laid down. This target will be reviewed each year in April by Delhi Govt. based on requests received from land owning agencies.

5. Land will be acquired under the scheme of "large Scale Acquisition for Planned Development of Delhi". Its development and disposal will also be governed by the conditions laid down under Govt. Of India Orders No. F.37/16/50-Delhi(1) dated 2.5.1961 read with GOI's Order No. J-2011/12/77-L.II dated 14.2.92 making it compulsory for conversion of plots below 50 sqm. from leasehold to freehold. (Copies enclosed). After acquisition, the land will be placed at the disposal of the Executing Agency by the Lands Deptt. of Delhi Government. The ownership of the land acquired for relocation will vest with the Delhi Govt. Requests for acquisition will be routed by the Executing Agency through the Urban Development Department of Delhi Government.

6. Cut-off date and eligibility criteria: Cut-off date for beneficiaries would be 30.11.98. To verify eligibility, Ration Cards issued prior to 30.11.98 will be taken into account. The name of the allottee must also figure in the notified Voters' List as on 30.11.98. Jhuggies who come up after 30.11.98 will be removed without any alternative allotment by the project Executing Agency.

7. Size of Plot: Keeping in view the scarcity and high cost of land, the plot size now approved for JJ dwellers will be as under:

Size of plot	**JJ dwellers who were eligible before 31.1.90.**	**JJ dwellers who have become eligible between 1.2.90 and 30.12.98.**
Size of plot for a single dwelling unit with WC.	20 Sqm.	15 sqm.
Ground coverage	100%	100%

8. Layout Plans: The layout plans for the relocation settlement will be prepared by the Executing Agency and proper approval taken from the concerned local body / DDA as the case may be. Executing Agency will follow the ISI Code 8888 for preparing the layout. 50% of gross area will be used for residential plots, 30% for services and 20% for other social infrastructure such as schools, dispensary, community hall and local shopping area and other utility sites.

9. Building Plans: The Executing Agency will also prepare standard building plans for each relocation settlement which are duly approved by the local bodies / DDA. The sanction shall be given to the beneficiary along with the allotment letters / conveyance deed.

10. Construction of Dwelling Units: The construction of dwelling units on the plots will be carried out by the allottee in accordance with the sanctioned lay out plans / building plans within a period of one year from the actual date of shifting. Till completion of the project and handing over of the services to the concerned local bodies, the Executing Agency will exercise the necessary building controls and ensure that the construction activities go on as per the approved plans and building plans. In case, the allottee fails to build even a single floor with WC within a period of one year the allotment be cancelled and plot resumed by the Executing Agency.

11. Handing of the services for maintenance to the local bodies: After two years from the date of actual shifting of the cluster to the Resettlement site, the settlement shall stand transferred to the concerned local body for maintaining services, and for exercising of building controls.

12. Cost of land :

    Cost of land at Rs.16.00 lakhs per acre or Rs.400 per sqm. Cost of Internal Development : Rs.600 Sqm.

    Total Rs.1000/- per sqm. of gross area, or Rs.2000/- per sqm of net area.

13. ……..

14. Recovery of electricity and water : Charges for consumption of electricity and water be recovered from allottees for community toilets and common water hydrants. Fixed charges shall be recovered by the Executing Agency from each allottee to cover the cost of maintenance and consumption of water for the first two years, during which period metered supply will be provided by DVB / DJB.

15. Water Supply: Individual metered water connections will be given to each allottee within a period of two years of shifting. The reduced norm for supply of water as in the case of unauthorised colonies will be adopted. The work of laying of internal water and sewer lines at the resettlement site shall be executed by the DJB from funds to be provided by the Executing Agency. No departmental charges will however be leviable by DJB for such works. Peripheral and trunk services will be provided by DJB as in the case of other settlement at its own cost.

    Water harvesting: The DJB will adopt innovative technology for water harvesting and ground water recharge at the relocation site.

16. Electricity: Individual metered connections will be provided to each allottee. The work of internal electrification as in the case of unauthorised colonies will be carried out by DVB. No departmental charges will be levied by DVB for executing the work. Peripheral and trunk services will be provided by DVB at its own cost as in the case of unauthorised colonies.

17. Other developmental works: Other developmental works like laying of roads, drains, developmental of parks, etc. Will be carried out by the Executing Agency. The services shall be transferred to the local bodies / DDA after a period of 2 years from the date of shifting, for maintenance.

18. Density and size of each dwelling unit: Keeping in view the high cost of land in Delhi and the reducing availability, density shall be as follows :

Size	Density
15 sqm plot	300 dwelling units per hectare
20 sqm plot	250 dwelling units per hectare

19. Terms of allotment: The grant of freehold plots to JJ dwellers at the relocation site has been agreed to, in principle by Delhi Government subject to clearance by Government of India. Separate instructions with regard to nature and tenure shall be issued shortly.

20. Public Utility sites: Sites for putting up sub-stations by DVB, tubewells and other water related infrastructure as also for primary school, community hall and dispensary will be transferred on a token charge of Re.1/- to the concerned government agency, since cost of such land has already been paid for by other departments of the Government / Delhi Government.

21. Survey of clusters: Prior to relocation and payment of subside by the land owning agency and Delhi Government, a joint survey of the slum cluster will be carried out by the DC of the revenue district, jointly with the land owning agency and Executing Agency. The figure of jhuggies to be relocated should be determined on the basis of this survey keeping in view the eligibility criteria.

22. Issue of Laser Cards: - Each allottee of a site and services plot shall be issued a Laser Card by the DC of the revenue district. This card will carry all relevant details of the allottee and his family members. This Laser Card will be used by the District authorities to check allotment of more than one plot to a family.

23. ……

24. ……

25. …….

Sd/-
(SUMAN SWARUP)
Principal Secretary (UD)

BINDING NATURE OF MPD-2021

46. **The Master Plan for Delhi (MPD) - 2021 envisages rehabilitation or relocation of the existing squatter settlement/jhuggi dwellers. It provides for relocation of the jhuggi dwellers if the land on which their jhuggies exist is required for public purpose, in which case, the jhuggi dwellers should be relocated/resettled and provided alternative accommodation. It also provides that resettlement whether in form of in-situ upgradation or relocation should be based mainly on built-up accommodation of around 25 sq.mtrs. with common facilities** *(emphasis added by HLRN)***.**

47. **It is now well settled that a plan prepared in terms of a statute concerning the planned development of a city attains a statutory character and is enforceable as such** *(emphasis added by HLRN)***.** In ***Bangalore Medical Trust v. B.S. Muddappa,*** (1991) 4 SCC 58, the Supreme Court in regard to the scheme prepared under the Bangalore Development Act, 1976, observed:

> "The scheme is a statutory instrument which is administrative legislation involving a great deal of general law making of universal application, and it is not, therefore, addressed to individual cases of persons and places. Alteration of the scheme must be for the purpose of improvement and better development of the city of Bangalore and adjoining areas and for general application for the benefit of the public at large."

48. In ***Delhi Science Forum v. DDA***, 2004 (112) DLT 944, the Division Bench of this court declared the proposed project at Sultangarhi to be illegal and stressed the need to strictly adhere to the MPD provisions by the DDA.

49. A Full Bench of this Court in ***Joginder Kumar Singh v. Government of NCT of Delhi,*** AIR 2004 Delhi 258, in the context of clear violations of the Zonal Development Plan (ZPD) under the Delhi Development Act, 1957 by impermissible commercial use of residential areas, went as far to suggest (para 37) that **"…..any act or attempt amounts to nothing but mischief with the Planned Development and is violative of Article of the Constitution of India" .** We may add that the previous plan, i.e. MPD-2001, also made similar provisions for resettlement or in-situ upgradation of JJ clusters *(emphasis added by HLRN)*.

SO-CALLED POLICY OF 'RIGHT OF WAY'

50. In our opinion, **the stand of the respondents that alternative land is not required to be allotted to the inhabitants of such land which comes under the "Right of Way" is completely contrary to the State's policy which governs relocation and rehabilitation of slum dwellers. State's policy for resettlement nowhere exempts persons, who are otherwise eligible for benefit of the said policy, merely on the ground that the land on which they are settled is required for "Right of Way". The respondents' have failed to produce any such policy which provides for exclusion of the slum dwellers on the ground that they are living on "Right of Way."** We find force in the submission of the petitioners that even if there is any such policy, it may be for those jhuggi dwellers, who deliberately set up their jhuggies on some existing road, footpath etc, but surely

this policy cannot be applied to jhuggi dwellers who have been living on open land for several decades and it is only now discovered that they are settled on a land marked for a road under the Master Plan though when they started living on the said land there was no existing road *(emphasis added by HLRN)***.**

51. Learned counsel representing the respondents fairly conceded that there is no written policy of "Right of Way" but made a faint attempt to justify their stand on the basis of a letter of the Principal Secretary, Urban Development, Government of the NCT of Delhi, which is reproduced below:-

"R. Narayanaswami
Principal Secretary
Urban Development
Government of the National Capital Territory of Delhi
Urban Development Deptt,
Vikas Bhawan, IP Estate New Delhi.
Dated 3/10/2001

Dear SP,

Kindly refer to your note dated 20th August 2001 in File No.11/DC(S&JJ)/S/2001 seeking advice of the Urban Development Department on the matter regarding status of jhuggies on roads, pavements and berms. In this connection, I am directed to convey Hon'ble Lt. Governor's instructions to the effect that encroachers on the right of way of roads (even if they reside there) are not entitled to alternate land. In this regard, the Hon'ble Lt. Governor has categorically observed that this has been explicitly stated in all previous orders and there is no ambiguity about it. He had made these observations on file on 26th September, 2001 following a discussion with you on 25th September, 2001.

You are therefore requested to kindly proceed accordingly to deal with any encroachments, in the manner provided under the DMC Act in so far as roads, pavements and berms are concerned.

This letter issues with the prior approval of the Chief Secretary.

Yours sincerely,
Sd/-
(R. NARAYANASWAMI)

Shri S. P. Aggarwal
Commissioner MCD
Town Hall, Delhi"

52. We fail to appreciate how the above letter of the Principal Secretary spells out any policy decision on 'Right of Way'. The letter merely records oral instructions of the Lt. Governor that the jhuggi dwellers on the 'Right of Way' will not be entitled to relocation. It is also not clear from the letter as to what constitutes 'Right of Way'. When the petitioners set up their jhuggies several decades ago there was no road. It may be that in some layout plan the land was meant for a road but when they started living there, they could not anticipate that the land will be required in future for a road or for the expansion of an existing road**. As long as they were not on an existing road, they cannot be denied the benefit of rehabilitation/relocation. The denial of the benefit of the rehabilitation to the petitioners violates their right to shelter guaranteed under Article 21 of the Constitution. In these circumstances, removal of their jhuggies without ensuring their relocation would**

amount to gross violation of their Fundamental Rights. The decision in ***Wazirpur Bartan Nirmata Sangh v. Union of India*** relied upon by the respondent has been stayed by the Supreme Court. In ***Pitampura Sudhar Samiti v. Govt. of NCT of Delhi*** (supra), the Court expressly observed: "No doubt the Government has been formulating the policies for relocation of JJ clusters keeping in view the social and humane aspects of the problem. As already mentioned above, we are not concerned with this aspect of the matter in the present case which is being attended to by the Division Bench-II" *(emphasis added by HLRN).*

*JUDGMENTS IN **GROOTBOOM** CASE AND **JOE SLOVO** CASE*

53. On behalf of the petitioners reliance was placed on the judgments of the South African Constitutional Court in **Irene Grootboom** case and **Joe Slovo** Case. On October 4, 2000 the Constitutional Court of South Africa delivered the decision in the case of ***Government of the Republic of South Africa v. Irene Grootboom*** **and others** in respect of housing rights of persons who were forced to live in deplorable conditions while waiting for their turn to be allotted low cost housing. In this case, the Constitutional Court held (relevant paras 19-26, 41-45 and 884) that "everyone has a right to have access to adequate housing. …..The state must take reasonable legislative and other measures, within its available resources, to a progressive realization of this right. …..The state is obliged to take a positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.

54. In the case of ***Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes and Others*** [CCT 22/08(2009)ZACC 16(10 June 2009)]. The Constitutional Court held:

> "Any government decision taken and consequent order made regarding the forced eviction of a group of people cannot ignore the enormous impact that a potential forced removal will have on the individual, family, and community at large. No matter how commendable the government's intentions are regarding the intended use of the land from which the community has been removed without the solid promise of alternative housing, evictions may turn out to be a method of brutal state-control and a far cry from the progressive realisation of the socio-economic rights our Constitution guarantees. Courts must remain vigilant to ensure that when the government seeks to evict a community in pursuit of commendable housing plans, the plans must include the guarantee that those who are evicted and relocated have a reasonable opportunity of accessing adequate housing within a reasonable time in relation to the housing projects concerned."

The Court directed the respondents to engage meaningfully with the residents on the timeframe of the relocation. The Court further directed the respondents to consult with the affected residents on each individual relocation specifically. Specifically, the engagement was to take place one week before the specified date for relocation. The Court went as far as specifying some of the issues to be included in the engagement, clearly pointing out that these were not exhaustive. The respondents were to engage with the residents on:

- ascertaining the names, details and relevant personal circumstances of those affected by each relocation;
- the exact time, manner and conditions under which the relocation would be conducted;
- the precise TRUs to be allocated to those relocated;
- the provision of transport for those to be relocated and for their possessions;

- the provision of transport facilities to those affected from the temporary accommodation to amenities such as schools, health facilities and places of work; and the prospect of the subsequent allocation of permanent housing to those relocated to temporary accommodation, including information on their current position on the housing waiting list and the provision of assistance to those relocated in the completion of housing subsidy application forms (para 7(11)).

55. We find no difficulty in the context of the present case, and in the light of the jurisprudence developed by our Supreme Court and the High Court in the cases referred to earlier, to **require the respondents to engage meaningfully with those who are sought to be evicted. It must be remembered that the MPD-2021 clearly identifies the relocation of slum dwellers as one of the priorities for the government. Spaces have been earmarked for housing of the economically weaker sections. The government will be failing in its statutory and constitutional obligation if it fails to identify spaces equipped infrastructurally with the civic amenities that can ensure a decent living to those being relocated prior to initiating the moves for eviction** *(emphasis added by HLRN)***.**

56. The respondents in these cases were unable to place records to show that any systematic survey had been undertaken of the jhuggi clusters where the petitioners and others resided. **There appears to be no protocol developed which will indicate the manner in which the surveys should be conducted, the kind of relevant documentation that each resident has to produce to justify entitlement to relocation, including information relating to present means of livelihood, earning, access to education for the children, access to health facilities, access to public transportation etc** *(emphasis added by HLRN)***.**

57. **This Court would like to emphasise that the context of the MPD, jhuggi dwellers are not to be treated as 'secondary' citizens. They are entitled to no less an access to basic survival needs as any other citizen. It is the State's constitutional and statutory obligation to ensure that if the jhuggi dweller is forcibly evicted and relocated, such jhuggi dweller is not worse off. The relocation has to be a meaningful exercise consistent with the rights to life, livelihood and dignity of such jhuggi dweller** *(emphasis added by HLRN)***.**

58. **It is not uncommon to find a jhuggi dweller, with the bulldozer at the doorstep, desperately trying to save whatever precious little belongings and documents they have, which could perhaps testify to the fact that the jhuggi dweller resided at that place. These documents are literally a matter of life for a jhuggi dweller, since most relocation schemes require proof of residence before a 'cut-off date'. If these documents are either forcefully snatched away or destroyed (and very often they are) then the jhuggi dweller is unable to establish entitlement to resettlement. Therefore, the exercise of conducting a survey has to be very carefully undertaken and with great deal of responsibility keeping in view the desperate need of the jhuggi dweller for an alternative accommodation. A separate folder must be preserved by the agency or the agencies that are involved in the survey for each jhuggi dweller with all relevant documents of that jhuggi dweller in one place. Ideally if these documents can be digitalized then there will be no need for repeated production of these documents time and again whenever the jhuggi dweller has in fact to be assigned a place at the relocated site** *(emphasis added by HLRN)***.**

59. **Each member of the family of the jhuggi dweller is invariably engaged in some livelihood from morning to night. It is, therefore, not uncommon that when a survey team arrives at a jhuggi camp, some or the other member may not be found there. By merely stopping with that single visit, and not finding a particular member of that family, it may not be concluded**

that no such member resides in that jhuggi. Such an exercise, if it has to be meaningful, has to be undertaken either at the time when all the members of the family are likely to be found. Alternatively there should be repeated visits by the survey team over a period of time with proper prior announcement. If jhuggi dwellers are kept at the centre of this exercise and it is understood that the State has to work to ensure protection of their rights, then the procedure adopted will automatically change, consistent with that requirement *(emphasis added by HLRN)***.**

60. **The further concern is the lack of basic amenities at the relocated site. It is not uncommon that in the garb of evicting slums and 'beautifying' the city, the State agencies in fact end up creating more slums the only difference is that this time it is away from the gaze of the city dwellers. The relocated sites are invariably 30-40 kilometers away from a city centre. The situation in these relocated sites, for instance in Narela and Bhawana, are deplorable. The lack of basic amenities like drinking water, water for bathing and washing, sanitation, lack of access to affordable public transport, lack of schools and health care sectors, compound the problem for a jhuggi dweller at the relocated site. The places of their livelihood invariably continue to be located within the city. Naturally, therefore, their lives are worse off after forced eviction** *(emphasis added by HLRN)***.**

61. **Each of the above factors will have to be borne in mind before any task for forceful eviction of a jhuggi cluster is undertaken by the State agencies. It cannot be expected that human beings in a jhuggi cluster will simply vanish if their homes are uprooted and their names effaced from government records. They are the citizens who help rest of the city to live a decent life they deserve protection and the respect of the rights to life and dignity which the Constitution guarantees them** *(emphasis added by HLRN)***.**

CONCLUSION

32. It is declared that :

    (i) **The decision of the respondents holding that the petitioners are on the 'Right of Way' and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional** *(emphasis added by HLRN)***.**

    (ii) In terms of the extant policy for relocation of jhuggi dwellers, which is operational in view of the orders of the Supreme Court, **the cases of the petitioners will be considered for relocation** *(emphasis added by HLRN)***.**

    (iii) Within a period of four months from today, each of those eligible among the petitioners, in terms of the above relocation policy, will be granted an alternative site as per MPD-2021 subject to proof of residence prior to cut-off date. **This will happen in consultation with each of them in a 'meaningful' manner**, as indicated in this judgment *(emphasis added by HLRN)*.

    (iv) **The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the jhuggies, are available at the site of relocation** *(emphasis added by HLRN)***.**

33. With the above directions, these petitions are allowed.

34. A certified copy of this order be sent to the Member Secretary, Delhi Legal Services Authority (DLSA) with the request that wide publicity be given to the operative portion and directions of this judgment in the local language among the residents of jhuggi clusters in the city as well as in the relocated

sites. **The DLSA will also hold periodical camps in jhuggi clusters and in relocated sites to make the residents aware of their rights**. A copy of this order be also sent to the Chief Secretary, Government of National Capital Territory of Delhi, for compliance *(emphasis added by HLRN)*.

Chief Justice
S. Muralidhar, J

February 11, 2010
"v/nm"

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.15239/2004 & CM No. 11011/2004

Date of decision: November 30, 2010

P.K. KOUL ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(2) Writ Petition (Civil) No. 15240/2004 and CM No. 11013/2004

T.K. OGRA ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(3) Writ Petition (Civil) No. 15245/04 and CM No. 11026/2004

A.K. MUKOO ... Petitioner

Through: Mr. B.L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ORS. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(4) Writ Petition (Civil) No. 15246/2004 and CM No. 11029/2004

M.L. DULLU ... Petitioner

Through: Mr. B.L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(5) Writ Petition (Civil) No. 862/2004 and CM No. 736/2006

A.K. TRISAL ... Petitioner

Through: Mr. Manoj V. George, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(6) Writ Petition (Civil) No. 15241/2004 and CM No. 11016/2004

T.S. BALI ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(7) Writ Petition (Civil) No. 15264/2004 and CM No. 11044/2004

P.N. KACHROO ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(8) Writ Petition (Civil) No. 15279/2004 and CM No. 11050/2004

C.L.MISRI ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(9) Writ Petition (Civil) No. 15698/2004 and CM No. 11044/2004

PHOOLA RAINA ... Petitioner

(Wife of late Sh.T.N.Raina) Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(10) Writ Petition (Civil) No. 1779/2004 and CM No. 1557/2006

TEJ KISHAN ... Petitioner

Through: Mr. Samrat K. Nigam, Advocate

VERSUS

UOI & ANR. ....Respondents

Through: Mr. Ravinder Agarwal, Advocate

AND

(11) Writ Petition (Civil) No. 2641/2006 & CM NO. 79/2006

S.N.BHAT ... Petitioner

Through: Mr. Manoj V. George, Advocate

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(12) Writ Petition (Civil) No. 5681/2007 and CM No. 10547/2007

M.K. TIKOO ... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo and Mr. Manish Shukla & Mr. Atul Sharma, Advocates

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with
Mr. A.S. Singh, Advocates.

AND

(13) Writ Petition (Civil) No. 7057/2007 and CM No. 13421/2004

C.L. RAINA ... Petitioner

Through: Mr. Thakur Summit, Advocate

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with
Mr. A.S. Singh, Advocates.

AND

(14) Writ Petition (Civil) No. 2869/2008 and CM No. 5540/2008

S.N. KAUL ... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo and
Mr. Manish Shukla & Mr. Atul Sharma, Advocates

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with Mr. A.S. Singh, Advocates.

AND

(15) Writ Petition (Civil) No. 8599/2008 and CM No. 16497/2008

KANTIAYANI GANJOO ... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo and
Mr. Manish Shukla & Mr. Atul Sharma, Advocates

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with Mr. A.S. Singh,Advocates.

AND

(16) Writ Petition (Civil) No. 8600/2008 and CM No. 16499/2008

H.L. KOUL ... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo and
Mr. Manish Shukla & Mr. Atul Sharma, Advocates

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with Mr. A.S. Singh, Advocates

AND

(17) Writ Petition (Civil) No. 8601/2008 & CM NO. 501/2008

VIJAY MAM ... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo and
Mr. Manish Shukla & Mr. Atul Sharma, Advocates

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with Mr. A.S. Singh, Advocates.

AND

(18) Writ Petition (Civil) No. 8641/2009 and CM No. 5796/2009

P.L. KAUL ... Petitioner

Through: Mr. Samrat K. Nigam, Advocate

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with Mr. A.S. Singh, Advocates

AND

(19) Writ Petition (Civil) No. 9609/2009 & CM NO. 7654/2009

Y.S. JAMWAL ... Petitioner

Through: Mr. Naresh Thanai, Advocate

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. R. V. Sinha with Mr. A.S. Singh, Advocates.

AND

(20) Writ Petition (Civil) No. 11377/2009& 10986/2009

M.K. BAZAZ ... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo and Mr. Manish Shukla & Mr. Atul Sharma, Advocates

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(21) Writ Petition (Civil) No. 11548/2009 & CM NO. 351/2009

B.L. TAKAROO ... Petitioner

Through: Mr. Manoj V. George, Advocate

VERSUS

UOI AND ANR. ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(22) Writ Petition (Civil) No. 11488/2009 & CM NO. 11242/2009

MOTILAL KAUL ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER, DIRECTORATE OF ESTATES,

NIRMAN BHAWAN ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(23) Writ Petition (Civil) No. 11489/2009 & CM NO. 11244/2009

B.L. RAINA ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

AND

(24) Writ Petition (C) No. 11490/2009 & C.Mo.No.11246/2009

A.K. GIGOO ... Petitioner

Through: Mr. B. L. Wali, Advocate

VERSUS

ESTATE OFFICER ....Respondents

Through: Mr. Jatan Singh with Mr. Abhishek Aggarwal and Ms. Megha Bharara, Advocates.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J

1. The instant case is a testimony to events which lead to an unprecedented ethnic cleansing of a minority community from the Kashmir valley on account of the inability of the State to protect them and their property from violence, who, as a result, were rendered homeless. Such turmoil was faced by the minority community in the state of Jammu & Kashmir after December, 1989, compelling its members to flee home, hearth and State for bare survival.

These writ petitions have been filed by some of such displaced persons who were Central Government employees seeking protection against forcible eviction of the quarters occupied by them on the ground that it is the only roof available to them.

2. The petitioners contend that those representing the Central Government in the Kashmir valley, especially those who were representing the intelligence agencies, para military and defence forces as well as the Government media became prime targets of the militants to the extent that lists of such persons who had to be targeted were published and circulated in the localities. Family members and friends of such Government employees were killed and their properties destroyed for the message to permeate. As a result, immediate steps for evacuation of such officials on emergency basis were taken by the Government of India in order to at least protect their lives.

3. The writ petitioners in W.P.(C) Nos. 5681/2007, 2869, 8599, 8600, 8601/2008, 11377/2009, 15239, 15240, 15245, 15246, 862, 15241, 15264, 15279, 15698, 1779/2004, 2641/2006, 7057/2007, 8641, 9609, 11548, 11488, 11489, 11490 & 11491/2009 were shifted from Jammu & Kashmir to Delhi and posted in the local offices of the central organization and department where they were employed.

