



Rays of Hope: Empowering Lives through the Right to Shelter

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ABSTRACT

In this era of globalization and so-called progressive societies, where we strive to achieve various rights essential for survival, the basic necessities for a life of dignity remain out of reach for many. The foundational needs of "roti, kapda, aur makan" (food, clothing, and shelter) are not universally accessible. The Constitution of India, through its preamble, pledges to secure justice, liberty, equality, and fraternity to all its citizens. It is a fundamental right of every citizen to enjoy a decent standard of living and have access to the basic necessities of life, including shelter. However, the right to shelter is not explicitly enumerated in the Indian Constitution, leading to ongoing debates and litigation regarding its recognition and implementation. This paper delves into the constitutional and legal aspects of the right to shelter in India, highlighting the challenges in its realization and proposing potential solutions.

Introduction

The right to shelter is intrinsically linked to the right to life as enshrined in Article 21 of the Constitution of India. The Supreme Court has expanded the interpretation of the right to life to encompass the right to shelter as a vital aspect of human dignity. In the landmark case of *Olga Tellis v. Bombay Municipal Corporation*¹, the Supreme Court ruled that the right to life under Article 21 includes the right to livelihood and shelter. The Court emphasized that the right to life is not merely a negative right to be left

¹ AIR 1986 SC 180

undisturbed but also includes the positive right to live with dignity. Nonetheless, the right to shelter is not absolute; the State holds the authority to regulate and limit this right in the interests of public order, health, and morality. Moreover, the State is obligated to ensure that the right to shelter is upheld for all citizens, particularly the most vulnerable segments of society.

Despite being a fundamental human right, the right to shelter remains a distant reality for millions in India, particularly those living in poverty. The issue of homelessness presents a significant challenge that demands immediate attention from policymakers, civil society, and citizens alike. While the right to shelter is explicitly recognized in various national constitutions or legislation worldwide, India has yet to enshrine this right within its legal framework. For instance, the right to shelter is acknowledged in certain state constitutions and laws in the United States, and similarly, Canada includes the right to housing within its federal government's National Housing Strategy.

However, the mere recognition of the right to shelter does not ensure its fulfillment. Governments globally, including those in countries with constitutional guarantees, often struggle to provide adequate housing and shelter, particularly for vulnerable groups such as the homeless, refugees, and low-income individuals and families. In some nations, progressive approaches have been implemented to address homelessness. Finland, for example, has seen success with its "Housing First" strategy, which prioritizes stable housing for those experiencing homelessness, coupled with supportive services such as healthcare and employment assistance.

Conversely, in the United States, estimated 567,000 people experience homelessness on any given night. Numerous cities have faced criticism for policies that effectively criminalize homelessness, such as "anti-camping" laws. The debate over the most effective approach to tackling homelessness remains ongoing, with some advocates favoring a Housing First model while others argue for the necessity of providing emergency shelters and transitional housing to meet the immediate needs of the homeless population.

In conclusion, while the right to shelter is recognized as a fundamental human right, ensuring its actualization requires concerted efforts from governments, civil society organizations, and individuals. Strengthening the right to shelter necessitates collaborative action to guarantee that every citizen has

access to safe and adequate housing, thereby upholding the principles of justice, liberty, and equality enshrined in the Constitution of India.

Concept of Adequate Housing

Adequate housing refers to the basic human right to live in an environment that is safe, secure, and healthy. This concept extends beyond just having a roof over one's head; it encompasses a range of essential elements necessary for a dignified life. These include access to basic utilities such as clean water, sanitation, electricity, and heating. It also involves protection from environmental hazards, pests, and other risks. Adequate housing should be affordable, accessible, and sustainable, meeting the cultural, social, and economic needs of individuals and communities.

In essence, adequate housing must provide sufficient space, privacy, and security of tenure, meaning that occupants should not fear unjust eviction. It also entails structural stability and durability, adequate lighting, heating, ventilation, and basic infrastructure like water supply, sanitation, and waste management. The location of the housing should be suitable, with easy access to work and essential services. All these aspects combined must come at a cost that is affordable to the occupants. Therefore, adequate housing is not just about physical shelter but also about ensuring a living environment that supports the overall well-being of its inhabitants².

