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Right to Housing and Shelter in India

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ABSTRACT

To deprive a person of his right to livelihood that includes food, clothing, decent environment and shelter, is to deprive him of his life.

-Supreme Court of India²

Right to Adequate housing and Shelter is an extension of Right to Life in India and this is also a well-recognized and internationally accepted Human right. The most common reason of people being deprived of this right is poverty. Lack of Housing and Shelter has different consequences on different groups of people but the one consequence which remains same for all is with respect to health. Although, there is no specific provision related to housing and shelter but in number of judicial precedents, this has been interpreted under the scope of Article 21. In the light of above mentioned facts the paper discusses the meaning of Housing and Shelter as a matter of right, the constitutional perspective and various provisions which mentions about the duty of state to facilitate a dignified life for its citizen, precedents which ruled that Right to housing and shelter is an essential part of Fundamental Rights and inseparable Human Right, also the International recognition of this right in the Covenants and a discussion of how lack of housing and shelter affects some specific groups. Further it suggests some reforms to tackle the problem of Housing and Shelter for its root cause, and make this right available to all.

Keywords: *Right to Life, Human Rights, Poverty, Health.*

I. INTRODUCTION

India which is the largest democracy with the lengthiest written constitution, right to housing and shelter still holds no specific mention in the Laws. The right of housing and shelter is however interpreted in various judicial pronouncements to be included under the umbrella of rights i.e. Article 21, Right to Life³. Adequate Housing and shelter is held to be one of the essentials of basic livelihood which is food, shelter and Clothing⁴. These rights are the basic requirements for the existence of any civilized society.

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² *Olga Tellis v. Bombay Municipal Corporation* AIR (1985) 3 SCC 545.

³ INDIA CONST. art. 21

⁴ *Shantistar Builders v. Narayan Khimalal Totame* AIR (1990) 1 SCC 520

The number of other social, cultural, political and economic rights guaranteed under the constitution of India and as well as enshrined in the various international covenants to which India is signatory are dependent on the above mentioned basic Human Rights. For any civic society guarantying the human rights is not just meeting the animal needs of a human, but it is assuring all the facilities to develop and removal of any restriction which inhibit this growth⁵. In the light of above mentioned points the paper broadly discusses the concept of housing and shelter as a matter of right, the constitutional perspective, the precedents as upheld by the Hon'ble courts, International perspective from the view point of Covenants and declarations . The later part of the paper presents a concluding observation with respect to right to housing and Shelter.

II. MEANING OF HOUSING AND SHELTER

The terms Housing and shelter generally refers to a living space, however it cannot be merely restricted to four walls and roof above one's head. Whatsoever the facts that the four walls and roof also still remains far from reach for many can't be undermined. Housing and shelter are more often used interchangeably but they have some points of distinction from each other.

The concept of Housing refers to more of the physical aspect which can be the structure or design of the house⁶.

The term adequate shelter is similar to housing but it directly relates to other civic amenities required for living such as the environment, sanitation, water, lighting etc. A simple living space is differentiated from an adequate living space by the very elements of housing and shelter. For instance the slums which is home to 35.2% of urban population⁷ in India is not an adequate housing and shelter because it lacks one or other amenities required to fulfill the condition of either adequate housing or adequate shelter. It generally lacks proper infrastructure, sanitation facilities etc.

III. IMPACT OF POVERTY ON HOUSING AND SHELTER:

Income is one factor that is directly used to determine poverty but however income alone cannot be used to determine the condition of poverty, though indisputably the income of household is directly proportional to the living conditions. Poverty is determined by taking in account various dimension such as health, living standards, basic utilities that includes access

⁵ *Chameli Singh v. State of Uttar Pradesh* AIR (1996) 2 SCC 549

⁶ Canadian Institute for Health Information, Housing and Population Health. *The State of Current Research and Knowledge*. Ottawa: CIHI; 2004.

⁷ *India - Population Living In Slums*, TRADING ECONOMIES, <https://tradingeconomics.com/india/population-living-in-slums-percent-of-urban-population-wb-data.html> (last visited May 5, 2021).

to clean water, air, sanitation facilities, electricity among other things, which enables human beings to live a decent life⁸.

Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*⁹, recognized that poverty itself is a violation of a bundle of human rights, encapsulated in Article 21 of the Constitution of India¹⁰. The fact that poverty poses to be the most common barrier in enjoyment of any other fundamental rights or Human right was acknowledged. The need of housing and shelter was addressed as a matter of right which needs to be protected with special emphasis for weaker sections (slum dwellers in this case).

The economically weaker sections of people are the most vulnerable group to be deprived from the right of housing and shelter. Adequate housing is an essential of adequate livelihood which in turn protects the dignity of an individual, ensures security and promotes a sense of belongingness. In *Ajay Maken v. Union of India*¹¹, *Udal v. Delhi Urban Shelter Improvement Board*¹², *Sudama Singh v. Government of Delhi*¹³ the issue of forced evictions, homelessness was raised and another common point of facts in these cases are that the evictions and deprivation suffered was by the marginalized and weaker groups of people.

IV. CONSTITUTIONAL PERSPECTIVE OF RIGHT TO HOUSING AND SHELTER

India is one such country which has a very clear and codified constitution. There are number of rights which are given to citizen of the country and series of rules and laws to protect these rights. By various precedents and in practice right to housing is an inseparable vision of the constitution but however it did not have any such special mention or any specific article for that matter. With this regard the Indian Judiciary have played a notable role in interpreting and extending the scope of Article 21¹⁴ to include within its purview right to housing and shelter. Expounding this provision of the constitution there is a notable decision in the case of *Francis Coralie v. The Union Territory of Delhi*¹⁵ where the apex court held that right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

⁸ UN Habitat. *An Urbanizing World*. Oxford: Oxford University Press; 1996.

⁹ (1985) 3 SCC 545.

¹⁰ INDIA CONST. art. 21

¹¹ W.P. (C) 11616/2015

¹² MANU/DE/2288/2017

¹³ 168 (2010) DLT 218

¹⁴ INDIA CONST. art. 21

¹⁵ (1981) 1 SCC 608

The concept of adequate housing is interpreted and included under other rights provided by the constitution that is right to life and personal liberty and another right which is to reside and settle in any part of country¹⁶.

India is a welfare state and accordingly being a welfare state there should be a proactive role of state towards the welfare of people. As discussed earlier that income is also somehow an affecting factor in case of housing and for this, it is the duty of state to endeavor in minimizing this income inequality so as to eliminate the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas¹⁷. This is basically an affirmative duty of the state as to ensure a social, economic and political justice and order.

In *Sudama Singh v. Government of Delhi*¹⁸ court recognized the relation of human well-being and development with adequate housing by ruling that Adequate housing serves as the crucible for human well-being and development, bringing together elements related to ecology, sustained and sustainable development.

In addition to the constitutional provision and judicial precedents in matters of adequate housing and shelter, the Government of India in the year 1994 adopted National Housing Policy in which the state's role was recognized as a facilitator rather than provider. In continuation of the National Housing Policy, National Housing and Habitat Policy was adopted in year 1998. Later on in 2007, National Urban Housing and Habitat Policy with the aim to accelerate the pace of development of housing and infrastructure, creating adequate housing stock both on rental and ownership basis with special emphasis on improving the affordability of the vulnerable and economically weaker sections of society through appropriate capital or interest subsidies and facilitating accessibility to serviced land¹⁹ and housing with focus on economically weaker sections and low income group categories²⁰.

