

The right to shelter: A pressing humanitarian issue

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Abstract:

Elementary rights are inseparable and intrinsic to every human being's life on our earth. They are owed to every person. These rights, collectively referred to as human rights, are essential to human existence and cannot be denied to anybody, not even the most subservient being on the planet. One of these rights is the right to a safe place to live. Every human being's basic needs include three things: food, clothes, and shelter.

In Roscoe's opinion "Right is a recognized, protected, and enforced by Law internalized". Right is an individual concept, while aim is a communal concept. India's constitution is divided into three parts, with Part III focusing on rights and Part IV on goals. Among the many rights recognized by Article 21 of the Indian constitution is the right to health, the right to a dignified existence, the right to education, the right to shelter, and so on. Affordability, habitability, accessibility, location, and cultural appropriateness are all part of what is meant by suitable housing. Legal security, availability of service materials, amenities, and infrastructure are all included. Individuals need an appropriate shelter for a variety of reasons, including psychological as well as physical, as well as monetary and cultural considerations.

To demonstrate the relevance of the "Right to Adequate Housing" in today's world, this study report was commissioned. An unstoppable increase in the population now resides in urban sprawl and public property, such as sidewalks. It is imperative that these marginalized groups have access to good and sufficient housing. The concept of "Right to Shelter" has been examined from both a national and international viewpoint. The major Indian decisions on this issue have been included to support the argument even further. Enumeration of the clauses of Indian Constitution and other related actions Existing data and current problems have been examined.

The conclusion reached is that human rights and the right to shelter have a legitimate connection. The two are intertwined and create an unbreakable one. This also means that all individuals who are forced to flee their homes must be provided with alternative housing and their wellbeing must be ensured in every manner feasible by the State. Offering a modest place to reside will go a long way toward raising their living standards and making their lives more fulfilling, productive, and profitable.

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Introduction:

“It is not wealth-I seek, it is not fame that I want, I crave for a home expressing the eternal yearning of all living beings for habitat.”

- Rabindranath Tagore

These renowned words by poet Rabindranath Tagore demonstrate the significance of one’s place of residence in one’s life. When it comes to a sense of security and belonging, there is no place like your own home. Since the dawn of time, food, clothes, and shelter have been regarded as the most fundamental human needs. Shelter encompasses much more than just a place to sleep. For those who are homeless, shelter offers a feeling of security and dignity as well as an identity, a place to call home and where they may raise their families.

Despite the fact that the right to shelter is a fundamental one, many individuals do not have access to it. An increase in the global population, urbanization, large-scale migration, and a loss of natural resources are all contributing to today’s bleak situation. India has 93 million slum residents, with estimates ranging from 50 percent in New Delhi to 60 percent in Mumbai.³ There is a five-fold increase in urban slum populations in India compared to rural regions. The current state of affairs in India is obviously very delicate. The world’s massive population is in peril. Providing sufficient housing to its citizens becomes a responsibility of the State when such conditions arise.

There are a number of duties that fall under its purview, including preventing homelessness to a large extent by limiting the use of force, harassment, and other forms of intimidation, addressing issues of unfair discrimination between different social groups, concentrating on the most vulnerable populations, and ensuring that everyone has access to adequate housing. There are many additional human rights that may be jeopardized when the right to sufficient housing is violated.

Right to Shelter under International Law:

Human beings have the right to shelter under international and national norms. Article 25(1) of the Universal Declaration of Human Rights recognizes the right to adequate housing as a global human right. Article 11(1) of the International Covenant of Economic, Social and Cultural Rights, to which India is a member, provides further backing for the right.

The right of everyone to an acceptable standard of living for themselves and their families, including an adequate... housing as well as the improvement of living circumstances are recognized by the States Parties.”

International conventions including those against racial discrimination, gender discrimination, children’s rights, and apartheid include similar provisions on the right to adequate housing.

³ http://www.boston.com/bigpicture/2012/02/slum_life.html accessed on 18-10-2021.