4. The facts disclose that all the petitioners (or the person on whom they were dependant as in the case of Smt. Phoola Raina widow of Late Sh. T.N. Raina writ petitioner in W.P.(C) No. 15698/2004) upon being brought to Delhi were allotted Government accommodation to reside in, not only by virtue of their employment but also their extreme need for shelter. These allottees of the quarters, superannuated from service on different dates over the period of time.

5. W.P.(C) No.15698/2004 has been filed by Smt. Phoola Raina, widow of Late Shri T.N. Raina who was a Government servant. Shri Raina was the allottee of Government accommodation bearing no. DG-915, Sarojini Nagar, New Delhi-23. While still in service Shri T.N. Raina unfortunately expired on the 4th of August, 2001. The petitioner contends that late Sh. T.N. Raina and family which included herself were compelled to flee from the valley in circumstances identical to those of the other petitioners. This petitioner is surviving on a meager pension and she cannot afford any alternate accommodation.

6. The petitioner in W.P.(C) No.5681/2007 evacuated in the same emergent conditions, is stated to be afflicted with the Parkinson's disease since his retirement. His home in Kashmir stands burnt. His relative, one Mrs. Chuni Lal had gone to retrieve her belongings from Kashmir, but was shot dead at point blank range. The petitioner is stated to be barely surviving on his pension. He has no place to return in his home state.

7. So far as the petitioner in W.P.(C) No.2869/2008 and his family are concerned, they were shifted out by the Government on account of the perception of a serious threat to their lives. It is contended that the militants have burnt the petitioner's ancestral home in order to demonstrate their intention of not sparing him. In addition, they have shot dead his uncle and wife at point blank range. As a result, other than the quarter under occupation, the petitioner is without any alternate shelter.

8. Shri P.K. Koul, the petitioner in W.P.(C) No. 15239/2004, was a resident of Razdan, Kochhaa, Bana Mohalla, Habba Kadal, Srinagar and his entire property in Srinagar has been destroyed by the communal riots and terrorist movements. He clearly states that he has no other house anywhere in India. This petitioner was lastly posted as the Director General with the Border Security Force at R.K. Puram, New Delhi. While in service, this petitioner was allotted the premises no. H-52, Sarojini Nagar, New Delhi. On 31st July, 2002, the petitioner superannuated from service. The allotment of this accommodation in his name was cancelled by a letter dated 27/28th August, 2002 with effect

from 1st December, 2002 directing the petitioner to vacate the accommodation immediately and he was informed that on failure to vacate, action to evict him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would be taken. The respondents also informed the petitioner that on failure to vacate, he would be liable to pay damage rent @ Rupees 150 per sq. mtr. for the entire period of over stay. The petitioner was permitted to retain the accommodation from 1st December, 2002 to 31st April, 2003 on payment of four times of the normal license fee for the next two months.

9. The petitioner and his family are permanent residents of the State of J&K and did not leave their home state voluntarily but were driven out of the Srinagar valley. Their household goods were looted and house was burnt by the terrorists. Other than the one residence, which also stands destroyed by the militants in Srinagar, Shri P.K. Koul owned no other property. A grievance is made that the respondents have taken no action for the reconstruction of the houses of the petitioners and others like him which were destroyed by the militants and to rehabilitate them resulting in a pitiable condition and absence of any security for them. Consequently, they are unable to return to their own homes.

10. In this background, the petitioner submitted a representation dated 24th March, 2003 seeking permission from the respondent to retain his accommodation on payment of the existing normal license fee setting out the above facts. Despite permitting retention of accommodation by other similarly placed persons, this request of the petitioner was rejected by the letter dated 20th February, 2003. The respondent no. 2 further referred the case for eviction of the petitioner, treating him as an unauthorised occupant of public premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

11. In these proceedings, the following eviction order dated 23rd September, 2003 was passed against the petitioner which was served on him on 18th November, 2003:-

> "OFFICE OF THE ESTATE OFFICER AND DEPUTY DIRECTOR OF ESTATE (LIT.) DIRECTORATE OF ESTATES, NIRMAN BHAWAN, NEW DELHI.
>
> EC/93/AD/Lit/03/T-D
>
> All persons concerned and in particular
>
> Shri P.K. Koul,
> 123, North West Moti Bagh, New Delhi
>
> Whereas I, the undersigned am satisfied for the reasons recorded below that Shri P.K. Koul is an unauthorized occupation of the premises specified in the Schedule below :
>
> REASONS
>
> You have been continuing to occupy the premises specified in the schedule below even after its allotment stands cancelled in your name w.e.f. 1.2.03 vide letter no. TD/283/M-23/96 dated 8.11.02.
>
> You have failed to prove that you are not in unauthorized occupation of the instant premises. Now, therefore, in exercise of the powers conferred on me under Sub-Section (I) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order Shri P.K. Koul, and all the persons who may be in occupation of the said premises or any part thereof to vacate the same within 15 days from the date of issue

of this order. In the event of refusal or failure to comply with this order within the period specified above, the said Shri P.K. Koul and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

123, North West Moti Bagh, New Delhi.

Sd/-
(B.K. Kulshreshtha)
ESTATE OFFICER

Date : 23.9.2003
Copy to A.D.-T-D."

12. The petitioner filed an appeal registered as PPA No. 333/2003 challenging the said eviction order. It is contended that the learned Additional District Judge mechanically dismissed the petitioner's appeal by an order dated 10th September, 2004 ignoring the orders passed by the Supreme Court and other precedents of this court in respect of identically placed persons, necessitating the present petition. The submission is that the cancellation of the petitioner's allotment by the letter dated 27/28th August, 2002; rejection of the petitioner's request by the letter dated 20th of February, 2003; the order of eviction dated 23rd September, 2003, as well as the order of the learned ADJ dated 10th September, 2004 are legally not sustainable. The writ petition lays a challenge to these orders as well as the non-action of the respondents.

13. The facts relating to the other petitioners in this bunch of petitions are similar and are not disputed by the respondents. For the purposes of convenience and clarity, the details of the allotment of accommodations which were effected in favour of the petitioners/the predecessor in interest; the dates of their retirement; the status of allotment and particulars of the orders which have been passed against all the petitioners and are impugned in these writ petitions are tabulated below:-

1	***2***	***3***	***4***	***5***	***6***
Writ Petition No.	***Quarter Allotted***	***Date of Retirement of Allottee***	***Date of impugned order of Cancellation of Allotment***	***Date of impugned Eviction Order***	***Date of the impugned order in Appeal***
WP (C) No.15239 /2004	H-52, Sarojini Nagar, New Delhi	31.7.2002	31.10.2002	23.9.2003	10.9.2004
WP (C) No.15240 /2004	GI-800, Sarojini Nagar, New Delhi	1.7.2002	31.10.2002	23.9.2003	10.9.2004
WP (C) No.15245 /2004	H-162, Sarojini Nagar, New Delhi	7.5.2002	7.5.2002	25.9.2003	10.9.2004
WP (C) No.15246 /2004	123/IV, North West Moti Bagh, New Delhi	30.9.2002	7.5.2002	25.9.2003	10.9.2004

WP (C) No.862/2006	499 A, Sector 3, R.K. Puram , New Delhi	30.4.2005	1.9.2004	28.3.2005	20.12.2005
WP (C) No.1779/2006	Z-20, Sarojini Nagar, New Delhi	12.12.2005	12.12.2005	31.1.2006	31.1.2006
WP (C) No.15241/2004	11/5, Sector-1, M.B. Road, New Delhi	31.10.2001	1.3.2002	18.9.2002	10.9.2004
WP (C) No.15264/2004	60/9, Sector-1, Pushp Vihar, New Delhi	28.2.2002	30.6.2002	11.7.2003	10.9.2004

1	***2***	***3***	***4***	***5***	***6***
Writ Petition No.	***Quarter Allotted***	***Date of Retirement of Allottee***	***Date of impugned order of Cancellation of Allotment***	***Date of impugned Eviction Order***	***Date of the impugned order in Appeal***
WP (C) No.15279/2004	3/252, Andrews Ganj, New Delhi	30.4.1998	1.9.1998	3.3.2004	-
WP (C) No.15698/2004	DG 915, Sarojini Nagar, New Delhi	(Allottee Died while in service on 4.8.2001)	22.1.2002	-	
WP (C) No.2641/2006	MS/1007, Sector VII, M.B. Road, New Delhi	30.4.2004	1.7.2004	25.4.2005	1.2.2006
WP (C) No.5681/2007	Allotted Quarter in Delhi	30.9.2006		23.7.2007	-
WP (C) No.2869/2008	New Delhi	31.5.2007	-	-	
WP (C) No.8599/2008	New Delhi	31.12.2007		10.11.2008	-
WP (C) No.8600/2008	New Delhi	31.12.2007	-	-	
WP (C) No.8601/2008	New Delhi	31.12.2007		10.11.2008	-
WP (C) No.8641/2009	GI-809, Sarojini Nagar, New Delhi	31.5.2008		20.4.2009	-
WP (C) No.11377/2009	880, Lakshmi Bai Nagar, New Delhi	31.7.2008		3.8.2009	

1	2	3	4	5	6
Writ Petition No.	***Quarter Allotted***	***Date of Retirement of Allottee***	***Date of impugned order of Cancellati on of Allotment***	***Date of impugned Eviction Order***	***Date of the impugned order in Appeal***
WP (C) No.1148 8/2009	SI/38, Sadiq Nagar, New Delhi	30.6.2008	1.8.2008	9.3.2009	25.8.2009
WP (C) No.1148 9/2009	S-1/65/11, M.B. Road, New Delhi	30.11.2007	21.7.2008	19.1.2009	-
WP (C) No.1149 0/2009	AB-837, Saro-jini Nagar, New Delhi	30.4.2008	18.8.2007	10.11.200 8	25.8.2009
WP (C) No.1149 1/2009	K-4/12, Sector II, DIZ Area, Gole Market, New Delhi	30.6.2006	1.11.2006	18.6.2007	25.8.2009
WP (C) No.1154 8/2009	47/3A/, DIZ Area, Sector 2, Gole Market, New Delhi	30.9.2005	1.2.2006	18.7.2006	25.8.2009
WP(C) No.7057 /2007	X-224, Sarojini Nagar, New Delhi	31.08.2006	01.01.2007	28.05.2007	1.9.2007
WP(C) No.9609 /2009	Qr.No.28 1, Type-IV, Sector-8, R.K.Pura m, New Delhi.	30.04.2008	31.12.2008	16.03.2009	-

Petitioners' contentions

14. In these writ petitions, the petitioners have all contended that they are permanent residents of Jammu & Kashmir and have no desire whatsoever to reside in Delhi. However, on account of the prevailing circumstances and the inability of the Government to secure their lives and properties in their home state, they are unable to return to the state. Their properties and only homes in the valley have either been destroyed or occupied.

15. Passage of time also has brought no change in the conditions prevalent in the state of Jammu & Kashmir. The petitioners remain unable to return to their own homes.

16. Mr. R.K. Handoo, Mr. B.L. Wali and Mr. Samrat Nigam, learned counsels appearing for the petitioners, with all the vehemence at their command, have urged that the status of the petitioners stands reduced to that of `refugees' in their own country with nowhere to go and no support at all from the state, the only difference being that instead of being displaced to another country, the petitioners stand evicted within their own country.

17. The petitioners have contended that discretion and power is vested in the respondents under SR 317-B-25 of the Allotment of the Government Residence (General Pool in Delhi) Rules to permit any person to occupy public premises. Instances have been cited of the respondents permitting other persons including identically displaced Kashmiris to occupy public premises. It is complained that the respondents have unfairly failed to consider the special circumstances so far as the petitioners are concerned and have discriminated against them. The writ petitioners thus assail the failure of the respondents to exercise the discretion vested in them to permit the petitioners to continue to occupy the quarters, in accordance with law on the ground of arbitrariness.

18. The submission is that the refusal of the respondents to permit the petitioners to retain the allotment on payment of normal license fee is illegal and results in violation of the constitutional rights of the petitioner as well as the constitutional and public law obligations, responsibilities and duties of the respondents.

19. It is submitted that in the given circumstances the petitioners cannot be deemed to be in 'unauthorised occupation' for the purposes of the application of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The petitioners contend that the respondents were constitutionally mandated to protect their right to life under Article 21 of the Constitution of India and having failed to do so, were bound to ensure the right to shelter of the petitioners, which is an essential concomitant thereof. In this background, the petitioners challenge inaction qua the rights of the petitioners; the legality and validity of the cancellation of the allotments of the quarters; as well as the proceedings and all orders under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is contended that the respondents have ignored all relevant material in initiating the proceedings against the petitioners, passing the impugned orders.

Respondents contentions

20. Mr. Jatan Singh, learned Standing Counsel for the Union of India and Mr. R.V. Sinha, learned counsel for the respondents challenge the very maintainability of these writ petitions. It is contended that the public premises were allotted to employees of the Government by virtue of their employment. Such relationships having come to an end on superannuation/demise of the government servant, learned counsels strongly urge that the petitioners have no right at all to continue to occupy the official accommodation after their retirement. It is further urged that the petitioners have no right

or entitlement to any accommodation from the respondents. The submission is that the decisions against the petitioners are in accordance with the provisions of the Act of 1971 and judicial precedents on the subject and cannot be faulted on any legally tenable grounds.

Material pleadings

21. Before examining these submissions, learned counsel for the petitioners have drawn attention to the petitioner's pleadings in grounds A to H, K, L & M of ***WP (C) No.15239/2004 P.K. Koul Vs. Estate Officer*** and the respondents response thereto which deserves to be usefully considered in extenso and reads as follows:-

Pleadings in the WP (C) No.15239/2004	
Grounds "**A**. Because the Hon'ble **Supreme Court of India in S.L.P. No.7639/1977 – Shri J.L. Koul & Ors. Vs. State of J&K & Ors.** has considered the question regarding the possession of the accommodation of the similarly placed employees and adjourned the matter sine die and till the Supreme Court decides the matter finally, the Respondents cannot dispossess the Petitioner from the premises in question. Vide order dated 26.8.1997 the Hon'ble Supreme Court of India in the said case passed the following orders: "List this matter on a regular day after six weeks. In the meantime, Mr. P.P. Rao will ascertain from the State Govt. as to whether the petitioners can be put back to their respective houses owned by them in the Kashmir valley and can ensure protection of the persons as also their property. To facilitate that venture, the petitioner's counsel will give to Mr. Rao the address of each petitioner where he would expect to be shifted." Again vide order dated 28.1.1998 taking into consideration of the present situation the Hon'ble Supreme Court of India passed the following orders adjourning the matter sine die and continued the stay:- "Adjourned sine die. Stay to continue. The petition to be activated on mentioning by Counsel for the State of Jammu and Kashmir as and when the	**Pleadings in counter affidavit** "That the contents of **Grounds (A to H)** are **matter of record, need no comments**. xxx
Pleadings in the WP (C) No.15239/2004 State is in a position to assure the return of the petitioners to their respective homes in the Kashmir valley and ensure their safety and personal property."	

Copies of the aforesaid orders of the Hon'ble Supreme Court dated 26.8.1997 and 28.1.1998 are annexed herewith as annexure herewith as Annexure P-5 & P-6 respectively. **B**. Because the Ld. ADJ has not even considered that the Hon'ble **Tribunal in OA No.2378/2002 – Tej Kishan Vs. Union of India & Ors. has gone into the issue** and directed the Respondents to allow the Applicant therein to retain the Govt. accommodation pending decision in SLP (Civil) No.7369/97. A copy of the aforesaid order of the Ld. Tribunal dated 30.12.2002 is annexed herewith as Annexure P-7. **C**. Because the Ld. ADJ has failed to appreciate that Petitioner being a Kashmiri migrant whose house in Kashmir was burnt and destroyed by the militants, he has no place to go. He is, therefore, compelled to stay at his Govt. accommodation allotted to him till the normalcy in Kashmir valley is restored and he could go back to his State one day and rebuild and reoccupy his destroyed house. However, the Respondents in a most callous, unconcerned and mechanical manner turned down the request of the Petitioner. **D**. Because the Petitioner has the Fundamental Right to live which is guaranteed to him under the Article 21 of the Constitution of India and which Right includes the Right to Shelter also. **E**. Because the Petitioner cannot go back to the Kashmir Valley, his place of origin because his life is in danger in the valley on account of the ongoing militancy in the State of J & K and also because his own house in Srinagar was burnt/ destroyed by the militants and he has no other shelter anywhere in India. **Pleadings in the WP (C) No.15239/2004** **F**. Because the Petitioner with his meager income received as pension cannot take an alternate private accommodation in Delhi where he can live with dignity alongwith his family members. His pensionary income is not even sufficient to buy food material for his family members. He has no other income whatsoever. **G**. Because unless the Respondent No.1 namely, the Ministry of Urban Development who is the nodal agency to ensure proper shelter to the citizens of India provide suitable accommodation to the Petitioner and other similarly placed Kashmiri migrants at affordable price and in easy	"That the contents of **Grounds (A to H)** are **matter of record, need no comments**. Xxx

installments, no retired Kashmiris can acquire a house of their own and move to the same. The Respondents have of their own and move to the same. **The Respondents have not taken any positive action in this direction so that the Kashmiri migrants are rehabilitated properly and with dignity.**	
H. Because in the face of the peculiar circumstances and abnormal conditions prevailing in the State of Jammu and Kashmir, employees of the State of J & K were granted relief by the Hon'ble Supreme Court of India on humanitarian considerations and on the **basis of equality.**	
xxx xxx xxx	
K. Because the right to the Petitioner to have a shelter does not cease to exist just because he has retired from the Government service. His right to continue to stay in the present accommodation or in an alternate accommodation to be provided by the Respondents cannot be taken away till his safety in his own State is ensured and his own house in Srinagar is renovated or re- built.	16. That in response to the contents of **para K** of ground, it is submitted that the petitioner was allotted Government accommodation subject to allotment rules while he was in service. He was entitled to retain the Government Quarter only during his service period and the allotment has been cancelled consequent upon his retirement from service after giving him concessional period of four months. Further retention thereafter for a maximum period of four months on medical grounds as per rules has already been availed by him.
Pleadings in the WP (C) No.15239/2004	
L. Because the Directorate of Estates are allotting general pool accommodation not only to the serving Government employees but also to various other categories of employees who have nothing to do with government service. The employees working in the office of the political parties, journalists, freedom fighters, artists, etc. are also allotted general pool accommodation. The Petitioner belongs to special category of displaced Kashmiri Pandits and they also deserve special treatment in the matter of providing accommodation as in the case of the aforesaid non-governmental categories.	17. That in response to the contents of **para L** of ground, it is submitted that the allotment of Government quarter is made as per the rules and policy laid down by the Government.
M. Because the Ld. ADJ has failed to consider the facts that the Respondents has the power to relax the Allotment Rules in respect of any person and in respect of any accommodation. According to **SR 317-B-25** of the Allotment of Government Residences (General Pool in Delh) Rules, 1963, the Government have the power to relax the Allotment Rules which is reproduced as under:-	18. That the content of para M of the Ground **needs no comments for want of knowledge**. Howwever, the petitioner is a retiree and getting post retrial pension."

"**SR 317-B-25**: The Government may for reasons to be recorded in writing relax all or any of the provisions of the Rules in this Division in the case of any officer or residence or class of officers or type of residences."	

22. The above narration would show that the respondents admit the correctness of the factual submissions, rights claimed and entitlements of the petitioners in these grounds of the writ petition.

Nature of rights involved in these petitions

Constitutional guarantees

23. Before proceeding to examine the challenge laid by the petitioners, it is essential to examine the right of the petitioners which is involved. **Article 19(1)(e) of the Constitution of India states that all citizens shall have the right to reside and settle in any part of the territory of India. Article 21 on the other hand states that no person shall be deprived of his life or personal liberty except according to procedure established by law** *(emphasis added by HLRN)*.

24. The petitioners question the jurisdiction and legality of the respondent's actions and threat to forcibly evict them from their only shelter in purported exercise of statutory powers utilizing the process prescribed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter referred to as the 'Public Premises Act, 1971').

25. In ***1995 (2) SLR 72, P.G. Gupta Vs. State of Gujarat & Ors***., the **Supreme Court held that food, shelter and clothing are the minimal human rights. The court reiterated its earlier expansion of the right to residence and settlement by again holding that, it is a "fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21" of the Constitution of India** *(emphasis added by HLRN).*

26. Fundamental rights are guaranteed to the citizens of India under part III of the Constitution of India. In ***(1996) 2 SCC 549 Chameli Singh & Ors. Vs. State of U.P. & Anr***., the Supreme Court held that the **right to shelter is a fundamental right available to every citizen of India** *(emphasis added by HLRN).* It was also read into the right to life guaranteed under Article 21 of the Constitution to make it more meaningful. In para 8 of the judgment, the court succinctly set out the nature of the right and the mandate on the state as follows:-

> "8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. ***Right to live guaranteed*** in any civilised society ***implies the right*** to food, water, decent environment, education, medical care and **shelter.** These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is ***home where he has opportunities to grow*** physically, mentally, intellectually and spiritually. ***Right to shelter***, therefore, ***includes adequate living space and decent structures***, *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. Right to shelter when used as an essential requisite***

to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens of course subject to its economic budgeting. In a democratic society as a member of the organised civil community one should have ***permanent shelter*** so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a ***right to dignity of person and equality of status*** is to enable him to develop himself into a culture being. ***Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.....***" (Emphasis supplied)

The apex Court unequivocally declared that all the civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention, 1948 or under the Constitution of India cannot be exercised without, inter alia, the basic human right of shelter *(emphasis added by HLRN).*

27. The right to shelter as an essential concomitant of the fundamental right to life was also pressed by the pavement dwellers in the pronouncement reported at ***(1997) 11 SCC 121 Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors***. The Municipal Corporation of Ahmedabad was complaining against encroachment and occupation of pavements in the urban limits of Ahmedabad by the pavement dwellers (respondents therein). The court was concerned with the plea of violation of fundamental rights of the pavement dwellers under Article 19(1)(e) and 21 of the Constitution of India and their entitlement to shelter. The summation by the Court placing reliance on the several precedents on the subject throws light on the very question which has been raised herein also. After reiterating the principles in earlier judgments, the observations of the Supreme Court read as follows:-

"13. Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its preamble. Articles 39 and 38 enjoins the State to provide facilities and opportunities. Articles 38 and 46 of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavour to eliminate inequalities in status. In that case, it was held that to bring the Dalits and the Tribes into the mainstream of national life, the State was to provide facilities and opportunities as it is the duty of the State to fulfil the basic human and constitutional rights to residents so as to make the right to life meaningful. In Shantistar Builders v. Narayan Khimalal Totame AIR 1990 SC 630, another Bench of three Judges had held that basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal, it is the bare protection of the body; for a human being, it has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual. The surplus urban-vacant land was directed to be used to provide shelter to the poor. In Olga Tellis case (supra), the Constitution Bench had considered the right to dwell on pavements or in slums by the indigent and the same was accepted as a part of right to life enshrined under Article 21; their ejectment from the place nearer to their work would be deprivation of their right to livelihood."

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It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and

opportunities by distributing its wealth and resources for settlement of life and **erection of shelter** over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of this living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make life miserable and impossible to live. ***It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the constitutional objectives.***

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25. Article 19(1)(e) of the Constitution provides to all citizens fundamental rights to travel, settle down and reside in any part of the Bharat and none have right to prevent their settlement. Any attempt in that behalf would be unconstitutional. The Preamble of the Constitution assures integrity of the nation, fraternity among the people and dignity of the person to make India an integrated and united Bharat in a socialist secular democratic republic. The policy or principle should be such that everyone should have the opportunity to migrate and settle down in any part of Bharat where opportunity for employment or better living conditions are available and, therefore, it would be unconstitutional and impermissible to prevent the persons from migrating and settling at places where they find their livelihood and means of avocation. It is to remember that the Preamble is the arch of the Constitution which accords to every citizen of India socio-economic and political justice, liberties, equality of opportunity and of status, fraternity, dignity of person in an integrated Bharat. The fundamental rights and the directive principles and the preamble being trinity of the Constitution, the right to residence and to settle in any part of the country is assured to every citizen. …….The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including Hawkers' case, Olga Tellis case and the latest Chameli Singh's case and host of other decisions which need no reiteration. Suffice it to state that right to life would include right to live with human dignity. As held earlier, right to residence is one of the minimal human rights as fundamental right. Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the state, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status. It positively charges the State to distribute its largess to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make the life worth living with dignity of person and equality of status and to constantly improve excellence."

(Emphasis supplied)

28. The petitioners are facing threatened forcible eviction from the only shelter they know which was allotted by the respondents, either to them or the person on whom they were dependant. If compelled to vacate without provision of an alternative, the inevitable consequence is, that the petitioners would be rendered homeless.