V. INTERNATIONAL PERSPECTIVE OF RIGHT TO HOUSING AND SHELTER

Globally the right of housing is well-recognized Human Rights. In several instruments, right to adequate housing is accepted 'as part of the right to an adequate standard of living'²¹. There is an International Bill of Rights which mentions the basic right of adequate housing to all

¹⁶ INDIA CONST. art. 19 (1)(e)

¹⁷ INDIA CONST. art. 38

¹⁸ 168 (2010) DLT 218

¹⁹ National Urban Housing and Habitat Policy, 2007. Government of India, Ministry of Housing and Urban Poverty Alleviation New Delhi. 13, (2007), https://www.nhb.org.in/Urban_Housing/HousingPolicy2007.pdf

²⁰ *Id.* at 14

²¹ Miloon Kothari, *the Human Right to Adequate Housing and Land*. National Human Rights Commission, 11, (2006)

without any discrimination. There are three Instruments which jointly form this International Bill of rights and they are-

i. The Universal Declaration of Human Rights (1948)

UDHR states that the right to adequate housing is a human right as part of the right to an adequate standard of living.²²

ii. The International Covenant on Economic, Social and Cultural Rights (1966)

This covenant is considered as the central instrument for the protection of the right to adequate housing, refers to 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.²³

iii. The International Covenant on Civil and Political Rights (1966)

Under this no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, neither to unlawful attacks on his honor and reputation.²⁴

VI. CONSEQUENCES OF NOT HAVING ADEQUATE HOUSING AND SHELTER ON SPECIFIC GROUPS

In a country such as India which is densely populated and consist of every strata or group of people which any society can have, there are some groups out of this which face more difficulties to fulfill there each and every basic human right. The equal treatments of these vulnerable groups may sometime not be the right approach since specific attention needs to be given to them. Generally it is often seen that the rules, policies, regulations of state are merely targeted for the majority however, this fact cannot be undermined that in recent times policies oriented for deprived sections have also been adopted. Still there is a long way to go, below mentioned are effects of housing and shelter on particular groups-

(A) Women

Women for the longest time were considered as the marginalized group of society, the sole reason for this was male dominated society in which females were considered inferior. But this remains still a fact that women in some households struggle to fulfill their minimum necessities. Housing and shelter are also one of them. This issue is more persistent in the rural areas where poverty and lack of resources adds on to it.

²² The Universal Declaration of Human Rights, 1948, art. 25. https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

²³ The International Covenant on Economic, Social and Cultural Rights, 1966, art. 11. https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

²⁴ The International Covenant on Civil and Political Rights, 1966, art. 17

In general also women in any society have very limited access and rights to hold land and property, though the law sets the principle of equality but in practice there arises number of barriers to accomplish them. Equality also doesn't mean that laws should be gender neutral but the fact needs to be considered that some special circumstances to which women are comparatively more vulnerable such as sexual and gender based violence needs to be taken into account.

Without control over housing, land or property, women enjoy little personal or economic autonomy and are more vulnerable to abuse within the family, community and society at large²⁵. Dependence of women also makes them more vulnerable and prone to poverty, homelessness and violence.

In case of forced evictions, while this affects both men and women but women tend to be disproportionately affected. Women are often exposed to violence and intense emotional stress before, during and after an eviction, because of their close ties to the home and their role as caregivers for the entire family.²⁶

Domestic violence has also been identified as a major cause of women and children becoming homeless, especially when there is insufficient protection by law enforcement officials or by the legal system. Conversely, fear of homelessness might compel women to remain in abusive relationships²⁷.

(B) Children

The overall development of a child including health and education, are deeply affected by the quality of housing in which they reside. Lack of adequate housing, forced evictions or homelessness tend to have a profound impact on children due to their specific needs, affecting their growth, development and enjoyment of a whole range of human rights, including the right to education, health and personal security²⁸.

Childhood is a very crucial stage of life which every child is entitled to experience but lack of proper housing and shelter just hampers the growth and enjoyment of this phase of life and further. It has various effects on their emotional, physical, social growth. Such Children are vulnerable to emotional anxiety, physically malnourishment and social exclusions.

²⁵ The Right to Adequate Housing, 18, Fact Sheet No. 21/Rev.1, UN Habitat. https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

²⁶ Economic and social policy and its impact on violence against women (E/CN.4/2000/68/ Add.5)

²⁷ The Right to Adequate Housing, 18, Fact Sheet No. 21/Rev.1, UN Habitat. https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

²⁸ Ibid.