Slum dwellers' numbers are tallied by United Nations Habitat, which is a United Nations organization. Member States have committed to making life better for at least 100 million slum residents by 2020, according to the document, which (Target 11, Millennium Development Goal No. 7). 100 million people may seem like a lot, but it represents just 10% of the current global slum population, which will more than triple to 3 billion people by the year 2050 if nothing is done.⁴

To be able to live with dignity, one has to have access to sufficient housing. All individuals have the right to adequate shelter and services, and the government has the duty to make sure these are available to everyone. As stated in article 11(1), "the right to adequate housing is most comprehensively elaborated. It recognizes the importance of tenure rights (for tenure owners as well as those who cannot afford to rent or buy a home) and the critical right to be protected against arbitrary or forced evictions from one's home." Forced evictions are expressly prohibited under India's commitment to sufficient housing under the ICESCR. Comment 7 of the Economic, Social and Cultural Rights Committee identifies this as a breach of human rights legislation since it abrogates liberty, justice, security, and privacy.

Forced eviction is also considered a grave violation of human rights by the UN commission on human rights, especially the right to housing.⁵ Despite the fact that the right to sufficient housing is not expressly stated in the Indian constitution.

It is seen as a subset of other basic rights and is protected as such. Article 21: No one shall be deprived of his or her life or personal liberty without justification. Firms highest court, which Because forceful eviction results in the loss of one's livelihood, it violates Article 21 prima facie. The right to sufficient housing is a fundamental protection.

Right to Shelter under National Laws:

The Indian court was confronted with this problem for the first time under national legislation in *Olga Tellis v. Bombay Municipal Corporation*⁶ (BMC). In this decision, the Supreme Court ruled that Article 21 of the Indian Constitution's right to life includes the right to livelihood and shelter. The pavement dwellers were only permitted to be evicted after being given adequate replacement housing.

There is a severe housing scarcity in India. Slums, illegal buildings, and urban sprawl are all growing more prevalent in major cities throughout the country. These things just serve to exacerbate the situation. The time has arrived to find a long-term solution to this issue. Landlord and tenant legislation must be rationalized, humanized, and capable of being implemented. To

⁴ <http://www.unhabitat.org/content.asp?cid=2799&catid=312&typeid=24&subMenuId=0> accessed on 18-10-2021.

⁵ Kothari 2003 the human right to adequate housing India's commitment and the struggle toward realization NEW DELHI-Journal of the NHRC Vol-2:136

⁶ AIR 1986 SC 180

urge and encourage landlords to part with available properties for short periods of time, certain protections should be put in place that will guarantee their full recovery should it be desired? The relevant authorities must formulate short-term plans for providing refuge.

In the case of Gujarat High People's Union for Civil Liberties v. Gujarat State,⁷ the Supreme Court issued the following observations: When it comes to balancing the rights of the individual and society, we don't believe that being more compassionate and forgiving to the part that justifies it would be a bad idea. Case No. 120, Indira Sawhney vs. Union of India There is a "Weaker Section" of individuals that includes everyone, not only the "Back Word class" of residents. This was clarified by the Apex court. Only people who are socially or economically disadvantaged are included in the backward classes¹²¹. Sections of society that are weaker because of different factors, such as poverty, natural disaster, or physical disability, are referred to as the "weaker sector."

Article 41 refers to the limitations of the state's economic capacity, so although security rights to labour, education, and public assistance are taken into consideration, economic capacity must be taken into account. The state has additional responsibilities as a result of this article.

Prabhakar Narain v. State of Tamil Nadu⁸: "If we want to avoid a catastrophic collapse of peace and order and gradual disillusionment of people, our nation urgently needs a National Housing Policy." Shelter is a basic human right, after all."

As the Supreme Court has done in cases like Francis Corale Mullin v. Administrator, Union Territory of Delhi and Ors⁹ and Union v. Chairman, Bombay Port Trust and Ors¹⁰, it has looked at the current circumstances and determined that public property and the interests of the majority must also be considered and can never be jeopardized. To repeat, the Supreme Court's constitution panel in the Sodan Singh case¹¹ said there can be no basic right for an individual citizen to set up shop on the sidewalk and do business.

At the same time, it was ruled that when displaced people are evicted from public property, it is the duty of the State to take care of their relocation needs. A member of the court thinks clearing the encroachment is an urgent matter. It's preferable to utilize public spaces sooner rather than later if encroachment is eliminated as soon as it's discovered. Delaying will just make it easier for encroachers who claim some kind of legal authority to block efforts to remove the intrusion.