29. It is obvious that the present petitions raise an important aspect of right to shelter of these displaced persons under Article 19(1)(e) and which has been declared by the Supreme Court to be an integral and essential part also of their right to life, guaranteed as a fundamental right under Article 21 of the Constitution of India. **In the several binding judicial precedents noticed hereinabove, the Supreme Court has further held that such violation may also adversely impact and violate the right to occupation and profession under Article 19(1)(g) of the Constitution of India which is the other basic human right of the petitioners inextricably involved in the instant case** *(emphasis added by HLRN).*

International perspective – conventions; norms; guiding principles and their applicability to present case

30. **So far as right to adequate housing and its protection is concerned, there is no specific domestic legislation on the issue. In the aforenoticed pronouncements the Supreme Court has been of the view that such right can also be sourced as a basic human right under the international human rights law** *(emphasis added by HLRN)***.**

31. This court has had occasion to examine the source of the right to housing, shelter and protection against forcible evictions by residents of Jhuggi Jhopri clusters (hutments) in the judgments dated 14th July, 2006 in W.P.(C) No. 5007/2002 reported at ***MANU/DE/9327/2006*** entitled ***Jagdish vs. DDA*** and also the pronouncement of this court dated 11th February, 2010 in ***W.P.(C) No. 8904/2009 Sudama Singh & Ors. vs Government of Delhi & Anr.*** with connected writ petitions. In this regard, in these judgments as well, reference was made to the following international & regional covenants and declarations on the right to adequate housing which declare that provision of housing as well as the protection against forced eviction is the unequivocal responsibility of the state:-

(i) The ***Universal Declaration of Human Rights, 1948*** makes the following statement:

> "Article 25.1
>
> Everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

(ii) The ***International Convention on the Elimination of All forms of Racial Discrimination, 1965*** contains the following :

> "Article 5
>
> In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
>
> xxxx
>
> (d) Other civil rights, in particular
>
> xxxx
>
> (iii) The right to housing."

(iii) Article 11 of the ***International Covenant on Economic, Social and Cultural Rights*** adopted by the General Assembly of the United Nations on the 16th of December, 1966 further codifies the right to housing and states thus :

"Article 11

"1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions……."

India has signed and ratified this covenant and is thus a state party to it.

(iv) Part II of the ***Declaration of Social Progress and Development, 1969*** states thus :

"Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms through the attainment of the following main goals:

xxxx

Article 10(f)

The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.

(v) Part III Section (8) of the ***Vancouver Declaration of Human Settlements, 1976*** mandates as follows :

"III Guidelines for Action

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8. Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavor to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupation, housing and amenities."

The Recommendations for National Action in the ***Vancouver Declaration*** contains inter alia also the following :-

"A. Settlement Policies & Strategies Preamble, Point 3

The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes and their land, or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and Universal Declaration of Human Rights."

(vi) Article 8.1 of the ***Declaration on the Right to Development, 1986*** also states that:

"Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter-alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income...."

(vii) The above objectives were also reinforced the declaration made in the ***International Year of the Homeless in 1987*** by the United Nations when it spoke of this right of all individuals in the following terms:

"a real home...one which provides protection from the elements; has access to safe water and sanitation; provides for secure tenure and personal safety; and within easy reach of centres for employment, education and health care; and is at a cost which people and society can afford."

(viii) On the issue of forcible evictions, the ***General Comment 7*** dated ***20th May 1997*** on the right to adequate housing (Article 11.1 of the Covenant : Forced Evictions) by the ***Commission on Economic, Social and Cultural Rights*** is important and is extracted hereafter :

"(1) In its General Comment No. 4, (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirement of the Covenant…….

(2) The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made. In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation (of Government) to protect and improve houses and neighborhoods, rather than damage or destroy them" was recognized. Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land". In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided". The Commission on Human Rights has also indicated that "forced evictions are a gross violation of human rights……."

(x) Annexure-I of the ***Report of the Special Rapporteur on Adequate Housing*** lays down some basic principles and guidelines on development based evictions and displacement. It provides the guidelines on relocation of the displaced which read as follows :

"52. ***The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction,*** except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable

to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) ***basic shelter and housing****;* (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

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55. ***Identified relocation sites*** must fulfil the criteria for ***adequate housing*** according to international human rights law. These include: (a) security of tenure;

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(c) ***affordable housing***; (d) ***habitable*** housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; xxx

(d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;

xxxx

57. ***Rehabilitation policies*** must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the ***human rights to housing***, food, water, health, education, work, ***security of the person, security of the home***, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

58. ***Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including*** their right to the progressive realization of ***the right to adequate housing***. This applies equally to host communities at relocation sites."

(Emphasis` supplied)

32. The ***UN Committee on Economic, Social and Cultural Rights in May, 2008****, in its* ***Concluding Observations on India***, called upon the Indian government particularly to address the issue of rising homelessness, including the need for disaggregated data on the homeless. In the observations relating to India as a state party, it specifically stated as follows:-

"30. The Committee is concerned about the lack of a national housing policy, which particularly addresses the needs of the disadvantaged and marginalized individuals and groups, including those living in slums who are reportedly growing in numbers, by providing them with low-cost housing units. The Committee also regrets that sufficient information was not provided by the State party on the extent and causes of homelessness in the State party.

The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing, disaggregated by, inter alia, sex, caste, ethnicity and religion.

70. The Committee urges the State party to address the acute shortage of affordable housing by adopting a national strategy and a plan of action on adequate housing and

building or providing low-cost rental housing units, especially for the disadvantaged and low income groups, including those living in slums. In this connection, ***the Committee reminds the State party of its obligations under Article 11 of the Covenant and refers to its General Comment No. 4 on the right to adequate housing (1991) to guide the Government's housing policies. The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing, disaggregated by, inter alia, sex, caste, ethnicity and religion***.

71. The ***Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and / or offered alternative accommodation***, in accordance with the guidelines adopted by the Committee in its General Comment No. 7 on forced evictions (1997). The Committee also recommends that, prior to implementing development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws the attention of the State party to its General Comment No. 4 on the right to adequate housing (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions."

33. The above narration would show that the international covenants and instruments refer to basic human rights. All of them have recognized right to shelter as a basic human right, essential for survival. It needs no elaboration that the concept of human rights emanates from the ancient doctrine of natural rights based on natural law. The experiences of the Post- Second World War which brought forth the International Charters and Conventions leading to the emergence of the present day human rights. The first documented use of the expression 'human rights' is to be found in the Charter of the United Nations, adopted on 25th June, 1945. This Charter was of course not binding but stated that it was only an ideal to be later developed. By adopting the Universal Declaration of Human Rights in December, 1948 the UN General Assembly took the concrete step of formalising the various human rights. This was followed by the International Bill of Rights. The deficiency in the binding nature of the declaration was removed by the U.N. General Assembly by adopting on 16th December, 1966, firstly, the Covenant on Civil and Political Rights which formulated legally enforceable rights of the individual and, secondly, the Covenant on Economic, Social and Cultural Rights which was addressed to the states to implement them by legislation. These covenants came into force in December, 1976 after ratification by the requisite number of member states. India is a party to both these covenants which were adopted on 16th December, 1966 and bind this country.

34. The above narration shows that **homelessness may result from several causes including natural disasters; development projects, economic deprivation as well as human rights violations**. International law terms persons who stand displaced from their countries as "refugees" and recognizes that they are entitled to protection from being returned to places where their lives or freedom could be threatened *(emphasis added by HLRN)*.

35. At the same time **there are growing instances internationally of persons and even communities who are compelled to abandon homes on account of threat of imminent violence or stand forcibly evicted by use of violence and compelled to relocate to other places even within their own country. They cannot return to their homes within the boundaries of their own**

countries in the face of the continuing threat of persecution and danger to their properties. Such persons cannot be termed as "refugees" as described by learned counsels for the petitioners. **In international parlance, persons compelled to relocate within the boundaries of their own countries stand categorised as "Internally Displaced Persons" (abbreviated as 'IDP's hereafter)** *(emphasis added by HLRN).*

36. The present petitioners along with several other families, have been compelled to relocate within India and would therefore fall under the category of such internally displaced persons ('IDPs') who have received either insufficient or no protection by the State, from or during their persecution.

37. Except that IDPs are forced to flee from their homes to another location with their own country, refugees and IDPs appear to be similarly situated. However, international covenants respect the principle of non-interference with the internal politics of one country, and consequently there exist no international conventions relating to IDPs.

38. The **United Nations High Commissioner for Refugees has recognised that the IDPs also face the same problems as international refugees and require to be treated with dignity by their own governments with full respect given to their basic human rights** *(emphasis added by HLRN).*

39. In this regard, a guiding document has been framed by Francis Denge, the representative of the Secretary General of the United Nations on Internal Displaced Persons, in 1998 which is titled as *"**Guiding Principles on Internal Displacement**"* which was presented to the UNCHR. The Commission in a unanimously adopted resolution took note of these principles which address the specific needs of internally displaced persons worldwide and identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration. The introduction to these Guidelines defines "Internally Displaced Persons" ('IDP's) in Clause 2 as follows :-

> "2. For the purposes of these principles, 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 violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border."

40. So far as housing of IDPs is concerned, these guidelines contain the following important provisions:-

> ***Principle 3***
>
> 1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
>
> 2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.
>
> xxx
>
> ***Principle 7***
>
> Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternative exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with :

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

xxx

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

xxx

Principle 15

Internally displaced persons have:

(a) ***The right to seek safety in another part of the country****;*

(b) The right to leave their country;

(c) The right to seek asylum in another country; and

(d) ***The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk****.*

xxx

Principle 18

1. All internally displaced persons have the right to an adequate standard of living;

2. At the minimum, regardless of the ***circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to***:

(a) Essential food and potable water;

(b) **Basic shelter and housing;**

(c) Appropriate clothing; and

(d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

xxx

Principle 21

1**.** No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

(a) Pillage;

(b) Direct or indiscriminate attacks or other acts of violence;

(c) Being used to shield military operations or objectives;

(d) Being made the object of reprisal; and

(e) Being destroyed or appropriated as a form of collective punishment.

3. ***Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.***

xxx

Principle 25
1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

xxx

Section V. Principles relating to return, resettlement and reintegration

Principle 28
1. ***Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety, and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country****.* Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principal 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or ***who have resettled in another part of the country shall not be discriminated against*** as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. ***Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover****, to the* ***extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation****."*

41. The United Nations Charter thus establishes the obligation upon member nations to promote the key human rights. The Universal Declaration of Human Rights, 1948 though not a treaty, but is a declaration published by the General Assembly of the United Nations and is the primary document which is concerned with the listing of the rights. It affirmatively lays down the common standards of achievement for all peoples and all nations. It consequently has an effect which is similar to a treaty. **Further every nation who is a signatory to the aforenoticed International Covenant on Economic, Social and Cultural Rights ('ICESR') must refrain from acts which would defeat the object and purpose of the covenant**. The preamble to the ICESCR establishes that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights" *(emphasis added by HLRN)*.

Article 11 of this covenant emphasises that the state parties recognises the right of every person to an adequate standard of living which include adequate housing and continued improvement of living conditions. The right for people to be free from want is the very foundation of the ICESCR *(emphasis added by HLRN).*

42. The **international human rights law thus establishes a legal obligation for ensuring minimum welfare guarantees. The conventions, treaties and declarations as well as the guiding principles manifest the international consensus that every nation has a duty to ensure and provide these guarantees including, inter alia shelter and basic general assistance to every person on its soils** *(emphasis added by HLRN).*

43. The aforenoticed international conventions which exist as well as the Guideline Principles for IDPs therefore **recognize that shelter and housing is a basic human right of every individual which is the bare minimum to be provided to internally displaced persons** *(emphasis added by HLRN).*

These Principles also emphasise all rights of displaced persons and **caste a mandate on the national authorities concerned of their primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction which includes their right to safety as well as protection against forcible return and resettlement in a place where their life, safety, liberty and or health would be ensured**. The Guiding Principles have been evolved after an elaborate consultative process *(emphasis added by HLRN)*.

44. Before proceeding any further, it is necessary to examine the bindingness of the above principles on the courts in India. The extent, manner and applicability of International Conventions and treaties in

interpretation and expansion of rights, have been authoritatively considered and are well settled by a catena of binding precedents of the Supreme Court. In the authoritative pronouncement reported at ***JT2008(7)SC11, 2008(9)SCALE69 Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd.*** the Supreme Court traced the evolution of the jurisprudence on the issue under consideration in paras 48 to 54 which may usefully be extracted and read as follows:-

"48. Beginning from the decision of this Court in Kesavananda Bharati v. State of Kerala MANU/SC/0445/1973 : AIR 1973 SC 1461, there is indeed no dearth of case laws where this Court has applied the norms of international laws and in particular the international covenants to interpret domestic legislation. In all these cases, this Court has categorically held that there would be no inconsistency in the use of international norms to the domestic legislation, if by reason thereof the tenor of domestic law is not breached and in case of any such inconsistency, the domestic legislation should prevail.

In Jagdish Saran and Ors. v. Union of India MANU/SC/0067/1980 : (1980) 2 SCR 831, it was observed:

> "It is also well-settled that interpretation of the Constitution of India or statutes would change from time to time. ***Being a living organ, it is ongoing and with the passage of time, law must change. New rights may have to be found out within the*** constitutional scheme. Horizons of constitutional law are expanding."

49. In the aforementioned judgment, this Court referred to a large number of decisions for the purpose of treaties and conventions. Yet again in Indian Handicrafts Emporium and Ors. v. Union of India MANU/SC/0640/2003 : AIR 2003 SC 3240, this Court considered the Convention on International Trade in Endangered Species (CITIES) and applied the principles of purposive constructions as also not only the Directive Principles as contained in Part IV of the Constitution but also Fundamental Duties as contained in Part IVA thereof. Referring to Motor General Traders and Anr. v. State of Andhra Pradesh and Ors. MANU/SC/0293/1983 : (1986) 1 SCR 594, Rattan Arya and Ors. v. State of Tamil Nadu and Anr. MANU/SC/0550/1986 : (1986) 2 SCR 596 and Synthetics and Chemicals Ltd. and Ors. v. State of U.P. And Ors. MANU/SC/0595/1989 : AIR 1990 SC 1927, this Court held:

> "There cannot be any doubt whatsoever that a law which was at one point of time was constitutional may be rendered unconstitutional because of passage of time. We may note that apart from the decisions cited by Mr. Sanghi, recently a similar view has been taken in Kapila Hingorani v. State of Bihar (supra) and John Vallamattom and Anr. v. Union of India (supra)."

50. These judgments were referred to in the decision of Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr. MANU/SC/0951/2003 : (2004) 9 SCC 512, wherein this Court observed that ***as no statutory law in India operated in the field, interpretative changes, if any, must, thus be made having regard to the ever changing global scenario***. Liverpool also referred for the proposition that the ***changing global scenario should be kept in mind having regard to the fact that there does not exist any primary act touching the subject and in absence of any domestic legislation to the contrary. Concurring with the said decisions, it was however opined that the same could not mean that it restricted the jurisdiction of the Indian High Courts to interpret the domestic legislation strictly according to the judge made law***.

51. Liverpool and London S.P. and I Asson. Ltd. (supra) has been followed by the Supreme Court in a plethora of cases inter alia The State of West Bengal v. Kesoram Industries Ltd. & Ors. MANU/SC/0038/2004 : (2004) 2 66 ITR 721(SC). In Pratap Singh v. State of Jharkhand and Anr. MANU/SC/0075/2005 : 2005 CriLJ 3091 wherein this Court directed to interpret the Juvenile Justice Act in light of the Constitutional as well as International Law operating in the field. (See also Centrotrade Minerals and Metal Inc. v. Hindustan Copper Limited MANU/SC/8146/2006 : (2006) 11 SCC 245 : State of Punjab; State of Punjab and Anr. v. Devans Modern Brewaries Ltd. and Anr. MANU/SC/0961/2003 : (2004) 11 SCC 26 and Anuj Garg and Ors. v. Hotel Association of India and Ors. MANU/SC/8173/2007 : AIR 2008 SC 663.

52. However, applicability of the International Conventions and Covenants, as also the resolutions, etc. for the purpose of interpreting domestic statute will depend upon the acceptability of the Conventions in question. If the country is a signatory thereto subject of course to the provisions of the domestic law, the International Covenants can be utilized. Where International Conventions are framed upon undertaking a great deal of exercise upon giving an opportunity of hearing to both the parties and filtered at several levels as also upon taking into consideration the different societal conditions in different countries by laying down the minimum norm, as for example, the ILO Conventions, the couirt would freely avail the benefits thereof. Those Conventions to which India may not be a signatory but have been followed by way of enactment of new Parliamentary statute or amendment to the existing enactment, recourse to International Convention is permissible.

53. This kind of stance is reflected from the decisions in PUCL v. Union of India MANU/SC/0274/1997 : AIR 1997 SC 1203, John Vallamattom v. Union of India MANU/SC/0480/2003 : AIR 2003 SC 2902, Madhu Kishwar v. State of Bihar MANU/SC/0468/1996 : AIR 1996 SC 1864, Kubic Darusz v. Union of India MANU/SC/0426/1990 : 1990 CriLJ 796, Chameli Singh v. State of Swaminathaswami Thirukoil MANU/SC/0441/1996 : (1996) 1 SCR 1068, Apparel Export Promotion Council V. A.K. Chopra MANU/SC/0014/1999 : (1999) 1 LLJ 962 SC, Kapila Hingorani v. State of Bihar MANU/SC/0403/2003 : (2003) III LLJ 31 SC, State of Punjab and Anr. v. Devans Modern Breweries and Anr. MANU/SC/0961/2003 : (2004) 11 SCC 26 and Liberpool & London S.P. & I Asson. Ltd. v. M.V. Sea Success I MANU/SC/0951/2003 : (2004) 9 SCC 512."

45. With regard to the application of International conventions and treaties in India, the Supreme Court laid the following principles in para 47 of the judgment:-

"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 fulfill 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."

46. In ***AIR 1997 SC 3011 Vishaka and others Vs. State of Rajasthan and Others,*** the court was concerned with a writ petition filed for preservation and enforcement of the right to gender equality and fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India, Section 2 of Protection of Human Rights Act, 1993 and the entitlements of working women under

the Convention on Elimination of All Forms of Discrimination Against Women. There was no specific domestic legislation on the subject. With regard to the importance and applicability of international conventions and treaties, the court held as follows –

> "7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. **Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee**. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil" *(emphasis added by HLRN)*

47. In ***(1999) 1 SCC 759 Apparel Export Promotion Council vs. A.K. Chopra***, also the Supreme Court was dealing with the case of sexual harassment at the place of work which vitiated the working environment and observed that the international instruments cast an obligation on the Indian State to gender sensitise its laws and that the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. **The Supreme Court again emphasised that the courts must never forget the core principles embodied in International Conventions and Instruments and reiterated the above principles** *(emphasis added by HLRN).*

48. In ***(2003) 6 SCC 1 Kapila Hingorani Vs. State of Bihar,*** the Apex court stressed on the importance of respecting International Treaties and Conventions while interpreting the Constitution and domestic law so as to effectuate the recognised rights and observed as follows-

> "47. It is also well-settled that a statute should be interpreted in the light of the International Treaties and Conventions. In Chairman, Railway Board and Ors. v. Mrs. Chandrima Das and Ors. MANU/SC/0046/2000 : 2000CriLJ1473 this Court stated the law thus:-
>
> "24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. ***The applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence***."

49. **As noticed above, right to residence and to settle in any part of the country is assured to every citizen as a fundamental right under Article 19(1)(e) of the Constitution of India** *(emphasis added by HLRN).* (Ref : ***1997 (11) SCC 121 Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors.****)* The right to shelter springs from this right and has been considered to be an integral part for a meaningful enjoyment of right to life under Article 21 of the Constitution of India. (Ref.: ***1995 Suppl. 3 SCC 456 : AIR 1996 SC 114 U.P. Avas Evam Vikas Parishad & Anr. Vs. Friends Co-operative Housing Society Ltd. & Anr****).*

50. In the instant case also there is no specific domestic legislation at all for internally displaced persons. As noticed hereinabove, there are also no International Conventions governing rights of such persons. **It is now an accepted rule of judicial construction that regard must be had to international conventions, norms and guiding principles for construing domestic law when there is no inconsistency between them and there is a void in the domestic law** *(emphasis added by HLRN).*

51. It is noteworthy that there is no specific law, rule, regulation or instrument providing for treatment of IDPs or setting out any minimum standards for their protection, rehabilitation and 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 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 *(emphasis added by HLRN)*.

52. It has been observed by the Supreme Court in ***(2003) 6 SCC 1 Kapila Hingorani Vs. State of Bihar*** that indisputably, **the state parties to the International Covenant on Economic, Social & Cultural Rights were to take appropriate steps to ensure realisation of this thought. So far as the present case is concerned, this covenant specifically states the right of everyone to an adequate standard of living including housing** *(emphasis added by HLRN).*

53. The rules laid down and right recognised in the aforenoticed conventions as well as the Guiding Principles would bind the present adjudication also in the light of the following principle laid down in ***Entertainment Network (supra)*** *:-*

> "54 Furthermore, as regards the question where the protection of human rights, environment, ecology and other second generation or third-generation rights is involved, the courts should not be loathe to refer to the International Conventions."

54. The **petitioners are members of the larger group from their community which stands forcibly evicted from one part of the country rendering them homeless and resourceless**. They are without resources at the place of their relocation and are faced with the threat of forcible eviction from their accommodation. **By way of these writ petitions, the petitioners seek protection and enforcement of their fundamental right to life which includes shelter. The international conventions recognise shelter as a basic human right**. The Guiding Principles reiterate the same rights and responsibilities of the state so far as IDPs are concerned. **Consideration of the petitioners' rights, therefore, would necessarily involve ensuring the objectives and declarations made in the above international instruments especially those endorsed by India reiterated by the Guiding Principles for IDPs** *(emphasis added by HLRN).*

The Protection of Human Rights Act, 1993

55. The issue in the instant case has another dimension to it which is of importance. In discharge of the obligation under the international covenants, India promulgated an ordinance appointing commissions and courts for the protection of human rights. This ordinance was replaced by *the* ***Protection of Human Rights Act, 1993*** was promulgated on 8th January, 1994 to provide for the constitution of the national and state human rights commissions and human rights courts for better protection and for matters connected therewith or incidental thereto. *'Human rights'* are defined in

clause (d) of sub-section (1) of Section 2 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'.*

The expression *'international covenants'* is also defined to include the two covenants adopted by the General Assembly on 16th December, 1966 and such other covenants and conventions adopted by the General Assembly of the United Nations as the Central Government may specify by notification. The enforceability of the several rights recognised under the International Covenants, therefore, stands recognized by this legislation in India. The said Act was made by the Parliament having regard to the changing social realities and growing concern in India about issues relating to human rights with a view of bringing about greater accountability and transparency in enforcement of the laws of the nation.

56. It is essential to note that in fact no new right is being created, recognized or reiterated by the international instruments or the said guidelines. **The right to shelter of every person has been recognized as an essential concomitant of right to life under Article 21 of the Constitution of India. It would clearly be covered under the definition of a 'human right' under Section 2(1)(d) of the Protection of Human Rights Act, 1993 which includes right relating to life, liberty, equality and dignity. The right to shelter, an essential part of right to life, would therefore also be a statutorily recognized right under Section 2(1)(d) of the Act of 1993 and enforceable as such also** *(emphasis added by HLRN).*

The present petitioners, as persons displaced from their homes and state, by way of these writ petitions are thus, seeking enforcement of such right to shelter.

57. The above discussion would show **that state 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 *(emphasis added by HLRN)*.

Q Whether the statutory provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which would have the effect of defeating the constitutional rights of the petitioners, could be validly invoked against them?

58. On behalf of the respondents, it is urged that the allotment of the quarters to the petitioners (or their predecessors) stands cancelled. They are therefore in unauthorised occupation of the Government accommodation and therefore liable to be evicted under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The submission is that the proceedings taken by the respondents and the orders passed against the petitioners were justified and are in accordance with law.

59. On the other hand, the petitioners have urged that even in their wildest dreams, they had never envisaged a situation when they would not be in a position to reside in their own homes after retirement. On account of grave threats to their safety, the petitioners have been prevented from returning to their homes. The petitioners are not residing in Delhi on account of a desire not to return to the valley or to perpetuate residence in Delhi, but for reasons totally beyond control of these petitioners. The writ petitioners have stated that their homes in Kashmir have either been destroyed or rendered inaccessible to them primarily on account of the inability of the respondents

to protect the same. They do not have adequate means to acquire any property in Delhi. It is the petitioners contention that the pension admissible to them does not enable them to afford rented accommodation or acquire their own houses. The petitioners have submitted that the respondents have permitted similarly situated persons to continue in the allotted accommodation. Reliance is also placed on orders of the Supreme Court, this Court and the Central Administrative Tribunal also prohibiting eviction of similarly placed persons from allotted accommodation.

In this background, the petitioners assail also the failure to consider their requests to the respondents to exercise discretion vested in them under the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 to permit the petitioners to continue to occupy the allotted premises. It is urged that this refusal was discriminatory, arbitrary and has failed to consider the relevant circumstances.