Importance of the Right to Shelter

The right to shelter is a crucial human right recognized in various international and domestic legal frameworks. It is intrinsically linked to the right to life and human dignity and plays a vital role in ensuring the well-being of individuals and communities. Adequate shelter is essential for protecting human life and dignity, shielding individuals from harsh weather, violence, and other dangers that could threaten their safety and well-being. Moreover, shelter is crucial for promoting both physical and mental health, protecting people from environmental pollutants, infectious diseases, and other health risks³.

² The Habitat Agenda, Paragraph 60,1996

³ Prof. S.N. bhansali, The Constitution India, Vol. 1, first ed., 2007, India Publishing House, p.312

Access to shelter is also a prerequisite for securing other social and economic opportunities, such as education, employment, and healthcare⁴. Without a stable living environment, individuals often find themselves excluded from fully participating in society. Shelter fosters social inclusion, providing individuals with a sense of belonging and stability within their communities. It also helps in building social cohesion, offering a foundation for people to engage in community life and civic activities.

The right to shelter is particularly important for vulnerable groups like women, children, refugees, and internally displaced persons. These populations are often at greater risk of homelessness and displacement, making the right to shelter an essential protection and support mechanism for them. The Indian Constitution, through various articles and interpretations by the judiciary, upholds the right to shelter as fundamental. For instance, Article 19(1)(e) guarantees the right to reside and settle in any part of India, while Article 21 assures the right to life, which includes the right to live with dignity⁵.

International human rights instruments like the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights also recognize the right to an adequate standard of living, which includes housing. These provisions underscore the state's obligation to provide permanent housing accommodations to the economically weaker sections of society.

Reasons for Homelessness in India

Homelessness in India is a complex issue caused by multiple factors, including:

1. **Rapid Urbanization:** The rapid growth of cities in India has led to an influx of people from rural areas seeking better employment opportunities. This migration has caused a surge in urban populations, resulting in a shortage of affordable housing and increasing homelessness.
2. **Poverty:** Poverty remains a significant cause of homelessness in India. Many people, due to low wages and high living costs, cannot afford proper housing.
3. **Natural Disasters:** Natural calamities like floods, earthquakes, and cyclones often leave people homeless, especially in vulnerable areas with inadequate infrastructure.

⁴ P G Gupta vs State of Gujarat, 1995 Supp. (2) SCC 182 (Para 2)

⁵ Fransic Coralie v. Union Territory of Delhi, AIR 1981

4. Lack of Social Safety Nets: India's limited social safety net system leaves many without access to basic necessities such as food, water, and healthcare making it difficult to maintain homes or secure shelter during crises.
5. Social and Cultural Factors: Discrimination based on occupation, caste, or other social stigmas can lead to marginalization, making it hard for certain groups to find housing or employment.
6. Mental Health Issues: Mental health problems, such as depression and anxiety, can contribute to homelessness as individuals struggle to maintain stable housing or employment.
7. Lack of Affordable Housing: The shortage of affordable housing, especially in urban areas, is a major challenge. High housing costs combined with low incomes make it difficult for many to find a place to live.

Addressing homelessness in India requires a comprehensive approach that tackles these underlying causes, including poverty alleviation, strengthening social safety nets, and increasing the availability of affordable housing.

Right to Shelter and Its Changing Dimensions

Over the years, the right to shelter in India has evolved significantly through various landmark judicial decisions. For example, in *Bandhua Mukti Morcha v. Union of India*⁶ the Supreme Court recognized that the right to life under Article 21 includes the right to live with dignity, which encompasses the right to adequate housing. Similarly, in *Olga Tellis vs. Bombay Municipal Corporation*⁷, the court acknowledged that the right to livelihood and shelter are essential components of the right to life. The court ruled that without adequate shelter, a person's right to livelihood and, consequently, their right to life is severely compromised.

In *Shantistar Builders v. Narayan Khimalal Totame*⁸, the Supreme Court reaffirmed that the right to shelter is a basic human right, integral to leading a dignified life. The court directed the government to prevent the eviction of slum dwellers and provide them with alternative accommodation. Other notable

⁶ (1984) 3 SCC 161

⁷ (1985) AIR 1986 SC 180

⁸ (1990) 1 SSC 520

cases, such as *Chameli Singh v. State of U.P.*⁹ and *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*¹⁰, further expanded the scope of the right to shelter, emphasizing the state's duty to provide affordable housing, especially for economically weaker sections.