⁷ AIR1994 Supreme court

⁸ AIR 1987 SC 2117

⁹ AIR 1981 SC 746

¹⁰ AIR 1989 SC 1306

¹¹ (1989) 4 SCC 155

When private property is intruded upon, planned development, ecology, and hygienic practices are all hampered. Preserving and safeguarding public property is essential. The State and local governments have a responsibility to guarantee this.¹²

Under Articles 19(1)(e) and 21, it was determined that people from lower socioeconomic status are entitled to preferential allocation so that they may pay the price in simple installments and have a permanent place of abode guaranteed.

A basic and human right, Article 19(1) (e) read with Article 21 of the Constitution provides the right to residency and settlement in order to live with dignity of the individual they essentially protect the right to a secure place to call home.¹³

Article 19(1) (e) states that the policy or principle should be such that everyone has the option to move and settle down in any area of the nation where appropriate job opportunities or improved living circumstances are available. Restricting individuals from travelling and residing in areas where they can earn a living would be unlawful. It's important to keep in mind the Preamble, which is critical to understanding the rest of the document. It provides socioeconomic and political justice, as well as equality of opportunity and position, to every Indian person living in a single country. The right to residency and to establish one's self wherever in the nation is guaranteed to every citizen by the Constitution's basic rights, directive principles, and preamble.

Because of this, the Supreme Court has construed Article 21 to encompass a meaningful right to life, not only the presence of animals. This rule has been established many times. In order to live a dignified life, every human being has the right to the necessities of life. In these kind of situations, having a place to stay is very essential. As previously stated, the right to a fixed address is a basic human right. Depriving someone of their right to live in such situation would render life not just meaningless but also miserable and dolorous.

The Constitution also requires the State to provide Dalits, Tribes, and the impoverished with housing facilities and opportunities so that they may live in dignity in a permanent place of residence. Although the Directive Concepts of State Policy are not enforceable by a court, Article 37 states that the principles outlined in them are basic and important to the country's administration. Article 38 motivates the State to work for the well-being of the people by making sure that social, economic, and political justice prevails and that the means of subsistence - food, clothing, and shelter - are distributed equitably. Status, facilities, opportunities, and economic disparities must be eradicated or at least reduced to the bare minimum. Also, in the same vein, Article 46 seeks to advance the educational and economic interests of the socially and economically disadvantaged. Collectively, the articles in this collection enhance and reaffirm the Right to Shelter's core values and goals.

¹² Olga Tellis case AIR 1986 SC 180

¹³ *P.G.Gupta Vs. State of Gujarat and Ors* 1995 (1) SCALE 653

To enforce what is legally correct, all of these decisions look at the issue from a statutory perspective. As a result, they neglect to look at the underlying socio-economic factors and conditions that lead to these types of incidents. It is necessary to change the way things are done so that they are more in line with human rights ideals. *Ahmadabad Municipal Corporation v. Nawab Khan Gulab Khan*,¹⁴ a case involving the expulsion of encroachers from a busy Ahmadabad neighborhood, struck a different note, fortunately.

The Supreme Court took a humanitarian approach, making use of all the rights that were available to those who were abused or neglected. “The Court of Appeal ruled that Section 284(1) of the Urban Ceiling Act mandates that surplus urban empty land be set aside for the purpose of providing housing for the most vulnerable members of society. Additionally, the Corporation is required by law to pass a resolution authorizing the Commissioner, who will then be empowered to provide such accommodations either by erecting buildings or in any other manner on any land owned by the Corporation or any land acquired by the Corporation for this purpose, or by converting any building owned by the Corporation into housing for the poor classes or by enlarging, alteration or repair or improvement.”

“Panchayats, Zilla Parishads” and “municipalities” were created as constitutional instruments to extend socio-economic and political democracy based on the rule of law under Articles 243-243ZG, which are found in Parts IX and IXA. Articles 243G and 243W call for the creation of economic and social justice programmes, respectively. As stated in Part IV, an integrated executive for implementing directive principles outlined therein is formed by the State (i.e. the Union of India and the State Governments, as well as local authorities). As a result, the State is required under Articles 38, 39, and 46 of the Constitution to guarantee the right to shelter for the destitute and impoverished. To help the rural and urban poor, as well as other underprivileged groups, the government should set aside money each year specifically for this purpose.