Studies have highlighted that the lack of adequate housing increases mortality rates for children under five, while the most significant form of chemical pollutant affecting children's health in low- and middle-income countries is indoor pollution resulting notably from poor-quality stoves and inadequate ventilation²⁹.

(C) Slum Dwellers

Slums are the most common habitation of the urban poor population. These settlements however are so temporary in nature and most prone to forced evictions. Due to informal nature of these settlements there is no tenure security with people residing in such condition.

Slums cannot be termed as an adequate housing and shelter because it lacks most of the facilities of a proper shelter, there are not utility supplies such as clean water, electricity and there is no hygiene, sewage and sanitation facility.

(D) Persons with Disabilities

Disabilities either of physical or mental nature creates a barrier for such people in matters of accessibility of housing and shelter facilities. Poverty when added on to disabilities makes the life of such people so miserable and they are often excluded from their families or society.

Such people are discriminated and experience several barriers in their enjoyment of their right to adequate housing rights such as they rarely able to enter in formal housing contracts such as ownership and lease, they are dependent on to someone in matters of physical access. After any situations of forceful evictions or so, it becomes more difficult and challenging for persons with disabilities to start all over again and fulfill their housing rights.

VII. SUGGESTED REFORMS

The right to Housing and Shelter is one of the very essential of an individual's existence. However both at regional level and as well as globally many people still do not have access to it in an adequate manner. With respect to India there is a dire need to implement strategies to address the structural causes of both homelessness and landlessness, such as unemployment, forced evictions and displacement, involuntary urban migration and domestic violence, and second, to address and resolve the existing crises that homelessness and landlessness create³⁰. Some of the reforms that can be made to facilitate the right to adequate housing and shelter in a better way can be –

²⁹ Poverty and exclusion among urban children, Digest No. 10, UNICEF, 10 (2002). <https://www.unicef-irc.org/publications/pdf/digest10e.pdf>

³⁰ Miloon Kothari, *the Human Right to Adequate Housing and Land*, NHRC, 73, (2006). <https://nhrc.nic.in/sites/default/files/Housing.pdf>

- i. Betterment needs to start from the root level, as discussed above that most of the poor urban population of India resides in slums and all of a sudden these slums cannot be evacuated and slum dwellers must not be forcefully evicted worsening their situations more. So what the local government authorities must do is upgrade these slum areas so as to it does not lack facilities of water, electricity, sanitation etc. and all this should be done in step by step manner.
- ii. Public Housing Schemes must be introduced for the poor so as to reduce homelessness.
- iii. Low interest credit schemes must be introduced for group of people coming under a particular income stratum.
- iv. For the above three reforms to be implemented efficiently first a distinction need to be made in weaker sections of people such as –
 - (a) Very low income earning group which may be people living in slums.
 - (b) Low daily wage laborers and immigrants from rural areas who come for earning their livelihood in urban areas and do not have any house or land to live and thus remain homeless.
 - (c) Another category can be of people of weaker section who are at least better than the previous two categories and for them low interest credit schemes can help facilitate housing facilities.
- v. Land reforms need to be brought and agrarian land and land unfit for agriculture needs must be separated and these non-agrarian lands must be properly utilized so as to reduce the barrier of landlessness which comes in securing right to housing and shelter.

VIII. CONCLUSION

Right to adequate housing and shelter is a serious issue and despite many schemes of government, many people still remains deprive of this right. Many are not even aware that adequate housing and shelter is matter of right. Income and poverty remains the greatest cause of lack of housing and shelter. The absence of low-cost housing options in urban areas forces many to live in inadequate and dire conditions with serious long-term consequences, including on their health³¹. Lack of housing and shelter is connected to series of other violation of rights such as right to life, health, privacy, etc. Lack of awareness on the part of individuals is also a challenge, for laws to be implemented proactively. Measures and reforms are required in order to ensure the Right of Adequate Housing and Shelter to all so that the fundamental right

³¹ Pradeep Kumar Pandey, *Right to Adequate Housing and Shelter in India : Human Rights Perspective*, 1, SSRN, 21, 33, (2019)

to life and Human rights are protected.