60. It is contended by the petitioners that in these facts, they are not in unauthorized occupation of the quarters and that the respondents could not have taken recourse to proceedings under the Public Premises Act, 1971 which would have the effect of ousting them and their families from their only residence without taking steps of making provision of reasonable alternatives. The contention is that the entire action taken by the respondents and **implementation of the threat of forcible eviction would result in violation of the fundamental and basic human rights of the petitioners and, therefore, is unconstitutional, without jurisdiction and completely illegal** *(emphasis added by HLRN).*

Binding judicial precedents

61. So far as the conditions which were in existence in the state of Jammu & Kashmir, the restoration of normalcy and the circumstances in which they are occupying these quarters are concerned, reliance has been placed by the petitioners on the proceedings and orders passed in several similar cases prior hitherto which have been completely ignored by the respondents. Attention is drawn to the orders of the ***Supreme Court of India in SLP (C) No.7639/1999 Shri J.L. Koul & Anr. Vs. State of Jammu & Kashmir & Ors.*** Shri J.L. Koul & the other petitioners in this case were Kashmiri pandits who were employees of the State Government and being State Government servants, had been allotted residential accommodations in Jammu between 1989-90. Their houses in the valley were either destroyed or burnt down by militants. Even though they had retired from service, these petitioners were permitted to retain the government accommodations in Jammu for safety reasons. Such a step was considered necessary and inevitable by the State Government as the atmosphere was not congenial for the appellants to return to the valley, more so when they had lost their respective houses.

62. It appears that other state government employees awaiting allotment of official accommodation, could not get the same for the reason that these retired persons continued to occupy the official accommodation. They filed a writ petition before the High Court of Jammu and Kashmir complaining against the failure of the State Government to provide them with official accommodation. A learned Single Judge of the High Court of Jammu & Kashmir had allowed the writ petition and passed a judgment on 24th January, 1997 directing eviction of all those persons who had ceased to be government servants for any reason but were still occupying the state accommodation. The learned Single Judge had also directed that the persons who were not in government service but required Government accommodation because of security reasons, should be tried to be accommodated within one complex so that their security is ensured, reducing the burden on the state which would have to incur lesser amount for their security.

63. For the reason that the state government was attempting to evict these occupants without providing them with alternative accommodations, a challenge was laid to the judgment of the Single Judge dated the 24th of January, 1997 by a letters patent appeal. This appeal was dismissed by the Division Bench by a judgment dated 14th March, 1997, however, giving an opportunity to the appellants to approach the appropriate authority for relief. In this background, these persons led by Shri J.L. Koul, filed the above special leave petition before the Supreme Court. On a consideration of the matter, an interim order order dated 11th April, 1997 was passed by the court directing the state government to maintain status quo regarding the possession of the property.

64. Mr. R.K. Handoo, learned counsel for the petitioners has referred to certain orders passed by the Supreme Court of India in the said petition. On 26th August, 1997, the Supreme Court had required counsel representing the State of Jammu & Kashmir to ascertain from the State Government as to whether the petitioners can be put back in to the houses owned by them in the Kashmir Valley and to ensure protection of their persons as also their properties.

65. The case was thereafter taken up by the Supreme Court on 28th January, 1998 when the Supreme Court took notice of the massacre of Kashmiri Pandits in the Kashmir Valley which had taken place a few days prior to the hearing and recorded the following order :-

> "This order is being made in the backdrop of a massacre of Kashmiri Pandits which took place a couple of days ago in the Kashmir valley.
>
> Adjourned sine die. Stay to continue. The petition to be activated on mentioning by counsel for the State of Jammu and Kashmir as and when the State is in a position to assure return of the petitioners to their respective homes in the Kashmir valley and ensure their safety and personal property."
>
> (Underlining supplied)

66. It is noteworthy that the Supreme Court had also passed an order on 3rd December, 2008 (in ***Shri J.L. Koul & Others vs. State of J&K aforenoticed***) directing the respondent-state to frame a rehabilitation scheme within a period of six months and to place the same before the court. For the reason that no material or scheme was placed before it by the respondents, on 17th September, 2009, the Supreme Court directed the Chief Secretary of the State to file a personal affidavit as to what steps had been taken pursuant to the orders of the court.

67. An affidavit dated 6th October, 2009 was thereafter filed by the Chief Secretary in the case. The appeal was disposed of by a final judgment on 27th October, 2009 which stands reported at ***2009 (1) AD SC 253 J.L. Koul & Others Vs. State of Jammu & Kashmir.*** So far as rehabilitation of the Kashmiri migrants is concerned, the affidavit dated 6th October, 2009 has been considered in para 7 of the judgment in the following terms:-

> "7. In pursuance of the said order, the Chief Secretary has filed the affidavit dated 6.10.2009. In the said affidavit it has been disclosed that out of 54 appellants 23 had already handed over the Government accommodation to the State Department and the same had been allotted to the Government employees. Only 31 migrants/retirees are presently in occupation of the Government accommodation. It has further been clarified that there are 37,280 families who have been registered for the relief including the accommodation and out of them only 5,000 families could be provided the accommodation in the camps. However, it had been undertaken that the Government would provide such facilities to all Kashmiri migrants till they are residing at the present places. The relevant part of the affidavit reads as under:-

"5. That it is further submitted that Govt. formulated a package for return and rehabilitation of Kashmiri Migrants which involves an outlay of Rs.1618.40 crores. This is for the first time since 1990, that **Govt. of India** has come up **with a policy for Return and Rehabilitation of Kashmiri Migrants**. The policy has been framed on the recommendations of a **working group constituted by Govt. of India** to suggest various confidence building measures in the J&K State. While framing the policy various needs of the migrants have been taken into consideration, such as housing, education, revival of Agriculture and Horticulture land, employment etc. The details of the package announced on 5th June 2008 are reproduced as under:-

i) Return and Rehabilitation Package of Kashmiri Migrants: The total package involves an outlay of **Rs.1618.40 crore.** The **main components** of the package are as under:

(a) **Housing**

i) Assistance @ Rs.7.5 lac for fully or partially damaged house left behind by migrant.

(ii) Rs. 2.00 lac for dilapidated/unused houses.

(iii) Rs. 7.5. lac for purchase/construction of a house in Group Housing Societies for those who have sold their properties during the period after 1989 and before the enactment of "The J&K Migrant Immovable Property (Preservation, Protection and Restraint of Distress Sale) Act, 1997" on 30.5.1997.

(b) Transit Accommodation : Construction of transit accommodation at three sites @ Rs. 20.00 crore each for total Rs. 60.00 crore. Alternatively, Rs. 1.00 lac per family towards rental and incidental expenses to those families who may not be accommodated in transit accommodation.

(c) Continuation of Cash Relief to Migrants: Migrants families at Jammu and Delhi who are recipients of cash relief and free ration would continue to receive the same @ Rs.5000 per family per month (including rations) for a period of two years after their return to the valley.

7. That it may be further submitted that unemployed youth were asked to convey their willingness for serving in Kashmir Valley. In response to the same, 14074 unemployed youth have expressed their willingness in writing for serving in Kashmir valley.

8. That it is further submitted that a form called "EXPRESSION OF INTEREST" was circulated among the migrants in order to ascertain their willingness to return to valley and so far 1676 families have expressed their willingness to return to valley and avail the concession available under the package.

9. That it is further submitted that land at the following three sites have already been identified for construction of transit accommodation, the details whereof are as under: a- Land at Vessu, District Kulgam 100 Kanals. b- Land at Qazigund, District Anantnag 25 Kanals. c- Land at Khanpura, District Baramulla 50 Kanals

10. That it may be further submitted that 200 flats are nearing completion at Sheikhpora Budgam. In addition to this, 18 flats are available at Mattan Anantnag. These flats are to be used as transit accommodation by the Kashmiri migrants who wish to return to valley. The migrants shall stay in the transit accommodation till they re- construct or renovate their houses.

> 11. That it may be further submitted that State Government had also constituted an Apex Advisory Committee to oversee the implementation of Return and Rehabilitation package for Kashmiri Migrants in the month of September 2009 and immediately after the constitution of the Apex Level 8 Committee, various suggestions were put forth in a meeting held on 23.9.2009.
>
> 12. That it may be further submitted that the State Cabinet vide its decision No.130/11/2009 dated 1.10.2009 has approved the package for Return and Rehabilitation of Kashmiri Migrants to Kashmir Valley. However, with regard to implementation of employment scheme a Committee has also been ordered to be constituted to go into the legal and other implications for making recruitments of the migrant youth against various posts before the said scheme is formally notified. The Committee has to submit its report within a period of two weeks.
>
> 13. That the State Government is keen to rehabilitate the Kashmiri Migrants in the Kashmir valley and shall provide every type of assistance for their return and rehabilitation. The process for the rehabilitation in valley has been initiated in June 2008 after ***Govt. of India announced the package for their return***."
>
> (Emphasis supplied)

The Supreme Court observed that this case had remained pending before it for twelve years and that the court had been insisting upon the state to frame the scheme of rehabilitation of the appellants and particularly for providing them accommodation. Placing reliance on the above affidavits/ undertakings given by the respondents, the Court further observed that the authorities have framed the rehabilitation scheme and for implementation of the same, it has got sufficient resources also. In this background, the Supreme Court issued the following directions:-

> "9. In view of the above affidavit/undertaking given by the State and after hearing Mrs. Purnima Bhat Kak, Ld. Counsel for the appellants and Mr. Anis Suhrawardy, Ld. Counsel for the State, we dispose of the appeal with a pious hope that State shall take all endeavours to ***rehabilitate the persons*** who have been **victim of terrorism** and ***till the State is able to rehabilitate and provide the appropriate accommodation to 31 appellants-retirees/oustees, they shall continue to possess the accommodations which are in their respective possession on this date.***"
>
> (Emphasis supplied)

68. It is noteworthy that the only difference between the petitioners before the Supreme Court and those who are before this court is, that the petition before the Supreme Court related to persons who were retired employees of the State Government while the present petitioners are all employees of the Central Government and its departments. However, the petitioners before the Supreme Court and the present writ petitioners are identically placed victims of the militancy and the rights asserted by both sets of the petitioners and issues raised by them are identical.

69. While the above petition remained pending in the Supreme Court, some other similarly placed employees were facing the same threat of eviction as the present set of petitioners. Some such persons approached this court while others filed a petition before the Central Administrative Tribunal. The orders passed in these matters would also have a bearing on the present consideration.

70. Reference requires to be also made to a judgment passed on 2nd August, 2006 in ***WP (C) No.11742/2005 entitled P.K. Handoo Vs. Estate Officer & Anr***. by this court which is reported at ***132 (2006) DLT 672***. Shri P.K. Handoo was also a Kashmiri Pandit and part of the minority community in the *Kashmir valley.* An employee with the Intelligence Bureau of the Government of India, he had retired from the service on 31st July, 2004 whereafter efforts to cancel his allotment and evict him by way of proceedings under the Public Premises Act, 1971 had been undertaken. Sh. P.K. Handoo filed the writ petition assailing this action and the eviction order dated 30th June, 2005 passed against him in the proceedings by the estate officer and also sought issuance of a writ of mandamus against the respondents to allow him to retain the official accommodation which had been allotted to him till such time that the Government made it possible for him to return to Srinagar or till suitable alternative accommodation is provided to him in Delhi.

71. The observations made by this court in the judgment dated 2nd August, 2006 in ***P.K. Handoo (supra)*** while dealing with the very objections urged in these proceedings, deserve to be considered in extenso and read as follows :-

> "11. The argument submitted by the learned counsel for the respondents is typically gauche. It lacks sensitivity. Kashmir has never ceased to be a hub of terrorist activity which is mainly directed against the Hindu Pandits. The violence in the State is at its peak. Due to the obstinacy of terrorists and helplessness of the government to counter terror, the situation could not improve. Indian Constitution applies to all the citizens of India. Equal protection means the right to equal treatment in similar circumstances. There should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same. It is settled law that a judicial or quasi judicial decision cannot offend Article 14.
>
> 12. In the result, *I* ***allow the writ petition in terms of the order passed by the Apex Court in the case of J.L. Koul Vs. State of Jammu and Kashmir (supra)***. Respondents are directed to allow the petitioner to retain Quarter No.D-845, Mandir Marg, New Delhi, pending decision in SLP © No.7369/2007, subject to payment of normal licence fees or in the alternative the respondents may provide alternative accommodation to the petitioner and his family anywhere in Delhi till the pendency of the above said writ petition before the Hon'ble Supreme Court. No costs."
>
> (Underlining supplied)

72. Learned counsels for the petitioners have also painstakingly pointed out the earlier similar directions made as back as on ***30th December, 2002*** by the ***Central Administrative Tribunal*** in ***OA No.2378/2002*** entitled ***Tej Kishan Vs. Union of India & Ors***. on the same issue which have also been noticed and reiterated in the ***P.K. Handoo*** (supra) judgment. It is noteworthy that Shri Tej Kishan, a Kashmiri displaced person had made a request for retention of Government accommodation beyond superannuation which was turned down by the Government by an order dated 13th August, 2002. This refusal was assailed by way of proceedings before the Central Administrative Tribunal. In these proceedings, the Tribunal had placed reliance on a letter dated 2nd July, 2002 written to the Delhi Development Authority ('DDA') by the Ministry of Urban Development & Poverty Alleviation on the subject of preferential allotment of DDA flats to J&K migrant Central Government employees who had retired or were retiring. The tribunal noted the letter in the following terms:-

> "12. By referring to the letter dated **2.7.2002** written to the **DDA** by the **Ministry of Urban Development & Poverty Allevation**, it is stated that this has been decided as under:-

".....But the situation prevailing in J&K is such that does not permit the safe return of these retired/retiring Central Government employees who can settle after retirement at their native place. Keeping this background in view, a decision has been taken to allot about 100 MIG and LIG Flats in Dwarka to such retired/retiring J&K migrant Central Government employees so that the Central Pool Accommodation could be got vacated from them. DDA is, therefore, requested to formulate a housing scheme for retired/retiring J&K migrant Central Government employees and send a draft thereof to this Ministry within a fortnight for approval."

(Underlining supplied)

73. In the above judgment, the Central Administrative Tribunal also observed on violation of Article 14 by the respondents holding that "the state shall not by its act discriminate as between two individuals who are similarly circumstanced." These findings are also noticed in para 10 of the judgment in P.K. Handoo's case (supra).

74. I have had occasion to deal with a similar issue in a judgment dated the ***11th of April, 2008*** rendered in ***W.P.(C) No.1065/2007 M.K. Koul Vs. Union of India & Ors.*** In this case also the petitioner was a retired Kashmiri employee of the Central Government who could not return to Kashmir for the same reason as the petitioners. Proceedings for his eviction were also initiated by the respondents under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. During the course of hearing on 7th April, 2008, a query was put to counsel for the respondent in this case in respect of the position with regard to the safety and security of the Kashmiri Pandits in the valley. The position was revealed to be the same as before. In para 14 of the said judgment, consequently it was recorded that *"the respondents are not in a position to ensure their safety and protection and as such, in case they are displaced from the accommodation which they are occupying, they will not be in a position to return to their respective homes in the Kashmir valley".*

Consequently, the following directions were issued:-

"15. **In this background, the respondents certainly cannot be permitted to maintain the order of cancellation of the petitioner's allotment or to enforce the eviction order which has been passed against the petitioner or to evict the petitioners from the premises which they are occupying.**

16. There is no doubt, that the petitioner was making payment of the normal licence fee while he was in service. Interest of justice and equity merit that the petitioner be required to make payment of the licence fee on the same basis till such time as the respondents are able to ensure safety of personal property of the petitioner in their home State or are in a position to provide similar alternative accommodation to the petitioner or the petitioner acquires any other residential property in Delhi.

17. In view of the above discussion, this writ petition is allowed.

The respondents are directed to permit the petitioner to continue to occupy the Quarter No.N- 299, Sector-8, R.K. Puram, New Delhi subject to payment of the same licence fee as was being paid by the petitioner on the date when he retired. This order shall continue to operate till such time as the respondents provide similar alternative accommodation to the petitioner, or the petitioner acquires any residential property in his name.

This writ petition is allowed in the above terms. There shall be no order as to costs."

(Emphasis supplied)

It is noteworthy that these orders have not been assailed and have attained finality.

75. It is urged by learned counsel for the respondents that failure of the Government of India to challenge the orders passed in ***WP(C) No.11742/2005 entitled P.K.Handoo v. Estate Officer & Anr.; WP (C) No.1065/2007 entitled M.K. Kaul v. UOI & Ors.*** and the other cases are immaterial and would have no bearing on the instant case. Reliance is placed on the pronouncement of the Apex Court reported at ***(2006) II SCC 709 Col. B.J. Akkara Vs. Government of India & Ors.*** in support of this submission.

76. It is noteworthy that ***Col. B.J. Akkara's case (supra)*** related to efforts of the Government to recover payment of excess amount as pension. Certain orders stood passed in the writ petition filed by other employees who had raised a similar challenge. These orders had not been challenged by the Government. In this background, the petitioner had contended that the Government was estopped from recovering the amount from him in view of those orders which had attained finality. The Apex Court rejected the contentions and held that the Union of India would not be barred from resisting the subsequent writ petitions involving similar issues or challenging subsequent judgments of the High Court realising the seriousness or magnitude of the issues or financial implications. The position would be different only if it is established that the Government had adopted a pick and choose method only to avoid relief to the petitioner on account of mala fide or ulterior motives. It was held that principles of estoppel, res judicata, legitimate expectation or fairness in action were not attracted on the facts of the case.

No plea of violation of fundamental rights was involved in Akkara's case (supra). There can be no comparison with the facts of ***Akkara's case (supra)*** with those of the present cases.

77. The aforenoticed judgments and orders were clearly relevant and binding upon the respondents for construing and taking a view on the contentions and claims of the petitioners. The respondents were also bound by the deposition and the policy placed before the Supreme Court which resulted in its judgment dated 6th of October, 2009. The available records do not show any consideration of the aforenoticed judgments and orders so far as the rights and plight of the petitioners are concerned.

Cancellation of allotments and action under the Public Premises Act, 1971

78. Mr. Jatan Singh, learned counsel appearing for the respondent No.1 has contended that the decision to cancel the allotments and to initiate the proceedings under the Public Premises Act, 1971 as well as the orders of the Estate Officer and the judgments of the Appellate Court are in terms of statutory provisions cannot be assailed by way of these writ petitions.

Reliance is placed on the pronouncements of this court reported at (***1995) II AD Delhi 293 Union of India Vs. S.M. Aggarwal & 31 others; 2000 (55) DRJ 57 Bhim Singh Vs. Union of India & Anr.; AIR 1977 Delhi 268 Hardwari Lal Verma Vs. The Estate Officer & Ors.*** in support.

79. This objection of the respondents ignores well settled first principles of law. Merely because the impugned action is taken and order passed in purported exercise of statutory power would not render it immune from judicial scrutiny. The question as to manner in which such action and orders viz-a-viz their effect on fundamental rights will be examined, stands answered by the Supreme Court

in ***AIR 1978 SC 597; (1978) 1 SCC 248 Maneka Gandhi Vs Union of India and others.*** In this case, the court had made the following observations with regard to the impact of action taken under provisions of the Passport Act:-

> "Now, if the effect of State action on a fundamental right is direct and inevitable, then a fortiorari, it must be presumed to have been intended by the authority taking the action and hence, this doctrine of direct and inevitable effect has been described by some jurists as the doctrine of intended and real effect. This is the test which must be applied for the purpose of determining whether Section 10 (3) (c) of the impugned order made under it is violative of Article 19 (1)(a) or (g)."

80. The Supreme Court further ruled that it is not necessary to assail the constitutional validity of the statutory provisions under which the impugned order is made and that the court would still be able to examine as to whether the order made in exercise of statutory power was invalid for the reason that it contravened a fundamental right holding as follows :-

> "But that does not mean that an order made under Section 10(3)(c)) may not violate Article 19(1)(a) or (g). While discussing the constitutional validity of the impunged order impounding the passport of the petitioner, we shall have occasion to point out that even where a statutory provision empowering an authority to take action is constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory provision is valid, the action may be void.
>
> It is true, and we must straightaway conceded that merely because a statutory provision empowering an authority to take action in specified circumstances is constitutionally valid as not being in conflict with any fundamental rights, it does not give a *carte blanche* to the authority to make any order it likes so long as it is within the parameters laid down by the provision. Every offer made under a statutory provision must not only be within the authority conferred by the statutory provision, but must also stand the test of fundamental rights. Parliament cannot be presumed to have intended to confer power on an authority to act in contravention of fundamental rights. It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred, should act constitutionally and not in violation of any fundamental right. This would seem to be elementary and no authority is necessary in support of it."
>
> (Underlining supplied)

81. In the above case, the Supreme Court held that even though the impugned order was within the terms of the relevant section, "it must nevertheless, not contravene any fundamental rights and if it does, it would be void".

So far as the present case is concerned, even it were to be held that the action taken by the respondents was permissible under the statutory provisions, but if it violated or adversely impacted fundamental rights of the petitioners, it would have to be voided. This objection to the maintainability of the present writ petitions is therefore misconceived and is rejected.

82. An examination of the order of cancellation of the allotment requires to be undertaken. The only rules relied upon in support of the power to permit occupancy of the quarters are the ***Allotment of Government Residences (General Pool in Delhi) Rules, 1963***. Cancellation of the allotment has been effected under these very rules.

83. The respondents have permitted the petitioners to occupy the same in exercise of power conferred on them. It is not the respondents' case that the petitioners came into possession of the quarters illegally or without authority. The occupancy is being treated as unauthorised by the respondents for the reason that they have cancelled the allotments.

84. In view of this stand of the respondents, it becomes necessary to examine the provisions of the Public Premises Act, 1971.

85. For the purposes of the instant case, the expression "unauthorized occupation" as defined under section 2(g) of the ***Public Premises (Eviction of Unauthorised Occupants) Act, 1971*** has to be construed.
Section 2(g) of the said statute reads as follows :-

> "**2(g)** "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever."

86. So far as the proceedings for eviction under the Public Premises Act, 1971 are concerned, Sections 4 and 5 thereof deserve to be also considered. The relevant extract reads thus:-

> ***"4.* Issue of notice to show cause against order of eviction. -** (1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.
>
> (2) The notice shall-
> (a) specify the grounds on which the order of eviction is proposed to be made; and
> (b) require all persons concerned, that is to say, all persons who are, or may be in occupation of, or claim interest in, the public premises,-
> (i) to show cause, if any, against the proposed order on before such date as is specified in the notice, being a date not earlier than seven days form the date of issue thereof, and
> (ii) to appear before the Estate Officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]
> xxxx
>
> ***5. Eviction of unauthorised occupants*. -** (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and [any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction [on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later.] the estate officer or any other officer duly authorised by the estate officer in his behalf [may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public."

(Underlining supplied)

87. The present cases raise a pertinent question as to whether the cancellation of the allotments to the petitioners was justified and valid and whether the petitioners' occupancy thereafter could be brought within the meaning of the expression "unauthorised" under Section 2(g) of the Public Premises Act, 1971.

88. The statutory definition of the expression "unauthorised occupation" in Section 2(g) of the Public Premises Act, 1971 thus requires judicial interpretation for the purposes of the present cases. In this regard the oft quoted words of Justice P.N. Bhagwati in ***(1983) 1 SCC 228 National Textile Workers' Union vs. P.R. Ramakrishnan*** would be apposite when it was stated as follows :-

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still: it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind."

89. While interpreting statutory provisions, the Supreme Court has also approved and applied in a number of cases, the principle of "updating construction" while interpreting statutes as set out by the leading jurist Francis Bennion in his commentaries titled 'Statutory Interpretation', 2nd Edn., pg 617. ***{Ref: (2003) 4 SCC 601 State of Maharashtra vs. Dr. Praful D. Desai ; (1997) 5 SCC 482 CIT Vs. Poddar Cement Pvt. Ltd.; (2000) 8 SCC 740 Basavaraj R. Patil vs. State of Karnataka}.*** These principles have been noticed in ***(1996) 2 SCC 428 State vs. S.J. Choudhary*** and read as follows :-

"(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law."

At page (618-19), of the report, it is further noted that:-

"In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as 'a living Constitution', so an ongoing British Act is regarded as 'a living Act'. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist

is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording."

It was, therefore, observed that an ongoing Act is taken to be always speaking stating that :-

"An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

Thus, the courts have over the period of time applied this principle to interpret various terms and phrases including "stage carriage" has been interpreted to include "electric tramcar"; "steam tricycle" to include "locomotive"; "telegraph" to include "telephone"; "banker's book" to include "microfilm"; "to take note" to include "use of tape recorder"; "documents" to include "data bases"; "handwriting" was construed to include "typewriting" ***{Ref: 1996(2) SCC 428 State Vs. S.J. Chaudhary}.*** **"**Notice in writing" in Section 138 of the Negotiable Instruments Act, were construed to include a "notice by fax". {Ref : ***(1999) 4 SCC 567 SIL Import USA Vs. Exim Aides Silk Exporters***}. This principle of legal interpretation would squarely apply to the construction to be placed on the provisions of Public Premises Act, 1971.

90. Because of the peculiar circumstances prevalent in the Kashmir valley, members of the minority community were targetted and singled out for hostility as a class in their home state. Admittedly, the state was unable to protect their rights or properties.

91. The state authorities assessed the threat perception and danger to the lives to some of the petitioners who were bodily evacuated from their homes in the valley. The transfer of the petitioners, (or that of the persons on whom they were dependent), to Delhi, which preceded the allotment of quarters, was thus compelled by the inability of the respondents to protect and ensure the right to life of the petitioners. The same was certainly involuntary. The allotments were a result of the extreme necessity recognised and adjudged by the respondents themselves. It is also noteworthy that those fleeing to safety had no opportunity to secure or salvage their properties.