Certain processes for evicting slum residents are laid forth in the Slum Areas (Improvement and Clearance Act, 1956). In *Punnu Ram & others Vs. Chiranjitlal Gupta and others*¹⁵, the Supreme Court reached a similar conclusion. Specifically, Section 19(4)(b) of the Act states that the competent authority must be convinced that the eviction is necessary for the development and removal of slum areas before it would issue such a permit. Even if a renter is evicted in this situation, he will face no difficulty. They shouldn't be forced out unless there is an alternate plan in place to house them. Authorities are given a fair amount of time to provide accommodations. There must be an orderly eviction and renovation or rebuilding procedure to meet the intent of the Act.

*Chameli Singh and others etc. Vs. State of Uttar Pradesh and another*¹⁶, a Supreme Court case, summarises this right well. So shelter is more than only safety for one's life and limbs for a

¹⁴ (1997) 11 SCC 123

¹⁵ (1999)-3-SCC-273

¹⁶ *ibid*

human being. Having the ability to develop in all of these areas is possible because he calls home. “Right to shelter therefore includes adequate living space, safe and decent structure, clean and decent surroundings, enough light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so that he can easily access his daily avocation and other daily activities like them. This means that the right to shelter includes the right to the entire infrastructure that is required for a person to be able to survive and grow as a human being. As long as a person has the right to shelter as a condition of their right to life, that right should be considered a basic one.”

This undermines the entire purpose of the Constitutional provisions of equality, economic justice, basic right to dwelling, human dignity and the right to life itself because of a lack of adequate housing. “Bring Dalits and Tribes into mainstream national life by giving these facilities and chances is the responsibility of the state, since it is essential to their basic human and constitutional rights.”

According to the Afzulpurkar committee¹⁷, illegal structure occupants such as those living in slums and hutments are an important component of this thriving city. All of them, without a doubt, play a role in the development, renown, and wealth of this magnificent metropolis. They have contributed and will continue to contribute to the development and maintenance of Brihan Mumbai’s commercial, industrial, and economic significance. We can’t ignore the fact that slum dwellers were evicted from the formal housing sector because it was unaffordable and far beyond their income levels, so it’s critical to raise their standard of living. An authorized dwelling can help with this, but we can’t ignore the fact that slum dwellers didn’t choose their shanties and unhygienic environment voluntarily. They were forced into it by compelling circumstances. Thus, their hygiene and health will significantly improve, and public hygiene will rise, both of which are necessary for lifting them from their current levels. Crossing out the cost of housing units and allocating them for free, despite the fact that housing philosophy had not become a necessity and an established situation. It seems likely that the slum resident deserves to be treated preferentially. Unfair treatment in order to integrate them into the city’s social, cultural, and economic life. It has been decided that in order to eliminate inequality, there must be uneven regulations.¹⁸

Conclusion:

According to the Indian constitution, Articles 14, 21 and 15 provide substantive equality, requiring the state to adopt affirmative action in order to facilitate chances for those who are disadvantaged and to ban discrimination on the basis of religion or race. Together, these provisions not only ban the exclusion of disadvantaged people from fundamental housing and land rights, but they also imply governmental action to remedy these inequalities. They are.. Home is a crucial element of equality, and everyone has the right to decent housing. All of our

¹⁷ AIR Afzulpurkar committee report 1995

¹⁸ <http://www.sra.gov.in>

civil and political rights are intertwined, with the former serving as a foundation upon which the latter may stand. When it comes to the broader aim of attaining social and economic justice, the Indian Supreme Court has prioritized housing rights since it is a basic constitutional objective. Slum dwellers' right to shelter must be protected and promoted in today's growing India.

Every human being has the "right to shelter," which is an essential part of who he is and what he does. In order to guarantee this right to its people, India, with its enormous population, confronts an enormous task. Despite this, the court is making an effort to guarantee this right to the disadvantaged members of society via its judgments. Both national and international law supports this right, but ensuring efficient execution is the difficult side of the bargain. At the grass-roots level, real change must be implemented. Abject individuals would be served by this human right only if their living standards substantially improved.

The ability to live in a decent place is one of the most basic human rights. UDHR, ICESCR, CEDAW, CRC and CERD have all recognized it to be a fundamental human right. 'Right to Shelter' is not explicitly guaranteed to citizens or non-citizens under Part III of the Indian Constitution. The Supreme Court of India has included 'Right to Shelter' as a basic right under Article 21 of the Indian Constitution, broadening the definition of the right to life and personal liberty. By examining the Supreme Court of India's interpretation of the Constitution to promote social justice, this research paper examines the developing situation of right to shelter in India.

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