92. It is an admitted fact that over this period, the properties of the petitioners in Jammu & Kashmir have either been destroyed or, in other cases, occupied by militants or the majority groups in the state. **On account of the inability of the Government to protect the lives and properties of the petitioners, despite the Constitutional mandate, the petitioners have been deprived of their properties, are unable to return to their homes and face danger to their lives, if they do so** *(emphasis added by HLRN).*

93. The accommodation allotted to the petitioners is the only accommodation which they have ever known in this city. **The petitioners state that they do not own any other property. It is the same sheer necessity which compels the petitioners to continue to occupy the premises which was allotted to them. It is clearly evident that having identified and supplied such need of the petitioners, absent any alternative with them, the respondents would be required to maintain the same** *(emphasis added by HLRN).*

94. The petitioners have been at the receiving end of the threats not only for the reason that they were from another community but also largely because they represented the face of the Central Government in the valley as its employees.

95. It is important to note that the scheme noticed in the aforenoticed affidavit dated 6th October, 2009 (filed by the Chief Secretary before the Supreme Court in ***J.K. Koul vs. Union of India (supra)***; talks of *'Return and Rehabilitation'*. It does not even advert to resettlement. No reference is made to the safety or security of the migrants who agreed or attempted to return. Interestingly, there is reference to 37280 Kashmiri families who had registered for the relief including accommodation out of which out of which only 5000 families have been provided accommodation. An undertaking stood given to the Supreme Court that the government would provide such facilities to all the Kashmiri migrants till they are residing at the present places. Persons as the petitioners are not even covered under those who are dealt with in this affidavit.

96. It is also noteworthy that the affidavit filed before the Supreme Court refers to a total package of the Central Government involving an outlay of Rupees 1618.40 crores.

97. The affidavit of the Chief Secretary does not even refer to the utilisation of this huge amount of public money and the fate of the proposed facilities. There is nothing even before this court which could suggest that the facilities promised before the Supreme Court, have even come into existence.

98. The alternatives propounded and the schemes pertaining to Kashmiri migrants noticed in the judgments of the Supreme Court and of this court remain in the realm of proposals and unimplemented schemes alone without any element of reality or fairness. No alternative at all has been made available to or offered to the petitioners even during the hearings before this court. In the light of the well settled principles laid in the above precedents, the inevitable conclusion is that the respondents have not taken the relevant factors into consideration and have acted arbitrarily and unreasonably. The above discussion clearly manifests that the respondents have not acted fairly in discharge of their positive obligation and have not sufficiently engaged with the problems and difficulties of the petitioners.

99. The petitioners have been prevented from residing in their homes in Jammu & Kashmir for the reason that the State has been unable to secure their lives or protect their homes. In fact, the respondents also admit their inability to ensure protection to the life and limb of the petitioners in case they were to return to the home state, let alone any measure of security for their continued residence in the place of their birth, in case they returned.

100. On behalf of the respondents, it has been argued at length even in these proceedings that the Union of India has formulated a package for return and rehabilitation of the displaced persons. This by itself shows that the situation is not such that the petitioners are in a position to return to their homes. The respondents are clearly unable to ensure protection to the lives of the petitioners and their families or security in their homes.

101. Mr. Jatan Singh, learned standing counsel for the UOI has placed reliance on the pronouncement of this court reported at ***2000 (55) DRJ 57 Bhim Singh Vs. Union of India & Anr***. In this case, the petitioner had sought upgradation of the accommodation allotted to him on grounds of the security cover which had been granted to him as a president of a political party. A challenge was also laid to the eviction proceedings. It was held that the accommodation allotted to him was not liable to be upgraded. It is noteworthy that the petitioner in that case did not hail from the Kashmir valley. No plea that the petitioner could not return to his own accommodation on account of inability of the

state to protect either his life or the property was putforth or considered. In the present case, the petitioners seek no upgradation of accommodation but only protection of their basic human right and the fundamental right to life. There is no parity at all between ***Bhim Singh's case (supra)*** and the present cases.

102. It needs no elaboration that a judgment has to be examined in the context of the factual matrix which it decides. The judgment reported at ***(1995) II AD Delhi 293 Union of India Vs. S.M. Aggarwal & 31 Others,*** also relied upon by the respondents, was a case of eviction of shopkeepers who were licencees in shops which were public premises and had failed to show cause in answer to the notice issued by the Estate Officer. This case cannot be compared with the factual matrix noticed hereinabove.

103. The respondents have also placed reliance on the pronouncement of this court reported at ***AIR 1977 Delhi 268 Hardwari Lal Verma Vs. The Estate Officer & Ors.*** wherein the court held that an allottee of a Government quarter is merely a licencee. There can be no dispute at all with this proposition. However, Hardwari Lal Verma had also not raised any question of violation of basic human and constitutional rights as the petitioners have in the present case. No fact situation as in the present case was involved.

104. The petitioners are not continuing to occupy the subject premises because they want to do so. They are also not claiming a right to indefinitely occupy the public premises or asserting a title or a right thereto in respect of the subject 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 *(emphasis added by HLRN)*.

105. 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.

106. Despite this hard reality, the representations, undertakings and promises of the Central Government, upon retirement, the allotments to the petitioners stand cancelled and they are being asked to vacate Government accommodation; otherwise they face the threat of eminent forcible eviction therefrom pursuant to proceedings taken against them under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

107. The petitioners may thereby be compelled to return to the violent situation where from they were evicted/evacuated/or forced to flee. **Forcing the petitioners who are IDPs to return to the area where they were persecuted violates the principle of non-refoulement which is the principle in international law forbidding the expulsion of a refuge into an area where such person mights be again subjected to persecution**. The respondents cannot be permitted, to on a hyper-technical construction of statutory provision or arbitrary exercise of power to create a situation where the homeless petitioners are compelled to return to the areas where they may face violence and threat to their life and liberty *(emphasis added by HLRN)*.

108. The respondents have themselves recognised the entitlement of the petitioners to appropriate residence, when they made the allotments. The only reason advanced by the respondents for their decision to cancel the allotment and to evict the petitioners is that they have retired. The relevant factor as to the developments in the state of Jammu & Kashmir and the effect of such eviction has not even been remotely considered. No examination of the issue of whether the spirit or intendment of the avowed policy of rehabilitation been achieved, or not, has been undertaken.

109. The situation which was to be addressed in these cases was truly exceptional. This aspect has also not even remotely entered the respondents consideration. In fact the decisions of the respondents amply illustrates that the respondents are not rational, reasonable or consistent in their decision making. The construction placed by the respondents in the cases of these IDPs on the permissibility of the occupancy of the quarters under the Allotment Rules as relateable solely to their service results in violation of constitutional guarantees and was clearly and completely unwarranted. It needs no further elaboration that the rights which the petitioners are complaining breach of, are the rights guaranteed to them under Article 19(1)(e) and Article 21 of the Constitution of India. For these reasons, the interpretation of the expression "unauthorised occupation" by the respondents as well as in the impugned orders is blinkered, restricted and impermissible in the given facts. The expression "authority for such occupation" appearing in Section 2(g) must take within its ambit the constitutional violations which result from the restricted working of the statutory provisions by the respondents. It was incumbent upon all concerned with the decision making to take into consideration the most material developments in the home state of the petitioners and the fact that the State was unable to guarantee protection of life and liberty to the petitioners in case they return; the insufficiency and inability of the resettlement/rehabilitation effort and the absence of any alternative to the petitioners for the purposes of construction of the expression "authority for such occupation". No legal interpretation could be acceptable which does not take into its consideration these relevant facts and circumstances. **The petitioners are occupying the accommodation because of the failure of the respondents to discharge the constitutional mandate and their public law obligations of protecting the right to life and liberty of the petitioners**. As noticed above, the authority to occupy the quarters so far as the petitioners were concerned was derived from the constitutional guarantees *(emphasis added by HLRN)*.

Such occupancy cannot be deemed or held to be "unauthorised" by any measure *(emphasis added by HLRN).*

110. The significant difference between the cases of the petitioners and that of an unauthorised occupant of public premises is that the writ petitioners have continued to occupy the public premises only on account of the inability of the state to protect the fundamental and basic human rights of the petitioners.

111. The respondents would have the records of the circumstances in which the petitioners and their successors in interest were transferred and evacuated to Delhi and also the extreme necessity of making the allotments of the quarters to these persons who were not only Government servants but also IDPs. The Directorate of Estates which has effected the impugned decisions cancelling the allotments would be aware of the pronouncements in respect of identically placed persons of the Supreme Court in ***P.K. Koul Vs. Estate Officer***, this court in ***J.K. Koul vs. Union of India***, the order of the Central Administrative Tribunal in ***Tej Kishan Vs. Union of India & Ors.*** and implemented the same. The respondents are aware of the prevalent situation.

112. No legal interpretation would be acceptable which does not take into its consideration the relevant facts and circumstances. There can also be no statutory interpretation which results in violation and constitutional guarantees and protection.

The present petitioners certainly cannot be compared with or treated in the same manner in which the respondents would deal with any other occupant who has not suffered the gross violations and deprivations as the petitioners, and is unauthorisedly occupying the public premises.

113. **It, therefore, has to be held that the occupation by petitioners cannot be construed as "unauthorized occupation" of the quarters within the meaning of the expression in Section 2(g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971** *(emphasis added by HLRN).*

114. An examination of the impugned orders is now necessitated. The cancellation of the allotments and the action initiated under the Public Premises Act, 1971 were resisted by the petitioners on the several grounds on which these writ petitions are premised. However, the same resulted in the impugned orders of eviction.

115. The sole reason given by the Estate Officer for passing the impugned orders of eviction is that the allotments in favour of the petitioners stand cancelled and that they had failed to prove that they were not in unauthorized occupation of the instant premises. None of the other contentions of the petitioner have been even mentioned let alone considered.

116. The petitioners' appeals assailing these eviction orders stand rejected.

117. The petitioners had placed the several decisions relating to similarly situated persons before the respondents, the Estate Officer as well as the learned Additional District Judges. A plea was taken that because of failure of the respondents to ensure the protection of the rights of the petitioners under Article 21 of the Constitution of India they continued to occupy the quarters. The petitioners had also urged that they stood deprived of home and hearth because of the failure of the respondents to ensure the constitutional guarantees and discharge the mandate thereunder.

118. The appellate orders notice the petitioners' contention that the petitioners have made several representations to various authorities for allowing them to retain the accommodation on the ground that they belong to Kashmir and it was not feasible to return in view of the communal riots and terrorists movements. These requests have not been acceded to. The impugned appellate orders record that the petitioners have challenged the eviction orders on the ground that the Estate Officer had failed to consider the fact that they were Kashmiri migrants and cannot return to Srinagar till normalcy is restored. It was also a ground of appeal that the Estate Officer had not considered the orders in SLP No. 1369/1997 by the Supreme Court and that the petitioners' cases were on the same footings. The challenge had also been laid to the orders of the estate officer on grounds of arbitrariness and violation of principles of natural justice.

119. The appellate court in the impugned orders has also proceeded on the sole ground that there was no lease or license deed issued in favour of the petitioners by the Government of India. The orders of the Apex Court were not considered on the sole ground that copy of the Special Leave Petition had not been placed before the court and that the petitioners were not a party to the proceedings. The learned appellate court was also of the view that the petitioners were provided accommodation in Delhi because they were in service in Delhi and not because of terrorists threats and further that accommodation was given only by virtue of employment. It was also concluded that no relief had been granted to the petitioners by the Supreme Court and therefore, the orders did not assist the Supreme Court. The eviction orders had been sustained in view of these conclusions.

120. As a result, such working of the Public Premises Act by the respondents, the petitioners are being threatened with eviction from the only shelters that they know, without any alternative being available to them.

121. The respondents are bound to act in a manner which is compatible with the constitutional rights of the petitioner while this court has to take into account and require the legislation to be read compatibly with such rights. The object is to ensure that the actions and orders must be such as to avert or rectify any violation of such basic rights.

122. The scheme of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 shows that the notice which is issued under Section 4 to show cause is required to specify the grounds on which the eviction is proposed to be made and require the persons concerned to show cause against the proposed order before the specified date when they are to produce evidence in support of the show cause. Under Section 5 of the Act, the Estate Officer is required to consider the show cause by the noticee under Section 4 as well as the evidence produced by him and after personal hearing, if any, given. Thereafter, the Estate Officer is required to record reasons for his satisfaction for making an order of eviction. The orders of the estate officer discloses no reasons at all to support satisfaction to order eviction. The impugned orders do not reflect the consideration of the contentions on the evidence placed by the petitioners.

123. The due process clause in the Constitution mandates ensuring that the state provides a humane standard of living to its citizens.

124. The letter from Ministry of Urban Development to Delhi Development Authority placed on record in ***Tej Kishan vs. UOI (supra)*** before the Central Administrative Tribunal (also relied upon in ***132 (2006) DLT 672 P.K. Handoo vs. Estate Officer*** indicates engagement of the authorities with this issue and the decision of the Central Government directing that schemes be framed by the Delhi Development Authority as well for making preferential allotments of accommodation to Kashmiri migrants. In addition, the Government affidavit dated 6th October, 2009 in ***J.L. Koul (supra)*** filed in the Supreme Court of India also expresses the same concern as has been expressed in the above Guiding Principles on Internal Displacement.

    These actions unequivocally manifest the respondents' awareness about the positive obligation imposed upon them to ensure that the persons displaced from Kashmir are required to be resettled and/or rehabilitated. There is admission of responsibility and culpability. The working of the measures, however, reflects that the steps which have been taken are inadequate and hopelessly insufficient. Even in the prolonged hearing before this court, the respondents could place no alternative so far as the petitioners were concerned.

125. In ***AIR 2010 SC 1476 State of West Bengal vs. The Community for Protection of Democratic Rights, West Bengal & Ors***., **the Supreme Court has also held that the court was required to weigh the impact of a particular government scheme, statute or action on the fundamental rights of those effected by the government scheme, statute or action. In case any statute or action abrogates or abridges such rights, it would be violative of the basic structure/doctrine of the Constitution** *(emphasis added by HLRN).*

    For this reason as well, **any application or enforcement of statutory provisions, rules, regulations that impacts or impinges fundamental rights has to be struck down** *(emphasis added by HLRN).*

126. In ***[2004] EWCA Civ 540 Secretary of State for the Home Department vs. Wayoka Limbuela, Binyam Tefera Tesema & Yusif Adam,*** the House of Lords has prescribed a test to determine whether a statutory scheme or a government policy caused a violation of fundamental rights. It was observed that when a reasonable evaluation of all relevant facts and circumstances shows that a government policy would subject petitioners to an immediate and serious deprivation of the basic necessities of life, then the court may properly grant relief. It was also held that the state would be liable for both action and inaction as long as the action or inaction results in a serious deprivation of rights or human dignity.

127. In the light of the directions by the Supreme Court and this court in the aforenoticed cases relating to identically situated displaced persons who are victims of violence, the contest by the respondents to the present writ petitions on technical, specious and legally untenable grounds is unfair to say the least. Similar issues have arisen before and orders stand passed in favour of the similarly placed persons therein.

128. The petitioners have suffered on account of the respondents failure to protect their life and liberty when they were compelled to flee from their homes in Kashmir. In international law, refugees are protected from being compelled to return to places or situations where their lives or freedom could be threatened. It is pointed out that the respondents have implemented this principle in the cases of Chakmas, Tibetans, and else where IDPs, who are citizens of the same country, certainly cannot be treated differently and compelled to return to violent situations.

129. The proceedings as well as the impugned decisions and orders have completely failed to take into consideration the material issue of the impact of the proceedings and the orders which would result in forcible eviction of the petitioners from the only shelters known to them without any alternative. **The impugned cancellation of allotments, the orders of eviction passed by the Estate Officer and the aforenoticed orders dismissing the appeals of the petitioners are in the teeth of the constitutional guarantees to the petitioners under Articles 19(1)(e)(g) and 21 and therefore not sustainable** *(emphasis added by HLRN).*

130. Such cancellation of allotment and forcible eviction at the hands of the State utilizing the shield of a statutory right to do so under the Public Premises Act, 1971 results in violation of the constitutional rights of the petitioners. It is manifest therefore such that such application of law as would have an impact of violating the fundamental rights of the petitioners is impermissible under the constitutional scheme.

Proportionality test

131. The proportionality of the impact on the fundamental right involved by working of the statutory provision as against the objective of the concerned statute is another important test for adjudicating upon the legality of the interference with the right which would have a bearing on the present case. In a pronouncement of the House of Lords reported at ***(2007) UKHL 11:(2007) 4 All ER 15 Huang Vs. Secretary of State for the Home Department,*** the decision making role and function of the appellate immigration authorities in the context of the Human Rights Act, 1998 and the Immigration and Asylum Act, 1999 was in issue. The House examined the scope of reviews by the prescribed authorities. The private parties complained of violation of their rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 which provides as under:-

"1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The consideration by the House of Lords on the principle of proportionality of the impact of the interference on the right vis-a- vis, the legitimate end in view is important and reads as follows :-

"xxx xxxx

In most cases where the applicants complain of a violation of their art 8 rights, in a case where the impugned decision is authorised by law for a legitimate object and the interference (or lack of respect) is of sufficient seriousness to engage the operation or art 8, the crucial question is likely to be **whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved**. Proportionality is a subject of such importance as to require separate treatment.
PROPORTIONALITY

In de Freitas Vs. Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 at 80, [1998] 3 WLR 675 at 684, the Privy Council, drawing on South African, Canadian and Zimbabwean authority, defined the questions generally to be asked in deciding whether a measure is proportionate :

`....Whether : (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

This formulation has been widely cited and applied. But counsel for the applicants (with the support of Liberty, in a valuable written intervention) suggested that the formulation was deficient in omitting reference to an overriding requirement which featured in the judgment of Dickson CJ in R v Oakes [1986] 1 SCR 103, from which this approach to proportionality derives. This feature is (at 139) the need to balance the interests of society with those of individuals and groups. This is indeed an aspect which should never be overlooked or discounted. The House recognised as much in R (Razgar) v Secretary of State for the Home Dept [2004] UKHL 27 at [17]- [20], [26], [27], [60],[77], [2004] 2 All ER 821 at [17]- [20], [26], [27], [60], [77], [2004] 2 AC 368 when, having suggested a series of questions which an adjudicator would have to ask and answer in deciding a convention question, it said (at [20]) that the judgment on proportionality -

`must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the convention. The severity and consequences of the interference will call for careful assessment at this stage.'

If, as counsel suggest, insufficient attention has been paid to this requirement, the failure should be made good.

xxxx"

(Emphasis supplied)

132. Having regard to the drastic violation which results from the impugned action and orders, it has to be held that the decision of the authorities to cancel the allotments and proceed for eviction as well as the impugned orders against the petitioners are not in accordance with law even on reasonable assessment of proportionality viz-a-viz the object of eviction of unauthorised occupants of the Public Premises Act, 1971.

Violation of Article 14 of the Constitution

133. The petitioners have also complained that the respondents had discretion to permit the petitioners to continue to occupy the premises under SR 317-B-25 of the ***Allotment of Government Residences (General Pool in Delhi) Rules, 1963***. It is contended that the respondents were bound to consider the matter on the relevant consideration of the right to shelter of the petitioners which was involved and cannot premise their action on extraneous and impermissible reasons or considerations.

Mr. B.L. Wali, learned counsel for petitioners has urged that the failure to exercise discretion in favour of the petitioners is in fact not only in violation of the constitutional obligations of the respondents, but is arbitrary and unreasonable.

134. Shri P.K. Kaul, (writ petitioner in W.P.(C) No.15239/2004) had earlier filed WP (C) No.6551/2003, submitting that the respondents had arbitrarily failed to consider his request for regularization despite having knowledge of the special circumstances of the case. Mr. B.L. Wali, learned counsel for this petitioner has placed the order which was passed on 15th October, 2003 in the earlier writ petition, which directed the respondents to consider the question of regularization of allotment in favour of the petitioner in view of the special circumstances. It was directed that the petition including its enclosures should also be considered while disposing of the petitioner's representation.

135. Despite these orders, the writ petitioner has contended that there has been no consideration in terms of this order till date. He has, therefore, filed the writ petition being WP (C) No.15239/2004 challenging the notice issued by the Estate Officer under section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1972 to him.

136. The other writ petitioners have also made similar requests to the respondents for exercise of discretion which were reiterated by them in the reply to the notices issued by the Estate officer under Section 4 of the Public Premises Act as well as in the appeals which were filed. The same ground of challenge to the respondents' action has been urged in these writ petitions.

137. Mr. B.L. Wali, learned counsel appearing for some of the petitioners has pointed out that the respondents have exercised discretion favourably and permitted some identically situated displaced Kashmiris to continue in allotted premises after retirement whereas this has been arbitrarily denied to the petitioners. Learned counsels contend that the respondents' action so far as the present petitioners are concerned, is discriminatory and not sustainable.

138. The respondents on the other hand place reliance on the pronouncement of the court in ***(1997) 1 SCC 444 Shiv Sagar Tiwari vs. Union of India*** and dispute that they have any discretion in the matter.

139. Allotment of government accommodations are effected under the provisions *of* ***Allotment of Government Residences (General Pool in Delhi) Rules, 1963***. Reference is made to SR 317-B-

25 thereof which empowers the Government to relax the provisions of these rules and deserves to be considered in extenso. The same reads as follows:-

> *"**SR 317-B-25**: The Government may for reasons to be recorded in writing relax all or any of the provisions of the Rules in this Division in the case of any officer or residence or class of officers or type of residences."*

140. It is undisputed before us that despite the propounded rehabilitation schemes stated before the Supreme Court and establishment of preferential quotas in allotments placed before the Central Administrative Tribunal, the respondents have not been able to rehabilitate or resettle any of the petitioners.

141. The respondents have also not denied the availability of the discretion under SR 317 B 25 of the Allotment Rules, 1963 and its favourable exercise in favour of some Kashmiri IDPs. Yet, the respondents have failed to exercise the same discretion in favour of the present petitioners. No explanation for the same is even attempted.

142. On the issue of exercise of discretion, in the judgment reported at ***AIR 1980 SC 1622, Municipal Council Ratlam Vs. Vardichan & Ors.,*** the court was concerned with the public power of the Magistrate under Section 133 of the Code of Criminal Procedure. The court observed that the 'public power of the magistrate under the Code' is 'a public duty to the members of the public who are victims of nuisance and so he shall exercise it when the jurisdictional facts are present as here'. So far as exercise of discretion is concerned, it was observed as follows :-

> "9. So the guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "***All power is a trust-that we are accountable for its exercise***-that, from the people, and for the people, all springs, and all must exist." ***Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise***.
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> xxxx"

143. **Given the established violation of the fundamental rights of the petitioners resulting in their displacement; the destruction of their property coupled with the prevalent conditions in their home state; and lack of any alternate to them, the exercise of discretion under the SR-317 B-25 of the allotment of Allotment of Government Residences (General Pool in Delhi) Rules, 1963 in favour of the petitioners would thus be the bounden duty of the respondents**. The mandate of the Supreme Court in ***Municipal Council Ratlam vs. Vardichan (supra)*** would bind even the court *(emphasis added by HLRN)*.

144. The pronouncement of the Supreme Court reported at ***(1997) 1 SCC 444*** entitled ***Shiv Sagar Tiwari Vs. Union of India & Ors.,*** has been placed before this court by the respondents. In this case, the court was concerned with gross misuse of discretionary power relating to allotment of accommodation to government employees. As against the permissible discretionary quota of 10 per cent, such allotments had shot up to 70 per cent. On top of these, 8,768 houses were allotted on "Special Compassionate Grounds" in exercise of discretion under the authority of a letter dated 18th July, 1996 from the Cabinet Secretary. The Government of India had submitted that it had exercised discretion vested in it under the aforenoticed SR. The court had concluded that the conduct of the respondents did not disclose application of mind and discretion was not exercised fairly. In para 56 of the judgment, it was observed as follows:-

"56. The decision of the present Central Government on this aspect as finding place in the letter of the Cabinet Secretary dated 18-7-1996 bearing DO No.1/44/1/96- CAV is that "where it is considered absolutely necessary " small number of out -of-turn allotments would be made for which purpose also the Ministries/Departments would formulate clear rules and guidelines. During the course of hearing, on being desired to know as to why out-of-turn allotment is at all required, the submission advanced on behalf of the Union of India was that there are a few officers, who by virtue of the duties discharged, have to be accommodated in government quarters to facilitate smooth functioning of the Government.

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145. In view of the gross abuse of the discretion vested in the respondents, in para 57 at page 463 of the report, it was held that a case to permit minimal out of turn allotments was made out which has to be regulated and transparency has to be maintained in such allotments. The court considered private citizens who could be allotted out of the discretionary quota which included accredited journalists and news cameraman, political parties, artistes, social worker etc and other organizations as well.

In **Shiv Sagar Tiwari vs. UOI (supra),** it was held that the discretion conferred has to be exercised to advance the purpose to subserve which the power exists and that even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter or unfettered discretion. The Supreme Court held that exercise of such discretion was an exception and deprecated the above action of the Government making the same into a norm. Noteworthy, is the Government's stand in this case that vesting of some discretion in the matter of allotment of quarters was essential.

In this background, the contention of the respondents that exercise of discretion was prohibited by the Supreme Court in this case is totally misconceived.

146. On the other hand, in the instant cases, the petitioners have assailed the arbitrariness in exercise of the discretion admittedly conferred on the respondents and the failure to permit continuation of occupation of the allotted accommodation in the exceptionable circumstances and conditions in which they were placed. The pronouncement of the Supreme Court, in fact, assists the petitioners as the court recognized existence of and permissible exercise of discretion while deprecating its abuse.

147. The standards on which an authority would exercise discretion were settled by the Supreme Court in the judgment reported at ***(1979) 3 SCC 489 entitled Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.*** as follows :-

"10. xxx.....It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes not difference whether the exercise of the power involves affection of some right or denial of some privilege."

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12. ……It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with

standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory." (Emphasis supplied)

148. In para 85 of the pronouncement reported at ***AIR 1974 SC 555*** entitled ***E.P. Royappa vs. State of Tamilnadu & Anr.*** the Supreme Court laid down the following binding principles :-

> "85. .....In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on equivalent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."
>
> (Emphasis supplied)

Therefore, even if it were to be held as urged by the respondents that this court could be held to be powerless to direct exercise of discretion in a particular manner, in view of the clear principles laid down in these judicial precedents, there is no prohibition upon this court from examining as to whether the respondents have failed to exercise discretion on relevant criterion. There is also no prohibition on this court to examine whether the respondents have acted arbitrarily or discriminated against the petitioners.

The impugned action of the respondents against the petitioners and the orders assailed herein have to be tested on the above principles.

149. A similar argument of the respondent that the allottees were prohibited from permitting retention of accommodation beyond the permissible period after retirement was rejected by the Central Administrative Tribunal in the aforenoticed decision rendered on ***30th December, 2002 in O.A. No.2378/2002 Shri Tej Kishan Vs. Union of India & Ors***. The Tribunal had examined the petitioner's challenge to the respondent's action on the plea of discrimination premised on the conduct of the respondents in exercising discretion in favour of some similarly situated migrants and not in favour of the petitioners and observed as follows:-

> "31. ***Respondents have not disputed that Kashmir migrants who were identically and equally situated, on their request have been allowed to retain the accommodation till the normalcy comes back in State of J&K and till they are returned, ensured further the safety of their persons and property and reconstruction of their houses. For these three Kashmir migrants, who are placed in similar situation and with same conditions,***

a different criteria was adopted on the ground of merits in their case, and the principle not to be given a general application. Applicant who is also a Kashmir migrant having no place to live in Delhi a large family to support, is on a similar footing with those who were allowed to retain the accommodation. In order to satisfy the requirements of law, the respondents have to establish that there has been an intelligible differentia and which has a reasonable nexus with the object sought to be achieved. No grounds whatsoever have forthcome which can be treated as reasonable or relevant for to mete out the aforesaid requirements of law and to pass dual test which will render the decision in consonance with the Article 14 of the Constitution of India. In absence of any reasons and the fact that the applicant is equal in all respects should not have been meted out a differential treatment. This in my considered view, is unsustainable being violative of Article 14 of the Constitution of India."

150. The tribunal rejected the arguments of the respondents premised on the pronouncement in ***Shiv Sagar Tiwari (supra)*** as well as scarcity of resources holding as follows :-

32. Moreover, the contention that the directions issued in ***Shiv Sagar Tiwari's case supra*** and the fact that the Government accommodations are few and the persons claiming the same are more and the rules do not permit retention beyond the specified period, is no justification for rejecting the case of the applicant as in J.L. Koul's case, even in an interim order passed, the Apex Court was well aware about the decision rendered in Shiv Sagar Tiwari's case as well as the Rules were also in existence at that time as well which prohibits retention of accommodation beyond the permissible period. Conscious of this, the Apex Court in the light of the fact and conditions as well as circumstances of Kashmir migrants, who have their own houses destroyed in Kashmir and those retired inclined to go back directed the Government to ensure their protection and as well as of their property so that they may be put back to their respective houses owned by them in Kashmir on 28.1.1998 i.e. much after the decision of ***S.S. Tiwari's case*** supra as well as the instructions through OM in 17.11.1997, the matter has been pending sine die and to be activated only after the State of Jammu and Kashmir ensures return of the petitioners to their respective Homes with safety of their persons and property. The aforesaid petition is still pending before the Apex Court.

33. I also find that the Government by the letter dated 2.7.2002 in order to hold the retirees or retiral officials of Kashmir migrants working in Delhi, who could not get back to J&K due to prevailing situation, a decision has been taken to allot about 100 MIG/LIG Flats and for which DDA has been requested to formulate the Housing Scheme for which a draft has been sent to the Ministry for approval. The aforesaid decision also incorporated that these houses are being allotted to Kashmir migrants retiring or retired so that the general pool accommodation got vacated from them. This on a literal consideration connotes that the Kashmir migrants who are in retention of general pool accommodation on retirement, are to be evicted only after the DDA formulate a Housing Scheme to allot MIG/LIG flats to them.

34. In my considered view, the review undertaken by the respondents in compliance of the earlier directions of this Court has not taken note of letter dated 2.7.2002 as well as the directions in Koul's case supra. If a post-facto approval can be accorded by CCA and approval by the Ministry for Urban Development denying the same to the applicant who is similarly situated and is equal in all respects, smacks of arbitrariness and hostile discrimination which, as per various pronouncements of the Apex Court, cannot be countenanced and would be an antithesis to rule of laws doctrine of equality.

35. In the result and for the forgoing reasons, OA is partly allowed. Impugned order dated 13.8.2002 is quashed and set aside. Respondents are directed to allow the applicant to retain the Government accommodation pending decision in SLP (Civil) No.7369/97. No costs."

(Underlining supplied)

This decision of the Central Administrative Tribunal has attained finality and also stands implemented.

151. Before this court the respondents have not even attempted to show how the present petitioners can be distinguished from either ***Shri Tej Kishan*** (supra) or from the instances noticed in para 31 of the judgment of the Tribunal. On the contrary, as set out above, in answer to grounds (A) and (B) of the writ petition noticed in para 22 above, the respondents have stated that these contentions of the petitioner are a "matter of record".

152. There is no dispute also to the fact that the orders in ***J.L. Koul, P.K. Handoo, M.K. Koul, Tej Kishan (supra)*** have attained finality and these persons continue to occupy the allotted accommodation despite superannuation.

153. The respondents are unable to point a single distinction, let alone a relevant one, between the present petitioners and those in the decided cases. The petitioners are identically situated, yet have been denied equal treatment. Not a whit of explanation for not treating these petitioners as those in the cited precedents is suggested by the respondents. Even the impugned orders unfortunately do not attempt to deal with this aspect of the matter.

154. As noticed above, the respondents contended before the Supreme Court in ***Shiv Sagar Tiwari (supra)*** that they have the discretion to draw exceptions in the matter of allotments of public premises and have relied on instances and categories when this discretion was exercised in favour of persons who were even not in public service and were never even employed by the Government.

155. In ground L of WP(C) no.15329/2004, Shri P.K.Koul, the petitioner has stated that the respondents have allotted the Government accommodation not only serving Government employees, but to various other categories of employees who have nothing to do with Government service. It has been stated that "employees working in the office of the political parties, journalists, freedom fighters, artists etc." are also allotted general pool accommodation. This averment is not contested by the respondents who have only submitted that the allotment of the quarter is made as per the rules and policy laid down by the Government.

156. It is trite that residuary rules are interpreted and worked to empower authorities permitting exceptions from applicability of the rule to remove hardships (Ref : ***1993 Supp.3 SCC 515*** **(**para 33) ***Syed Khalid Rizvi vs. UOI & Ors; (1996) 8 SCC 762 SBI & Ors. vs. Kashinath Kher & Ors.; (1988) 4 SCC 179 Ashok Kr. Uppal and Ors. vs. State of J&K).***

157. The orders in ***Tej Kishan (supra)*** make a detailed reference to the voluntary exercise of discretion in favour of three migrants by the respondents which was the entire basis of the finding of arbitrariness by the Tribunal in the action taken against Tej Kishan and co-petitioners. These very findings squarely apply to the cases of the present petitioners.

158. No explanation is rendered or reason given by the respondents for the rejection of identical requests of some of the petitioners or for not favourably considering the said requests of the petitioners. The

failure to even consider these requests despite the specific directions in P.K. Koul's previous writ petition reflect high handedness, unreasonableness and arbitrariness on the part of the respondents. The respondents have granted approval to similarly situated persons. Denial thereof to the equally placed petitioners certainly tantamounts to hostile discrimination against them which is impermissible and as observed above 'an antithesis to the equality clause'. The action of the respondents in not favourably considering the petitioners' representations; in cancelling the allotments of the petitioners and proceeding against them under the Public Premises Act, 1971 as well as the impugned orders are, therefore, not sustainable also being in violation of Articles 14 and 16 of the Constitution.

Change in Policy

159. There is yet another important side to the claim asserted by the petitioners which requires consideration. The declared policy of the state with regard to the IDPs from Kashmir is concerned with their rehabilitation. Forcible eviction from their current residences without an alternative is not even remotely suggested in these policies. The same is evident from the affidavit placed before the Supreme Court in ***J.L. Koul vs. State of Jammu & Kashmir (supra)*** and the letter dated 2nd July, 2002 placed before the Central Administrative Tribunal in ***Tej Kishen Vs. Union of India (supra).*** The decision taken to cancel the petitioners' allotments and to initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 without making available of alternative shelter clearly suggests a drastic change in the government policy so far as these IDPs are concerned.

160. In a recent judgment of the Supreme Court reported at ***MANU/SC/0476/2010 Sindhu Education Society & Anr. Vs. The Chief Secretary, Govt. of NCT of Delhi & Ors.,*** the Supreme Court observed that framing a policy is the domain of the Government. The framework of the policy and the working of such Government Policy has essentially to be done within the framework of the Constitution & the laws. As and when Government changes its policy decision, it is expected to give valid reasons thereof and act in larger interest of the entire community rather than a section. In para 66 of the judgment, the Supreme Court held that:

> "..... It is a settled canon of administrative jurisprudence that state action, must be supported by some valid reasons and should be upon due application of mind. In the affidavits filed on behalf of the state, nothing in this regard could be pointed out and in fact, none was pointed out during the course of arguments. Absence of reasoning and apparent non- application of mind would give colour of arbitrariness to the state action."

The position in the cases in hand is no different. The state does not again even suggest a reasonable explanation or valid reason for the change from the rehabilitative policy to the decision to evict the petitioners and thereby threatening them with imminent homelessness.

161. The respondents would have the right to change its policy upon change in circumstances. (Ref: ***(1998) 1 SCR 1120 State of Punjab & Ors. vs. Ram Lubhaya Begga & Ors****.).* No such change is pointed out in the present cases. The decision to treat the petitioners as unauthorized occupants without their resettlement is clearly not premised a change of policy upon application of mind and therefore not sustainable.

Responsibility of the Central Government

162. It has been suggested by Mr. Jatan Singh, learned standing counsel for the Union of India that the Central Government has no responsibility vis-a-viz the petitioners in the given facts and that only the State of Jammu and Kashmir is liable for the infraction of the rights of the petitioners.

163. The submission on behalf of the petitioners on the other hand is that the duty and responsibility of the state authorities vis-a-vis these groups of persons which stands recognized and admitted by the both the state and Central Government itself. As such, the rights of the petitioners cannot be ignored, imperilled or violated by any of the respondents.

164. It is urged that the respondents have heartily engaged with and manifested extreme concern for refugees from other countries, but have handled inadequately, and even failed to address the difficulties of internally displaced persons.

165. Reference is also made to the policies of regularization of unauthorized constructions and encroachments on public lands are pointed out. Several schemes and policies of the respondents with regard to the disadvantaged masses so far as rehabilitation and resettlement is concerned. **The attention of this court is drawn also to the several judgments concerned with the right of shelter of pavement and jhuggi-jhompri dwellers** including ***Olga Tellis v. Bombay Municipal Corporation & Ors.; Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors.; Jagdish vs. DDA; Sudama Singh & Ors.vs. Government of Delhi & Anr.*** which have been referred above. **The petitioners have urged at some length that the respondents have shown utter insensitivity not only in protecting their rights but even in the pursuit of the matter before this court** *(emphasis added by HLRN).*

166. The question which begs an answer is having failed to ensure the life and safety of the petitioners or to protect their property, or to guarantee either of them, what would be the obligation, duty and responsibility of the respondents qua the petitioners.

167. It is an admitted fact that the petitioners were all employed by the Central Government or its agencies. In order to avoid compromising the security issues of these persons, a more detailed analysis of the factual matrix is not being undertaken. However, the present cases set out instances of extreme trauma faced by the petitioners and their family members as well as the continued threat to their life and property. In one of the cases, the petitioner is a destitute lady who was working in the Ministry of Information & Broadcasting of the Government of India used to give live performances and conducted programs on behalf of the Central Government in remote villages in the valley as well as on the electronic media making her face known to the militants. Her troupe was attacked in 1987 while performing at Khamabal in District Anantnag and they had to flee for their life. In this background, she was transferred to Delhi, and was allotted the premises by the respondents. The petitioner points out that in mid-1990, the Songs and Drama Division Office in Srinagar, Kashmir was blown up and the entire staff transferred to Delhi. Not only the house of her in-laws but her ancestral/parental rental house also stands burnt down and she has no place to return to in Kashmir. Even after she was evacuated from the valley, her brother received threats to her life by way of communications advising the petitioner to desist from participating or performing in programs in support of the Government. This communication has been placed on record. The petitioner was deserted by her husband decades ago and she stands abandoned by the State with none to assist to her. The writ petition states that she is getting a meager amount of Rs 4500/- as pension, insufficient even to sustain her, let alone acquiring rights in any property.

168. Another petitioner who was the author and the voice of a programme on the All India Radio in Srinagar division which became popular across the line of control was so targetted by the militants. A price for his head was even announced. In one of the cases, despite the security cover, an attempt was made on the life of the petitioner whose property and belongings stand looted and gutted in Srinagar and he has no property at all anywhere in the country. There are other petitioners who were working in the intelligence agencies in the state who were evacuated on emergency basis after their colleagues were shot dead. Several of the petitioners have lost close friends and relatives on account of the attacks by militants.

The petitioners were targetted because they were the face of the Central Government in the Kashmir valley and are unable to return for the same reason.

169. **So far as ensuring the right to shelter is concerned, the Supreme Court has held that the state is deemed to be under an obligation to secure the same to its citizens** [Ref : ***(1996) 2 SCC 549 Chameli Singh & Ors. vs. State of U.P.(supra)***, **that it is imperative for the state to provide permanent housing accommodation to the deprived** *(emphasis added by HLRN).*

170. In ***1995 (2) SLR 72 P.G. Gupta vs. State of Gujarat*** the Supreme Court had further declared that it **was the duty of the state to construct houses at reasonable costs and make them easily accessible to the poor, and that such principles have been expressly embodied in our Constitution to ensure socio- economic democracy so that everyone has a right to life, liberty and security of the person** *(emphasis added by HLRN).*

In this context, in para 11 of the pronouncement, the court expressly laid down the **imperative duty of the state to provide permanent housing accommodation to the poor in the housing schemes undertaken by it, or its instrumentality** *(emphasis added by HLRN)* and observed as follows:-

> "11. As stated earlier, the right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy of planned development of the country and has undertaken massive housing schemes. As its part, allotment of houses was adopted, as is enjoined by Arts. 38, 39 and 46, Preamble and 19(1)(e), facilities and opportunities to the weaker sections of the society of the right to residence, make the life meaningful and liveable in equal status with dignity of person. It is, therefore, ***imperative of the State*** to *provide* ***permanent housing accommodation to the poor*** in the housing schemes undertaken by it or its instrumentalities ***within their economic means*** so that they could make the payment of the price in easy instalments and ***have permanent settlement and residence*** assured under.

Article 19(1)(e) and 21 of the Constitution. xxxxx"

(Underlining supplied)

171. **The Supreme Court has repeatedly reiterated the well settled position that the state has the constitutional duty to provide adequate facilities and opportunities to all including the disadvantaged and the displaced, by distributing its wealth and resources for the settlement of life and erection of shelter over their heads. The court has emphasized the constitutional right of every citizen to migrate and settle in any part of India for better employment opportunity and it would be the duty of the state to provide right to shelter to the disadvantaged in society** *(emphasis added by HLRN).* (Ref: ***Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors.(supra)***.

172. **The forcible removal of pavement and slum dwellers by the agencies of the state without their resettlement or rehabilitation has been repeatedly deprecated by the courts in the plethora of judgments on the subject**. In case they have to be evicted from the place they are occupying, state authorities are bound to formulate schemes and policies. The respondents have gone on record with regard to such projects as are in vogue for their relocation, resettlement and rehabilitation. (Ref: ***(1985) 3 SCC 545 Olga Tellis v. Bombay Municipal Corporation & Ors.; (1997) 11 SCC 121 Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors.; MANU/DE/9327/2006 Jagdish vs. DDA;*** decision of this court dated 11th February, 2010 ***W.P.(C) No. 8904/2009 Sudama Singh & Ors.***) **Placing reliance on the obligations under the international instruments, the courts have repeatedly stated that adequate and reasonable facilities for resettlement and effective steps taken for rehabilitation have to be made available before forcible eviction** *(emphasis added by HLRN).*

173. An issue involving chakmas who were tribals from erstwhile East Pakistan (now Bangladesh) went to the Supreme Court in the case reported at ***(1996) 1 SCC 742 National Human Rights Commission vs. State of Arunachal Pradesh Anr.*** In this case, a public interest litigation was filed by the National Human Rights Commission seeking enforcement of rights under Article 21 of the Indian Constitution, of about 65,000 Chakma/Hajong tribals. It was alleged that these Chakmas had settled primarily in the State of Arunachal Pradesh and were being persecuted by sections of the citizens of the state i.e. the All Arunachal Pradesh Students Union referred to as "AAPSU" hereafter. It was additionally complained that the applications of the Chakmas under the Citizenship Act and Rules thereunder were not being forwarded by the State Government for consideration to the Central Government in accordance with law.

In deciding the matter, **the Supreme Court placed citizens as well as non-citizens on a common platform so far as the rights under Article 14 and 21 of the Constitution are concerned** *(emphasis added by HLRN).*

So far as the constitutional and the statutory obligations of the states to protect the rights of those who reside within the territory of that state are concerned, the court observed as follows :-

> "20. We are a country governed by the Rule of Law. Our Constitution confers certain 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. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus 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 person to another group of persons; it is duty bound to protect the (Sic) group from such assaults and if it fails to do so, it will fail to form its Constitutional as well as statutory obligations. Those giving such (Sic) would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well- being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, Constitutional and statutory, to be considered for being registered as citizens of India."

The court considered the factual matrix and prevalent circumstances in detail and thereafter issued, inter alia, a writ of mandamus directing the State of Arunachal Pradesh, to ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any

attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force. The Union of India was directed to provide such additional force as is necessary to protect the lives and liberty of the Chakmas on the request of the first respondent. The Supreme Court further directed that the Chakmas shall not be evicted from their homes except in accordance with law and shall not be denied domestic life and comfort therein; the State Government was directed to deal with the quit notices and ultimatums issued by the AAPSU and any other group which tantamounted to threats to the life and liberty of each and every Chakma in accordance with law. The Supreme Court has thus recognized the responsibility of the Central Government to provide forces to protect the right to life of the threatened persons.

174. Unlike the Chakmas, the petitioners are IDPs who complain of violation of the same rights and seek redressal thereof. However, the extreme situation of hardship and difficulties being faced by the petitioners and other persons similarly placed is no different. The State Government has been unable to protect or secure the life and property of the petitioners. The Central Government has not been able to adequately address the several issues which have been raised. Many of the petitioners had been physically evacuated by the Central Government in extreme situations. All the petitioners were employees of the Government in Delhi and have superannuated in Delhi. The attempt being made at present is also by the Central Government at Delhi is to forcibly evict the petitioners by taking recourse to statutory provisions.

175. **It is the constitutional duty of the state to protect human rights and the fundamental rights of all persons. The distinction between such rights and legal rights which may require adjudication in appropriate proceedings has also been emphasised on several occasions** *(emphasis added by HLRN).*

In ***(1982) 3 SCC 235 People's Union for Democratic Rights & Ors. Vs. Union of India & Ors.,*** the court observed that denial of statutory rights of the labour force, which was a vulnerable section of the community, tantamounted to breach of their constitutional rights and was therefore enforceable against the government. It was held that it was the duty of the Union of India, the Delhi Administration and the DDA to ensure that the constitutional obligation towards labour are discharged by the contractors to whom they had entrusted construction work. It was held that the Union of India, Delhi Administration and DDA cannot fold their hands in despair and become silent spectators of the breach of constitutional prohibitions being committed by their own contractors. In this context, the court held as follows :-

> "21. Before leaving this subject, we may point out with all the emphasis at our command that whenever any fundamental right, which is enforceable against private individuals such as, for example a fundamental right enacted in Article 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker Section humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Union of India, the Delhi Administration and the Delhi Development Authority must therefore be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners indicating the cause of the workmen are entitled

to enforce this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected."

The failure of the state to ensure statutory rights was held to provide the essential basis for maintaining the writ petition under Article 32 for enforcing fundamental rights against the State and its agencies.

176. It is noteworthy that a writ petition was filed in this court in connection with compensation payable to residents of Kashmir whose property had been destroyed in the disturbances in Kashmir. The judgment of this court reported at ***AIR 2005 Delhi 110 B.L. Wali & Ors. Vs. Union of India & Ors.*** has made observations on this very unacceptable stand of the Government of India in its affidavit which is under consideration. These observations before the Court read as under:-

"20. Respondent No. 1, Union of India, has also filed an affidavit under the signatures of Mr. K.M. Kuti, Under Secretary in the said Ministry dealing with the Department of Jammu & Kashmir affairs. Respondent No.1/UOI by way of the said affidavit effectively washes its hands off the matter. It is stated that relief and rehabilitation are State subjects. Para 2 of the parawise reply may be reproduced to show the stand of the Union of India:

> "2. That the averments made in para 2 of the petition that UOI is invested with the responsibility to rehabilitate and provide relief to the citizens who suffer as a result of failure of state to protect their life and property is misconceived, incorrect and is denied. The answering respondent respectfully submits that Law and Order as well as Relief and Rehabilitation are State Subjects. Ministry of Home Affairs has the responsibility of providing Relief and Rehabilitation to refugees from West Pakistan (now Pakistan), East Pakistan (now Bangladesh), Sri Lanka, Tibet and to the repatriated Indian Nationals. Therefore, the present writ petition qua the answering respondent is not maintainable."

21. The Government of India, thus, considered its responsibility for providing relief and rehabilitation to refugees, who are not citizens of this country, but not to citizens of the country who are refugees in their own country. The apathy is writ large on its face.

22. There is a vast para para phernelia of military and para military personnel in the State of Jammu & Kashmir of the Central Government. The boundaries of the country are to be protected. The condition in the State was so serious that it has been taken as a priority issue. The dislocation of persons from the Valley is a well-known undisputed fact. How can the Government of India wash its hands of the whole matter and absolve itself of the responsibility for providing a safe living to the citizens of the country?

23. Article 21 of the Constitution of India provides for the Fundamental Right of Protection of Life and Personal Liberty. Life cannot be bare existence. Persons who are displaced and suffered injury to life and property as a result of terrorism cannot be left without remedy. It is the duty and responsibility of the State to protect its citizens. Citizens like the petitioners are victims of environment, which is not their own creation. The State owes a responsibility to create an environment for safe and dignified existence of the citizens."

(Emphasis supplied)

This court rejected the stand of the Government of India that the responsibility towards the payment of the compensation rests with the State Government alone holding as follows:-

> "31.The Government of India cannot also absolve itself of the responsibility and is liable to ensure that the State Government remits the amount. A large amount of funds flow to the State of Jammu & Kashmir from the Central Government keeping into consideration the disturbed conditions and, thus, the Central Government cannot say that it has no role to play. The State of Jammu & Kashmir is an integral part of our country and the writ of the Central Government runs. In the cases of victims of Charari Sharief incident, funds have been disbursed out of the Prime Minister Relief Fund to make a package of Rs.2 lakhs of ex-gratia compensation apart from other benefits."

177. **In this judgment, the court held that what holds true for loss of life and limb, would hold true for loss of property occasioned by failure of the State to protect the same.** It is noteworthy that in the present writ petitions, the petitioners have not been deprived of their property and homes in accordance with law as, for instance, in the case of acquisition proceedings. The deprivation is a direct result of the failure to control the violence against the petitioners. The principles laid down in the above judgment would apply to the Kashmiri migrants on every score. More important is **the clear finding by the court of the responsibility of the Central Government for the rehabilitation and relief to the IDPs from Kashmir** *(emphasis added by HLRN).*

178. It is unfortunate that despite this adjudication, the stand which was rejected has again been taken in these proceedings. This position on behalf of the Central Government in fact ignores the commitments made in legal proceedings noticed above.

179. It is noteworthy that the displacement of the petitioners is also not intra-state. The petitioners have been compelled to leave the boundaries of their state and are residing in Delhi.

180. The Central Government has acknowledged its responsibility in the matter inasmuch it has intervened in the matter. Several of the present petitioners stand evacuated by it and the allotments of the quarters in the instant case stand made it. Central resources are being utilized for development projects and security purposes in the state and admittedly the **Central Government has accepted and assumed responsibility towards rehabilitation and resettlement of the persons displaced as well in the grants and reservation made by it** *(emphasis added by HLRN).*

181. It was observed in ***(1978) 1 SCR 1 State of Rajasthan & Ors. vs. UOI*** by Chief Justice Beg that :-

> "In our country national planning involves disbursements of vast amounts of money collected as taxes from citizens residing in all the States and placed at the disposal of the Central Government for the benefits of the States without even the "conditional grants" mentioned above. Hence, the manner in which State Government function and deal with sums placed at their disposal by the Union Government or how they carry on the general administration may also be matters of considerable concern to the Union Government."

182. **The expansion and interpretation by the courts has affirmatively established a positive right to housing and shelter for every person as part of the fundamental right. Human rights and fundamental rights are inalienable; their violations are indefeasible. The state is under a constitutional obligation and duty to protect these rights. When violated, a citizen is entitled to their enforcement. The constitutional mandate upon it, is coupled with the statutory duty and public law obligations to ensure the protection of the fundamental and basic human rights to all, in addition to its obligation under the several international instruments noticed above. This essentially remains in the exclusive domain of state functions. Failure to protect**

the citizens from eminent loss of life and property as well as maintenance of public order, implicates the state for culpable inaction *(emphasis added by HLRN).*

183. Mr. Jatan Singh, learned standing counsel for the Union of India has urged that these petitioners are not public servants and can claim no right to continue in the allotted public premises. It has been vehemently urged that on account of their superannuation, they ceased to be Government servants and are disentitled to retain Government accommodation. Learned Standing Counsel has urged at some length that the Government of India has formulated a rehabilitation package which necessitates that all these petitioners must return to their homes in Kashmir. It is contended that by their failure to vacate, the rights of the several Government employees who are waiting to be allotted Government accommodation are adversely effected. Unfortunately the respondents are unable to submit that the petitioners would be safe upon return or how the respondents propose to ensure protection of life and liberty of the petitioners or ensure restoration of their property in the Kashmir valley.

184. Before the Supreme Court of India, the respondents have accepted responsibility and obligation to the IDPs from Kashmir and claimed to have advanced huge grants to the State of Jammu Kashmir and also set out a detailed scheme in the affidavit filed before the Supreme Court.

In the instant case given the nature and extent of the violations, the Union of India cannot abdicate responsibility in the matter, or avoid its constitutional obligation of at least ensuring reasonable shelter or a roof to these petitioners *(emphasis added by HLRN).*

Financial stringency of the Government

185. Placing reliance on the judgment reported at ***(2005) 6 SCC 138 Master Marine Services Pvt. Ltd. vs. Metcalfe and Hodgkinson Pvt. Ltd. & Anr.,*** it has been further argued by Mr. Jatan Singh that this court is bound to exercise judicial restraint and cannot be unmindful of the administrative burden and increase in unbudgeted expenditure on account of quashing decisions. It is urged that in this background, while exercising power of judicial review of an administrative decision, the court cannot substitute its own decision without the necessary expertise and compel the respondents to exercise discretion to permit the petitioner to continue to occupy the aforenoticed accommodation.

186. This submission fails to consider the nature of the rights which are involved in the case in hand. ***Metcalfe Hodgkinson Pvt. Ltd. (supra)*** related to a challenge to award of a tender and contract of work of professional services to the appellant and was not concerned with a plea of violation of basic human rights and constitutional guarantees as are involved in the instant case. The consideration in ***Metcalfe Hodgkinson Pvt. Ltd. (supra)*** has no application to the present case.

187. In ***(2003) 6 SCC 1 Kapila Hingorani vs. State of Bihar & Ors.*** the State Government had, however, pleaded financial stringency to shift its liability to the Union of India or to the State of Jharkhand. In para 67 of the judgment dated 9th of May, 2003 Supreme Court had held that the liability of the state of Bihar cannot be shifted to the Union of India only because it is the repository of funds raised by it through excise and other central levies and impost, and consequently it would not be indirectly or vicariously liable for the failings on the part of the State Public Sector Undertakings. It was held that either precedentially or jurisprudentially, the Union of India cannot be held liable and no such direction as was being sought by the state government could be issued.

The Supreme Court, however, clearly declared the position that financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises *(emphasis added by HLRN).* In this regard, the court noticed the emphasis given by it on this aspect including the judgments reported at ***[1987]1SCR641 Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors. ; 1980CriLJ1075 Municipal Council, Ratlam vs. Vardichan & Ors.; [1996]3SCR80 B.L. Wadhera v. Union of India ; (1995)4SCC507 State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.; AIR 1996 SC 2426 Paschim Banga Khet Mazdoor Saimiti & Ors. vs. State of West Bengal & Anr.]***

In para 65 of ***(2003) 6 SCC 1 entitled Kapila Hingorani Vs. State of Bihar & ors,*** the Court rejected the contention of the State of Bihar also to this effect.

188. In para 6 at page 589 of ***(1993) 3 SCC 584 All India Imam Organisation vs. UOI,*** the Supreme Court held that:- "6....Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. ***Financial difficulties of the institution cannot be above fundamental right of a citizen***. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which is created."

189. On the same issue in ***(1995) 4 SCC 507 State of H.P. vs. H.P. State Recognised & Aided Schools Managing Committees***, the Supreme Court observed that:-

> "16. The ***constitutional mandate to*** the State, as upheld by this Court in Unni Krishnan case - to provide free education to the children up to the age of fourteen - ***cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity***."

190. The observations of the Supreme Court at ***(2005) 2 SCC 262 Kapila Hingorani vs. State of Bihar & Others,*** while dismissing the review petition filed by the Bihar Government, seeking a review of the earlier order dated 9th May, 2003 are also topical on this objection of the respondents and need to be considered. The State of Bihar had submitted that the state had no liability to pay the salaries of the employees of the statutory corporations/companies incorporated under the Indian Companies Act and that they were not completely under the control of the State. Before the Supreme Court, counsel for the State of Bihar had urged that the remedy of the employee was to file appropriate applications before the Company Judge who was seized of the winding up proceedings in relation to such company.

These submissions were rejected by court observing that in the order dated 9th May, 2003., the court had considered the matter from the human rights aspect as well as the fundamental rights of the employees in the public sector undertaking operating in the state of Bihar. The court noticed that after the passing of the order dated 9th May, 2003, several employees died due to non-payment of their salaries. The court placed reliance, inter alia on para 24 of the directions dated 9th May, 2003 and while rejecting the review petition filed by the respondents observed as follows :-

"24. This Court further observed that the State has a constitutional obligation and acts in a fiduciary capacity vis-à-vis performance of its constitutional duties and functions by the public sector undertakings as it has constitutional obligations in relation thereto."

(Underlining supplied)

So far as protection of such human rights and fundamental rights, and remedy for violation thereof, is concerned, the court issued directions to the state government to pay the salaries of employees in the public sector undertakings in the following terms :-

"22. ..... The Government companies/public sector undertakings being 'States' would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the Company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the Government companies; in the matter of enforcement of human rights and/or rights of the citizen of life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect life and liberty of the employees of the Government owned companies/corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company."

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37. We make it clear that we have not issued aforementioned directions to the States of Bihar and Jharkhand on the premise that they are bound to pay the salaries of the employees of the public sector undertakings but on the ground that the employees have a ***human right as also a fundamental right under Article 21 which the States are bound to protect***. The directions, which have been issued by this Court on 9th May, 2003 as also which are being issued herein, are in furtherance of the human and fundamental rights of the employees concerned and not by way of an enforcement of their legal right to arrears of salaries. The amount of salary payable to the concerned employees or workmen would undoubtedly be adjudicated upon in the proper proceedings. However, these directions are issued which are necessary for their survival. Undoubtedly, any amount paid by Justice Uday Sinha Committee pursuant to these directions shall be duly credited for."

(Emphasis supplied)

191. **The principle reiterated by the Supreme Court was that financial difficulties of the institution or the state cannot be above the fundamental rights of the citizen**. It has also been observed that in a situation of the nature which was before the court, it was obliged to issue necessary directions to mitigate the extreme hardship of the employees involving of human rights of the citizens of the country at the hands of the state government and companies and corporations owned and controlled by it *(emphasis added by HLRN)*.

192. Other than the bald reference to the judgment in ***Metcalfe*** (supra), learned standing counsel has placed no factual assertions in support thereof. Such submission is clearly untenable in view of the admitted Government position in the affidavit dated 6th October, 2009 filed in ***J.K. Koul (supra)*** before the Supreme Court of its responsibility as well as liability qua the displaced Kashmiris. The same stands admitted in the discretion exercised in favour of the three persons cited in ***Tej Kishan (supra)*** and the letter dated 2nd July, 2002 placed before the Central Administrative Tribunal as also in the policy of reservation/preferential allotment of the flats. The respondents have clearly admitted their responsibility and are bound by their commitments.

193. Before this court, the respondents have not stated that there is any assessment or calibration in terms of priorities of the various of the several projects which the respondents need undertake or the various areas which Government business addresses. **The respondents explain neither the financial burden of ensuring shelter to these IDPs nor the extent of the available resource. Mere announcement of schemes and allocation of large volume of funds by the Government as a reaction to court directions upon occurrence of events in the country by themselves are insufficient and may prove to be meaningless. Displacement as that of the present petitioners clearly reflects the imperative to take a holistic view and for the decision makers to take a 'minimum-needs' based approach where ensuring basic human rights and social welfare are concerned** *(emphasis added by HLRN).*

194. **Experience and examples abound in this city and the aforenoticed judicial precedents of forcible evictions relating to slums and jhuggi dwellers. Defenceless and disadvantaged citizens are forcibly evicted from their shelters which are then destroyed. And then, the long arm of the state, gives a hyper technical interpretation to legal definitions, takes the shield of statutory provisions and implements what is touted as the "rule of law" in removal of "encroachments" by the disadvantaged. Others illegal constructions and deviants are "regularised" or "compounded". This very ethos is illustrated in the present writ petitions** *(emphasis added by HLRN).*

195. **Instance after instance of schemes in Delhi for regularising not only rank illegal and unauthorised constructions but also large scale encroachments on public land are in existence and being implemented. So much so that the Central Government has promulgated ordinances and statutes prohibitting demolitions of huge illegal buildings and even interdicting court orders. Interestingly such legislations benefit such law breakers who do not even need rehabilitation or state support, who are certainly not disadvantaged or displaced**. The Delhi Laws (Special Provisions) Act, 2006 was enacted by the Parliament concerned that action for violation of the provisions of the Master Plan 2001 and building bye laws was causing hardship and irreparable loss to a large number of people. No reference to public safety, public interest, environment concerns, enforcement of legal provisions or the financial impact and loss is displayed *(emphasis added by HLRN)*.

196. The judgment reported at ***2010 (III) AD (Delhi) 513 Harijan Kalyan Samiti Regd. & Ors. vs. Government of NCT of Delhi*** makes a reference to Government policy to regularise 1400 unauthorised colonies. The huge loss to the public exchequer of indiscriminately regularising illegal encroachments on land acquired after payment of large sums as compensation from public funds by the government; encroachments those on public land as also violations of building regulations is not even computed, let alone addressed. (Ref: ***(2006) 3 SCC 399 M.C. Mehta vs. UOI & Ors.; AIR 2005 SC 1 Friends Colony Development Committee vs. State of Orissa & Ors.)***

197. Yet the respondents urge "financial stringency" so far as the present petitioners are concerned. The essence of the policy of rehabilitation and resettlement, so far as the petitioners is concerned has not only been given a complete go by but the respondents are completely denying all liability for the same.

198. Apart from a vague suggestion of insufficiency of funds, the respondents do not substantiate such plea with any material. The respondents have not shown any consideration of the petitioners' needs, let alone any steps take to address their plight. There is nothing which could enable this court to arrive at a conclusion that the respondents had difficulty in working the rights of the petitioners on account of financial incapacity. To say the least, similar submissions were termed as "typically gauche" and "lacking insensitivity" by this court in ***P.K. Handoo vs. Estate Officer (supra)*** and already stand rejected in ***B.L. Wali & Ors. vs. UOI (supra)***. The impugned action and the submissions manifests the huge barriers which a displaced citizen of the country faces in accessing even basic and guaranteed constitutional rights despite the admitted responsibility of the state for the breaches and violations of the constitutional protections suffered by them.

Appropriate remedy, role of the court and nature of relief

199. It is now necessary to consider the nature of remedy and relief which would be available to a citizen for violation of the fundamental right to life as well as threat thereto. **The Supreme Court has repeatedly judicially awarded compensation in cases of established breach of public duty to protect the fundamental rights and violations thereof, especially the guarantees of personal liberty and life** *(emphasis added by HLRN).*

200. In ***AIR 1983 SC 1086 Rudul Sah vs. State of Bihar***, the court was concerned with violation of rights resulting from illegal detention. The observations of the court on the duty of the court deserve to be considered in extenso and read as follows :-

> "10. .....Article 21, which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sele(sic)sis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country, as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights."

201. So far as the remedy which would be available in cases involving infringement of fundamental rights and the power of courts, Dr. A.S. Anand, J [as his Lordship then was] in his concurring judgment in ***AIR 1993 SC 1960 entitled Nilabati Behara @ Lalita Behura Vs. State of Orissa*** had observed as follows :-

> "33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available

in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making `monetary amends' under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of`exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

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37. ***This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles*** *32* ***and*** *226* ***of the Constitution to the victim or the heir of the victim whose fundamental rights under Article*** *21* ***of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen,*** notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible."

(Emphasis supplied)

202. In ***(1988) 4 SCC Sheela Barse vs. UOI & Ors.,*** the court was concerned with gross violations of the constitutional and statutory rights of a large number of children in the country who were suffering custodial restraints. While commenting on the nature of proceedings in public interest litigation and the issue of protection and enforcement of their rights, the court made the following observations with regard to the duty of the court :-

"6. .....More importantly the Court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the proceedings, moulding of the relief and-- this is important -- also supervising the implementation thereof."

203. **Where infringement of fundamental rights is established, the duty of the court does not stop at giving a mere declaration**. In ***1997 (1) SCC 416 D.K. Basu vs. State of West Bengal***, it was laid down that in such a case, the court must proceed further and give compensatory relief, not by way of damages as a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of the public duty by the State of not protecting the fundamental right to

life of the citizens. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience *(emphasis added by HLRN)*.

204. Unlike the several cases noted hereinabove including cases of ***Rudul Shah, D.K. Basu, Leelawati Behura, Sheela Barse (supra)*** etc. in the instant case, the state or its instrumentalities itself have not harmed or punished the petitioners. However, the state has totally failed to protect the fundamental right to life of the petitioners and to protect them from violence, harassment and pogroms. This is in clear abdication of the constitutional responsibility of the State. Responsibility for the violence in the State is not the question before this court. The issue before this court is restricted to the question of the rights of the petitioner.

205. So far as the approach of a court on such issues is concerned, in para 13 of the pronouncement reported at ***(2003) 4 SCC 601 State of Maharashtra vs. Dr. D. Praful B. Desai***, the Supreme Court stated that one needs to set out the approach which a court must adopt in deciding such questions and **reiterated that the first duty of the court is to do justice** *(emphasis added by HLRN).*

206. In para 15 of ***AIR 1980 SC 1622 Municipal Council, Ratlam vs. Vardichan & Ors.***, the court observed that:-

> "15. ……. The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile."

207. In para 11 of ***(1997) 6 SCC 241 Vishakha & Ors. vs. State of Rajasthan & Ors.,*** the Supreme Court held that **the obligation of the Supreme Court under Article 32 of the Constitution for the enforcement of fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region**. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary *(emphasis added by HLRN)*. The objectives of the judiciary mentioned in the Beijing Statement are:

> "Objectives of the Judiciary:
>
> 10. The objectives and functions of the judiciary include the following:
>
> (a) to ensure that all persons are able to live securely under the Rule of Law;
> (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
> (c) to administer the law impartially among persons and between persons and the State."

In Clause 10(a) of the objectives of the Chapter on 'Objectives of the Judiciary', it has been clearly stipulated that the objectives and functions of the judiciary include ensuring that all persons are able to live securely under the rule of law.

208. So far as the manner in which relief is required to be moulded so as to ensure protection of the constitutional rights of the petitioners in this bunch of writ petitions are concerned, learned counsel for petitioner has placed reliance on the pronouncement of this court dated 10th September, 2004 in ***WP(C) No. 172/1997*** entitled ***Smt. Kamla Devi vs. Govt. of NCT of Delhi & Ors.*** In this judgment, learned brother B.D. Ahmed, J was dealing with a case relating to a prayer for compensation for

the death of one Uday Singh, an electrician who was killed in an explosion on account of terrorist activity in Delhi.

The court held that lower courts would lose their efficacy if they cannot possibly respond to the needs of the society – technicalities there might be many but the justice-oriented approach ought to not be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

209. While referring to several pronouncements of the Apex Court with regard to compensation for custodial death; death of school children on a picnic; death of a passenger in a train in action on the part of the railway employees, it was further observed in ***Kamla Devi's case (supra)*** as follows :-

> "7. xxx
>
> The fact of the matter is that Uday Singh lost his life on account of an act of terrorism. The State failed to prevent it. The Primary duty of the State is to maintain peace and harmony amongst its citizens. If for some reason, it is unable to put the lid on simmering discontent, then it is its duty to protect innocent citizens from harm. If it fails in this duty, then it must compensate the citizens who have been wronged."

Reliance was placed on the pronouncement in ***AIR 1993 SC 1960 Nilabati Behara @ Lalita Behura Vs. State of Orissa*** wherein it had been also observed that while directing monetary compensation for established infringement of the fundamental rights, the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles.

210. In ***AIR 1989 Mad. 205 R. Gandhi & Ors. vs. UOI & Anr.,*** the Madras High court was concerned with the inability of the State to enforce public order putting in jeopardy the life and liberty, home and hearth of the victims involved. The petition sought redressal for the trials and tribulations undergone by the minority Sikh community of Coimbatore in Tamil Nadu and a few others in the wake of the assassination of late Prime Minister Smt. Indira Gandhi on 31st October, 1984. Observing on the violation of the fundamental rights and the duty of the state, the Madras High Court placed reliance on the observations of the Supreme Court in the ***Olga Tellis (supra)*** case, and held as follows:-

> "21. The maintenance of law and order is the primary duty of the State and under our Constitution it is a State subject and tops the State List. No Government worth the name can abdicate this function and put the life and liberty, the hearth and home of the citizens in jeopardy. Article 38 of the Constitution enjoins on the State to 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. Under Article 19(a) and (g) of the Constitution, any citizen of this country is entitled to reside and settle in any part of the Territory of India and to practice any profession or to carry on any occupation, trade or business. Article 21 lays down that no person-shall be deprived of his right or personal liberty except according to the procedure established by law. As pointed out by the Supreme Court in Bombay Pavement Dweller's case, MANU/SC/0039/1985 : AIR1986SC180 , no person can live without the means of living, that is, the means of livelihood and the easiest way of depriving a person of his right to life would be

to deprive him of his means of livelihood to the point of abrogation. Under Article 300(A) of the Constitution, no person shall be deprived of his property save by authority of law and to allow his properties to be reduced to ashes by the force of darkness and evil is a clear deprivation of the right to property guaranteed by the Constitution. The members of the Sikh Community form an integral part of the Indian society; they have every right to settle down in Coimbatore and carry on their profession. They have the Constitutional right to live and they cannot be deprived of their means of livelihood. Their right to property is inviolable. All these Constitutional rights of the Sikhs and a few members of the other communities have been flagrantly infringed by the inaction of the law enforcing authorities. Fundamental rights are not mere brutum fulmen. They are the throbbing aspirations and realities of civilised human life, they cannot be rendered desuetude or dead-letter or as observed by Bhagwati, J. as he then was, 'a paper parchment, a teasing illusion and a promise of unreality', by the failure of the State to protect those rights. These unfortunate victims of arson and violence are, therefore, entitled to seek ***reasonable compensation*** from the State of Tamil Nadu, which has failed in its duty to protect their Constitutional and legal rights.

22. ……It is a matter of regret that the State of Tamil Nadu, which has failed to carry out its elementary function of enforcing public order should treat the victims of its own lapses as beggars with bowls for alms. It is not charity that is expected of the Government, but legal recompense for wrongs done to them, for injuries inflicted on them on account of the break-down of the Governmental machinery. The second respondent-- ***State*** of Tamil Nadu ***cannot***, therefore, ***shirk its responsibility for these unfortunate happenings or try to escape from its obligation as a social welfare State to make suitable amends."***

(Underlining supplied)

211. Examining the claim for compensation on account of death of a spouse in similar riots targeting members of the same community in Delhi in 1984, Anil Dev Singh, J in the judgment reported at ***1996 (3) AD (Delhi) 333 : 1996 (38) DRJ 203 Bhajan Kaur vs. Delhi Admn***. has observed as follows:-

"(10) Article 21 is the Nation's commitment to bring every individual or group of persons within its protective fold. This Nation belongs to members of all the communities. They arc equal members of the Indian society. Equality before law and equal protection of laws is ensured to them by Article 14 of the Constitution to them. None is to be favoured or discredited. The conduct of any person or group of persons has to be controlled by the State for the lofty purpose enshrined in Article 21 of the Constitution. It is the duty of the State to create a climate where the cleavage between members of the society belonging to different faiths, caste and creed are eradicated. The State must act in time so that the precious lives of the people are not destroyed or threatened. Otherwise, Article 21 will remain a paper guarantee. Time is long overdue for adopting measures that have more than a hortatory effect in enforcing Article 21 of the Constitution. The State cannot adopt a "do nothing altitude". Like disease prevention, the State must take every precaution, measure and initiative to prevent terrorem populi of the magnitude represented by 1984 riots and in the event of an outbreak of riots it must act swiftly to curb the same and not allow precious time to slip by, as any inaction or passivity on its part can result in loss of precious life and liberty of individuals amounting to violation and negation of Article 21 of the Constitution. The State has to enforce minimum standards of civilized behavior of its citizens so that the life, liberty, dignity and worth of an individual is protected and preserved and is not jeopardised or endangered. If it is not able to do all that then it cannot escape the liability to pay adequate compensation to the family of the

person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution which mandates that life cannot be taken away except according to the procedure established by law. "

It is noteworthy that in para 25, the learned Judge in Bhajan Kaur's case, was of the view that the judicial trend is to award substantial compensation for illegal extinction or deprivation of life and liberty.

212. I had also occasion to consider a claim for compensation for injuries and loss suffered by the petitioner in the 1984 riots in Delhi in the aftermath of the assassination of late Smt. Indira Gandhi in which members of one community were targetted. In the judgment reported at ***120 (2005) DLT 156 Manjit Singh Sawhney vs. UOI & Ors.,*** placing reliance on the principles laid down in the aforenoticed pronouncements, it had been observed as follows :-

"20. The award of monetary relief to the victim for deprivation of fundamental right is to be guided by the aforestated principle requiring the state to make monetary amends under public law for the wrong done due to breach of the public duty of not protecting the fundamental rights of the citizens. This computation is not guided by any strict arithmetical formula and it has to be borne in mind that money cannot remove the trauma and the battering suffered by a victim."

213. The observations of the Supreme Court in ***AIR 1981 SC 487 Ajay Hasia vs. Khalid Mujib Sehravardi & Ors.*** are also classical and topical on this aspect and shed light on the issue under consideration as follows :-

"Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form..... It must be remembered that the fundamental rights are constitutional guarantees given' to the people of India, and : are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The Courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligations of the Fundamental Rights."

214. It is a well settled principle of interpretation of the constitution as well as statutes that the same have to be read keeping the societal changes and growth. **Law must change to keep pace with the on going developments and new rights may have to be found out within the constitutional scheme**. (Ref : ***(2003) 6 SCC 1 Kapila Hingorani vs. State of Bihar*** (para 60 at page 30). The imperative necessity to take recourse to take such interpretative changes by the courts has resulted in the expansion to the right to life ensured under Article 21 of the Constitution of India *(emphasis added by HLRN)*.

The court relied on earlier judgments and reiterated that the first duty of the court is to do justice. In para 62, the Supreme Court also declared that the right to development in the developing country is itself a human right.

215. **The duty to ensure constitutional rights rests not only on the Supreme Court or the High Court in exercise of jurisdiction under Article 32 and 226 but would be the mandate of every**

court and its essential judicial function. The claims in the present cases have to be adjudicated on these principles *(emphasis added by HLRN)*.

216. In ***P.K. Koul (supra)***, a specific order was passed on 15th October, 2003 in W.P.(C) No. 6551/2003 by this court to decide the petitioner's representation dated 16th January, 2003 seeking permission to continue to retain the quarter. Without meaningfully complying with this order, the respondents have taken recourse to the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Such a decision of the respondent patently violates the petitioner's basic human rights and constitutional guarantees noted hereinabove. Other petitioners have also made similar representations on which orders have not been passed by the respondents.

217. Smt. Phoola Raina who is the petitioner in W.P.(C) No. 15698/2004 is the wife of late Sh. T.N. Raina who expired in harness on 4th August, 2001. She and family were dependent on late Sh. T.N. Raina and residing with him in the allotted quarter. The respondents have been unable to rehabilitate this legal heir who is also a Kashmiri displaced person and if forcibly evicted from the premises in her possession, she has nowhere to go. It is contended by Phoola Raina that the meager pension she is receiving is her only source of income which is insufficient to even bear the expense of food for her family members. The writ petitioner has also placed reliance on SR- 317 B-25 of the allotment of Allotment of Government Residences (General Pool in Delhi) Rules, 1963. In view of the above discussion, it is clearly evident that so far as her claim is concerned, the same fundamental and human rights as those of the other writ petitioners are involved and she is entitled to the same relief and consideration as the others.

218. The petitioners in the present cases have complained of violation of their right to life in their home state. This situation has come to be despite the 1984 riots, which mark an unfortunate watershed in Indian history, when examined from any aspect. **The threatened breach of primarily of their right to shelter, a basic human right and an integral part of the guarantee under Article 21 of the Constitution of India, even at their displaced location at the hands of the respondents has compelled invocation of this court's extra-ordinary jurisdiction under Article 226 of the Constitution** *(emphasis added by HLRN).*

219. The pleadings in the case would show that there is no dispute to the facts pleaded by present petitioners. There cannot be and there is not even a suggestion that the right to shelter of the petitioners in their home state has been abridged by any procedure established by law. Such infraction of their rights is purely on account of the inability of the respondents to discharge their constitutional obligation; duty and responsibility of protecting the life and property of the petitioners.

    The respondents have a positive duty to provide basic necessities to its citizens. It certainly defies commonsense and all notions of human dignity to permit the respondents to exclude such facilities as bare shelter which is essential and necessary to encourage the self respect and dignity of these displaced persons in a human manner consistent with well recognized modern standards thereof.

    The courts have a constitutional duty and international legal obligations to ensure the right of every person to be free from want of basic essentials *(emphasis added by HLRN).*

220. The above discussion would show that there cannot be any dispute about the nature of and protection of the right of the petitioners. However, the manner in which it is to be enforced against the respondents deserves consideration.

221. The instant cases relate to a unique situation. **It has been repeatedly stated by the Supreme Court that in case of violation of the right to life and personal liberty, the court is not helpless**

to grant relief and should be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty *(emphasis added by HLRN).* (***Ref.: (1981) 1 SCC 627: AIR 1981 SC 928 Khatri & Ors. Vs. State of Bihar & Ors.***).

222. In ***(1991) 4 SCC 584 : AIR 1992 SC 248 Union Carbide Corporation Vs. Union of India***, it was stated by the Chief Justice Ranganath Misra that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future..... there is no reason why we should hesitate to evolve such principle of liability.....". The observations of Venkatachaliah, J (as his Lordship then was) in this case who had rendered the leading judgment in the Bhopal Gas case with regard to the courts' power to grant relief are the same.

These principles have been reiterated in ***AIR 1993 SC 1960 Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa & Ors***.

223. The jurisdiction of the court to mould the relief so as to do justice to a party complaining of infringement of Chapter III rights is wide and requires to fit the contours of the right which is violated. It is essential, therefore, that while adjudicating on the questions raised, the relief to be granted has to be moulded keeping in mind the unique challenges laid and the claims made in these petitions.

224. In ***(1987) 1 SCC 395 M.C. Mehta vs. UOI & Ors.***, the court expanded on the jurisdiction and obligation of the court to mould a new relief in the following terms :-

> "3. .....It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning."

225. The Supreme Court has categorically held in ***(1996) 9 SCC 300 J.P. Ravidas & Ors. vs. Navyuvak Harijan Utthapan Multi Unit Industrial Coop. Society Ltd. & Ors.*** that any contract or action which is opposed to constitutional animation is void. The court as custodian and protector of fundamental and basic human rights has a sacred duty to deter breaches thereof.

226. **It is also well settled that it is not only the right of the litigants, but also the duty of the court to not only enforce fundamental rights but also award compensation against the state for violation of those rights. In other words, 'the power of the court is not only injunctive in ambit, that is preventing the infringement of a fundamental right but it is also remedial in scope and provides the relief against the breach of the fundamental right already committed.'** *(emphasis added by HLRN)* (***AIR 1989 Mad. 205 R. Gandhi vs. UOI & Anr. (supra).***

227. On the aspect of **appropriate compensation for established breaches of fundamental rights,** *(emphasis added by HLRN)* reference can also usefully be made to the observations of the Division Bench of this court in the judgment reported at ***2001 (1) JCC Delhi 57 Government of NCT of Delhi vs. Shri Nasiruddin (Father of deceased Mohd. Yasin)*** to the following effect :-

> "21. It is true that ***perfect compensation*** is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Morris in West v. Shephard (1964) AC 326. ***Justice requires that it should be equal in value, although not alike in kind***. Object of providing compensation is to place claimant as far as possible in the same position financially, as he was before accident. ……. ***Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the damage.***"

228. In the present cases, the petitioners have complained of grievous violence to their lives and properties and the admitted helplessness of the respondents to protect the same. We are concerned with forced ouster, though not by the State, but which is a direct result of the inability of the state to protect the life and property of a class of its citizens resulting in their forced displacements. **The petitioners are now threatened with compulsive eviction from their occupied quarters without any alternative despite the threats to their lives in their home state. The UN Commission on Human Rights has unequivocally stated that forced evictions are a gross violation of human rights. The International Community has long recognised forced eviction as a serious matter and it has been reported repeatedly that clearance operations should take place only when conservation arrangements and rehabilitation are not feasible, relocation measures stand made** *(emphasis added by HLRN).*

229. In ***(1990) 1 SCC 328 S.M.D. Kiran Pasha vs. Government of A.P.,*** the Supreme Court had observed that a writ petition would be maintainable under Article 226 of the Constitution of India also when a right under Article 21 is threatened as contradistinguished from the right when it is infringed. In para 21 at page 342 of the report, the court held as follows :-

> "21. In the language of Kelsen the right of an individual is either a mere reflex right-the reflex of legal obligation existing towards this individual; or a private right in the technical sense -the legal power bestowed upon an individual to bring about by legal action the enforcement of the fulfillment of an obligation existing toward him, that is, the legal power. From the above analysis it is clear that in the instant case the appellant's fundamental right to liberty is the reflex of a-legal obligation of the rest of the society, including the State, and it is the appellant's legal power bestowed upon him to bring about by a legal action the enforcement of the fulfillment of that obligation existing towards him. Denial of the legal action would, therefore, amount to denial of his right of enforcement of his right to liberty. A petition for a writ of habeas corpus would not be a substitute for this enforcement."
>
> (Emphasis supplied)
>
> These principles have been reiterated by the Apex Court in ***(2003) 6 SCC 1 Kapila Hingorani vs. State of Bihar.***

230. These judicial concepts have evolved from conservative and traditional judicial systems and concepts. **Legal interpretation as well as judicial pronouncements lean towards providing for the social needs of society and societal developments**. In this background, the objection of the respondents that the petitioners are disentitled to relief is devoid of legal merit *(emphasis added by HLRN)*.

231. **In view of the harm inflicted by a third party against which the state could offer no protection in the present cases, a positive obligation is also imposed upon the state to compensate the petitioners in reparation of the effects of the harm caused by the third party**. It remains a fact that the State's inability to secure the life and property of the petitioners compelled them to flee

their homes. The same inability prevents the petitioners' return to their homes *(emphasis added by HLRN)*.

232. **So far as compensation is concerned, it is again well settled that the same would not be monetary alone. Principle 18 of the Guiding Principles for IDPs as set out by the UN mandates that competent authorities shall provide internally displaced persons with and ensure safe access to essential food and potable water, basic shelter and housing, appropriate clothing, essential medical services and sanitation etc. Resettlement and reintegration are an essential part of the rehabilitation of IDPs. They have the right to participate fully and equally in public affairs at all levels and are entitled to equal access to public services in the part of the country where they are resettled. Principle 29 mandates when recovery of the property and possessions which the IDPs left behind or were dispossessed of upon their displacement is not possible, they are entitled to be provided appropriate compensation or another form of 'just reparation'** *(emphasis added by HLRN).*

233. Reference can usefully be made to the observations of the Constitutional Court of South Africa in **(*2001) 3 LRC 209 Government of Republic of South Africa & Ors. vs. Gootboom & Ors.*** wherein the court observed as follows :-

> "93... this case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land on an equitable basis."

234. **There can be no dispute at all that whether it be a jhuggi or mud built thatched house or a mansion considered in *Shantistar (supra)*, without security of limb and life as well as the property, no enjoyment thereof is possible. In order to be meaningful, the shelter which is envisaged has to be in an environment which is safe and secure, not only from the elements, but from the larger threats and dangers which have been created by mankind**. Even if the respondents were in a position to provide shelter in the home state of the petitioners as envisaged in the affidavit filed in ***J.L. Koul (supra)***, in order for such right to be meaningfully enjoyed, it has to be ensured that there is peace within the community and the state; that its law enforcement agencies are able to ensure that the constitutional guarantees and protections of the citizens are fully secured *(emphasis added by HLRN)*.

235. The respondents are not in a position to facilitate the return to their homes for the petitioners. Even if the petitioners were to so return, the respondents are not in a position to state they could protect and guarantee their safety and security. The respondents do not even remotely suggest that they could get restitution to the petitioners of their properties which had been left behind in the Kashmir valley.

236. The Supreme Court has also prescribed different reliefs in cases involving breaches of constitutional rights. In ***Municipal Council Ratlam Vs. Vardichan & Ors.(supra)***, the Supreme Court was of the view that punitive action in the given facts was the remedy which was effective to ensure the essence of the right involved.

237. In ***National Human Rights Commission vs. State of Arunachal Pradesh Anr.(supra)***, the court had directed the state to ensure that the life and personal liberty of each and every Chakma residing

within the Government of Arunachal Pradesh, the state was protected and any attempt to forcibly evict or drive them out was repelled in view of the violations and threat to their lives.

As noticed above, in para 13 of ***Nilabati Behara @ Lalita Behura Vs. State of Orissa (supra)***, the court had moulded relief by granting monetary compensation in view of the failure to protect fundamental rights of the persons. In fact the court held that the refusal to pass orders for compensation would be doing lip service and that the court was under an obligation to grant relief (para 37).

In ***1997 (1) SCC 416 D.K. Basu vs. State of West Bengal***, the **Supreme Court emphasized a justice oriented approach which was responsive to the needs of the society**. The court had also granted monetary compensation for violations in this case *(emphasis added by HLRN)*.

Denial of wages was the consideration and relief moulded appropriately in ***Kapila Hingorani Vs. State of Bihar (supra).***

238. **Compensation to these petitioners which could be considered appropriate and perfect thus would have to include comprehensive resettlement such as economic rehabilitation and affordable housing schemes which have been clearly envisaged by the respondents. Several other measures towards meaningful rehabilitation essential in terms of the Guiding Principles have not even entered the respondents' consideration**. The same has however not been possible so far. **This court cannot shut its eyes or judicial conscience or remain oblivious to the stark realities** *(emphasis added by HLRN).*

239. **The issues raised in the present case have arisen before in the context of persons facing displacement on account of development and infrastructure projects especially major river valley projects**. In ***(2000) 10 SCC 664 : AIR 2000 SC 3751 Narmada Bachao Andolan vs. Union of India*** the Supreme Court was concerned with the displacement of tribals as a result of construction of the Sardar Sarovar Dam. In para 62 at page 702 of the SCC report the court held that if the displaced persons were in a better position to lead a decent life enjoying better amenities and facilities and earn their livelihood in the rehabilitated location, their fundamental rights guaranteed under Article 21 of the Constitution would per se not be violated by the construction of the dam and the resultant displacement *(emphasis added by HLRN)*. This position was reiterated in ***(2005) 4 SCC 32 Narmada Bachao Andolan vs. UOI & Ors.***

240. In para 60 (pg 394) of ***(2004) 9 SCC 362 N.D. Jayal & Anr. Vs. UOI & Ors., Rajendra Babu***, J held that **rehabilitation of oustees of a dam is a logical corollary of Article 21 of the Constitution and that the oustees should be in the better position to lead a decent life and earn livelihood in the new locations** *(emphasis added by HLRN).*

No reason at all as to why forcibly displaced persons as the petitioners should not be similarly treated given the violations of their constitutional rights *(emphasis added by HLRN).*

241. Before this court, the petitioners are aggrieved by the deprivation of their homes and property and the threat by the respondents to evict them from the only shelter possessed by them. Looked at from any angle, **the respondents cannot avoid their constitutional obligation of protecting the life and liberty of the petitioners and ensuring shelter to these victims of criminal acts who stand displaced from their home for no fault of theirs, primarily on account of failure of the respondents to protect their Constitutional rights. In case rehabilitation is not possible then the respondents have no option but to ensure meaningful and reasonable resettlement in the above terms. To mitigate effects of the displacement from home, hearth and property,**

the respondents are thus legally obliged to provide at least reasonable shelter as part of the proportional compensation to the petitioners for violation of their basic and fundamental rights *(emphasis added by HLRN).*

Such 'just reparation' would constitute part of "reasonable compensation" and would be a step towards suitable rehabilitation of the petitioners. Relief in these petitions has to be so moulded *(emphasis added by HLRN)*.

242. It is now necessary to examine the contours and parameters of the state responsibility.

243. Mr. Jatan Singh and Mr. R.V. Sinha, learned counsel for the Union of India have urged at length that the petitioners were fully aware about the fact that eventually they were to retire from the Government service. The submission is that they were required to have made their life plans and alternate arrangements with this unavoidable event in mind.

244. The further contention is that, the government ensures adequate financial security to retiring employees, who have the benefit of pension as well as other retiral benefits which run into several lakhs of rupees including gratuity, provident fund etc. and nothing further can be expected of the respondents.

245. Pension, gratuity and other retiral benefits are not unique to the petitioners, but are available to every person who retires from the service of the country. What distinguishes these petitioners is the fact that they have been placed in a unique position and are unable to return to their homes as a consequence of the inability of the State to discharge its constitutional obligations.

246. The question still remains as to whether the pension and the monetary retiral benefits could be "adequate compensation" for the infringement of the petitioners indefeasible rights to life and due discharge of the constitutional obligation of the State. The answer clearly has to be in the negative.

247. **We are here concerned with the entitlement of shelter to IDPs** *(emphasis added by HLRN).* So far as the nature of the development which would meet the guarantee of shelter and ensure a life of dignity to the person concerned, in para 9 of the pronouncement reported at (***1990) 1 SCC 520 Shantistar Builders Vs. Narayan Khimalal Totame & Ors.,*** the Supreme Court had observed as follows:-

> "9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation."
>
> (Emphasis supplied)

Undoubtedly, so far as the reasonableness and adequacy of the measures which the respondents are required to take, must meet the principles laid down in the aforenoticed

pronouncements of the courts, the international conventions, the standards in the guiding principles for IDPs and ensure the rights of the petitioners *(emphasis added by HLRN).*

248. **The above International instruments and Guidelines for IDPs provide not only for the right to adequate shelter and housing services but also refer to access to land on equitable basis to all. They recognise and cast a positive obligation on the state i.e. the respondents, to take other reasonable measures possible to ensure complete realisation of the right to adequate housing of the petitioners. It is evident that the respondents cannot avoid their responsibility and duty to ensure that the aforenoticed basics to the petitioners**. These are the principles which had to guide the consideration of the issues which were before the respondents and have been raised in this bunch of writ petitions *(emphasis added by HLRN)*.

249. **The claim for shelter in these writ petitions is thus pressed as part of the compensation for the violation of the petitioners rights**. The petitioners seek directions to the respondents to permit them to occupy the premises in their occupation till such time the respondents are able to discharge their constitutional duty of protecting the lives and property of its citizens and providing them permanent residences. In similar cases, the Supreme Court and this court has permitted the displaced persons to continue to occupy the occupied quarter. Order to this effect stand passed by the Central Administrative Tribunal as well. The respondents have permitted some of IDPs to continue with their occupation of the allotted quarters after retirement. There is clearly no justification at all for not permitting the petitioners to do so in the given facts and circumstances *(emphasis added by HLRN)*.

Rights of dependants of deceased allottees.

250. There is yet another aspect of the matter. The petitioners before this court include Smt. Phoola Raina, a widow of the allottee. The respondents do not dispute that she was a dependant of the allottee and that she is also an IDP. It is also not the respondent's case that she is a person of means who is living in Delhi in circumstances which are different from those of the others from her home State. There is no material to show that this petitioner has any alternative shelter under the schemes and policy of the respondents or has been adequately compensated.

251. So far as the claimed rights or the violations urged by Smt. Phoola Raina are concerned, other than a bald plea that she was not the allottee, the respondents are unable to point out any distinction from the other petitioners. The respondents do not state that she can safely return to any residence in the Kashmir valley. It is also not averred that this petitioner owns any property into which she could shift. It is not even suggested that there is any difference in the constitutional rights or scheme between her and the other petitioners. Not a single circumstance which could disentitle this petitioner to grant of relief against the threatened eviction and violation of her constitutional rights has been placed or made out in the case. **Till such time that the respondents are able to meaningfully and reasonably rehabilitate this petitioner, her forcible eviction under the shield of statutory process is also without any doubt constitutionally impermissible** *(emphasis added by HLRN).*

252. As noted above the respondents have admittedly made discretionary allotments in favour of persons who are not Government servants. It is not explained as to why such discretion could not be exercised in favour of this petitioner. Certainly permitting such a dependant of the deceased allottee to continue to occupy the accommodation under occupation till alternate shelter was made available would not violate any rule as well. The same would clearly be in consonance with the constitutional mandate and the principles which emerge from the several judgments noticed above. It is clearly evident that such a dependant would be permitted to continue to occupy the allotted accommodation

till such time that the respondents meaningfully resettle and rehabilitate the IDPs or they acquire their own alternatives or if the respondents are able to show that they have the means to make alternate meaningful and reasonable arrangements.

Conclusions

253. In view of the above discussion, absent any alternative; the admitted failure of the respondents to protect the constitutional rights of the petitioner and the threats which subsist in case they were compelled to return to their State; given the arbitrary and wrongful failure to exercise the discretion under the SR-317 B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 in favour of the petitioners; the drastic violation of the fundamental and basic human rights of the petitioner which results upon such implementation of the statutory provisions; keeping view the schemes of rehabilitation and resettlement of Kashmiri migrants of the respondents, and also the several judicial precedents and administrative orders in respect of similarly placed persons, the action of the respondents in treating the petitioners as unauthorised occupants and proceeding against them under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was completely misdirected and unwarranted.

254. It is evident that the learned appellate courts in the appeals also **adopted a hyper technical approach ignoring the serious violation of constitutional rights which has resulted to the petitioners and the drastic consequences of rendering them homeless which results on implementation of the eviction order**. The constitutional rights of the litigants are not only well established but are without any limitations. The orders do not indicate that the several important questions raised by the petitioners were deemed to deserve an adjudication including the manner in which superior courts had dealt with similarly situated displaced persons. The learned courts paid no attention to the declared policy of resettlement and rehabilitation of Government or the constitutional rights and guarantees which all courts are bound to enforce *(emphasis added by HLRN)*.

255. The action of the respondents in denying favourable consideration of the request to continue to occupy the quarters suffers from the vice of discrimination and arbitrariness. **The decision to treat the petitioners as unauthorized occupants and proceed against them under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 as well as the impugned orders are in violation of the constitutional guarantees and basic human rights of the petitioners**, and do not show application of mind to relevant material or consideration thereof. The impugned decision to cancel the allotments, the action under the Public Premises Act; and the impugned orders of the Estate Officer and the appellate orders are constitutionally and legally not sustainable *(emphasis added by HLRN)*.

256. The special leave petition in ***J.L Koul (supra)*** was filed in 1997 and the rehabilitation scheme was placed before the court for the first time in 2006 which proceedings culminated in the judgment dated 3rd December, 2008 after twelve years. Adjudication was still necessitated in ***P.K. Handoo vs. Estate Officer (supra)*** decided on 2nd August, 2006; ***M.K. Koul (supra)*** decided on 11th April, 2008. I find that the Central Administrative Tribunal had passed a detailed judgment on 30th December, 2002 in OA No. 2378/2002 entitled ***Tej Kishan vs. UOI***. In all these cases by final adjudications, the petitioners have been permitted to continue with occupation of the quarter concerned. Despite

the proceedings and judgments in the above noticed matters, the respondents have still proceeded against the petitioner in the manner noticed above.

257. **Instead of facilitating the resettlement and rehabilitation of the petitioners who are internally displaced persons as per the declared policy, they have arbitrarily been exposed to the additional trauma of the threat of forcible evictions and the uncertainty and insecurity of seeking the adjudication by pursuing litigation. In these circumstances, the petitioners are entitled to exemplary costs from the respondents inasmuch as the threat of forcible eviction by the process resorted to by the respondents impacts the fundamental rights of the petitioners** *(emphasis added by HLRN).*

258. In this background, while allowing the writ petitions and having regard to the number of the petitions which have been unnecessarily generated and the lack of material with regard to the persons responsible for the unfortunate decision making, only the litigation costs of the present cases are being awarded.

259. It is essential to make it clear that it is only in the peculiar fact situation of the present cases and the extreme hardship of the petitioners involving violation of the fundamental rights and human rights of the citizens of India that such continued occupation of the public premises by the petitioners has to be permitted. No inference can be laid that any person not having a property of its own or not having suffered the violations aforenoticed can or has been permitted to continue to indefinitely occupy the public premises. Therefore, the principles laid down in this judgment would bind only a fact situation as in the present case or similar circumstances when the State has been unable to protect the fundamental and basic human rights of its citizens compelling them to be displaced from the place of their residence and is not in a position to ensure their safety or security in case they return to the place of their residence.

Result

In view of the above discussion, it is directed as follows

(i) The impugned orders cancelling the allotment of the petitioners; the orders of eviction passed in the proceedings held against the petitioners under the Public Premises (Eviction of Unauthorised Occupants) Act and the appellate orders which are detailed in para 13 are hereby set aside and quashed.

(ii) A direction is issued to the respondents to make all endeavours to adequately, effectively and reasonably rehabilitate and resettle the petitioners, making provisions for appropriate accommodations for them *(emphasis added by HLRN).*

(iii) Till such time, the respondents are able to provide alternative accommodation to the petitioner and his/or her family anywhere in Delhi, the petitioners shall be allowed to retain and occupy the allotted accommodation (also detailed in column no. 2 of para 13 above) subject to payment of normal license fees.

(iv) Each of the petitioners shall be entitled to costs of Rs.25,000/- which shall be paid within a period of six weeks from the date of passing the order.

These writ petitions are allowed in the above terms.

CM Nos. 11011/2004, 11013/2004, 11026/2004, 11029/2004, 736/2006, 11016/2004, 11044/2004, 11050/2004, 11444/2004, 1557/2006, 2379/2006, 10547/2007, 13421/2007, 15540/2008, 16497/2008, 16449/2008, 16501/2008, 5796/2009, 7654/2009, 10986/2009, 11351/2009, 11242/2009, 11244/2009 & 11246/2009

In view of the orders passed in the respective writ petitions, these applications do not require further adjudication and are disposed of accordingly.

(GITA MITTAL) JUDGE

November 30, 2010.
aa/kr

Housing and Land Rights Network (HLRN) is an integral part of the Habitat International Coalition (HIC) – an independent, international, non-profit movement of over 450 members specialised in various aspects of human settlements. Members include non-government organizations, social movements, academic and research institutions, professional associations and like-minded individuals from 80 countries in both the North and South, all dedicated to the realisation of the human right to adequate housing for everyone.

HLRN works for the recognition, defence, promotion, and realisation of the human rights to adequate housing and land, which involves securing a safe and secure place for all individuals and communities, especially marginalised communities, to live in peace and dignity. A particular focus of HLRN's work is on promoting and protecting the equal rights of women to housing, land, property and inheritance. HLRN aims to achieve its goals through advocacy, research, human rights education, and outreach through network building at local, national and international levels.

HLRN, shares with HIC, a set of objectives that bind and shape HLRN's commitment to communities struggling to secure adequate housing and improve their habitat conditions. HLRN seeks to advocate for the recognition, defence and full implementation of everyone's human right to a secure place to live in peace and dignity, by:

- Promoting public awareness about human settlement problems and needs globally;
- Cooperating with UN human rights bodies to develop and monitor standards of the human right to adequate housing, as well as clarify states' obligations to respect, protect, promote and fulfil the right;
- Defending the human rights of the homeless and inadequately housed;
- Upholding legal protection of the human right to adequate housing;
- Providing a common platform to formulate strategies through social movements and progressive NGOs; and,
- Advocating on their behalf in international forums.

To attain these objectives, HLRN member services include:

- Building local, regional and international member cooperation to form effective housing and land rights campaigns;
- Human resource development, human rights education and training;
- Action research, fact-finding, and publication;
- Exchanging and disseminating member experiences, best practices and strategies;
- Advocacy and lobbying;
- Developing tools and techniques for professional monitoring of housing and land rights; and,
- Initiating 'Urgent Actions' against forced evictions and other housing and land rights violations.

To become a member of HIC-HLRN, see: www.hic-sarp.org / www.hlrn.org

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