These judicial pronouncements have not only reinforced the importance of the right to shelter but also outlined the state's obligation to ensure that every citizen has access to adequate housing and basic amenities. The Indian judiciary has played a pivotal role in interpreting and implementing Article 21, making the right to shelter a fundamental aspect of the right to life and personal liberty.

Internationally, the right to shelter is also recognized in several human rights treaties to which India is a signatory, such as the International Covenant on Economic, Social and Cultural Rights. Despite this recognition, the reality on the ground remains stark, with millions of people in India lacking access to safe and adequate housing. The 2011 Census recorded over 1.7 million homeless people, a figure likely to have increased since then.

The housing crisis in India is largely driven by the lack of affordable housing, particularly in urban areas where high property prices and low incomes make housing inaccessible for many. Additionally, inadequate housing policies and limited access to affordable credit exacerbate the problem.

The government has implemented several initiatives to address the housing crisis, such as the *Pradhan Mantri Awas Yojana (PMAY)*, which aims to provide affordable housing for all. This scheme, along with others like the Housing for All initiative and the National Urban Housing and Habitat Policy (NUHHP), aims to bridge the housing gap. However, these efforts have yet to fully resolve the housing challenges facing the nation.

Civil society organizations have also been active in advocating for the right to shelter and affordable housing, working to raise awareness and push for more effective policies. These collective efforts are crucial in the ongoing struggle to secure the right to shelter for all citizens in India.

⁹ AIR 1993 SC 2178

¹⁰ (1996) 2 SCC 549

Legal Framework for the Right to Shelter in India

The right to shelter in India is supported by a robust legal framework encompassing constitutional provisions, national policies, and judicial interpretations. Below, we delve into the various elements that form the backbone of this right:

1. Constitution of India:

- Article 21: The Constitution of India, under Article 21, guarantees the right to life and personal liberty. The Supreme Court of India has expanded this right to include the right to a dignified life, which entails access to basic amenities such as shelter, food, and clothing. The Court has explicitly recognized that the right to life includes the right to live with human dignity, covering adequate nutrition, clothing, and shelter.

- Directive Principles of State Policy (DPSPs): Part IV of the Constitution, which includes the DPSPs, further reinforces the right to shelter. For instance:

- Article 38 mandates the State to secure a social order promoting justice—social, economic, and political—and ensure the welfare of the people.

- Article 39(a) directs the State to formulate policies ensuring that citizens, irrespective of gender, have the right to an adequate means of livelihood.

- Article 39(b) emphasizes the equitable distribution of material resources for the common good.

- Article 47 enjoins the State to improve the standard of living and public health, thereby indirectly supporting the right to shelter.

2. National Building Code:

- The National Building Code of India provides detailed guidelines for the construction and maintenance of buildings, focusing on safety, accessibility, and minimum standards for housing. This code is vital in ensuring that housing projects meet the basic requirements for human habitation.

3. Bharatiya Nyaya Sanhita :

- It contains provisions that safeguard property, including residential houses and dwellings. These provisions help protect individual's homes from illegal occupation or damage.

4. Right to Information Act:

- The Right to Information Act empowers citizens to access information regarding the implementation of government housing policies and programs. This transparency is crucial for ensuring accountability in the provision of housing rights.

5. National Urban Housing and Habitat Policy (2007):

- This policy aims to provide affordable housing, particularly to economically weaker sections and the homeless. It emphasizes sustainable development and inclusive growth in urban areas.

6. Pradhan Mantri Awas Yojana (PMAY):

- The Pradhan Mantri Awas Yojana is a flagship initiative of the Indian government, launched with the goal of providing affordable housing to all. The scheme targets various sections of society, including the urban poor and rural populations.

Challenges in Realizing the Right to Shelter

Despite the comprehensive legal framework, the realization of the right to shelter in India faces significant challenges:

1. Lack of Political Will:

- A persistent obstacle is the inadequate political commitment to housing issues. Housing policies often suffer from insufficient budgetary allocations and inefficient implementation, hindering progress.

2. Inadequate Legal Framework:

- While various laws and policies address housing, there is a need for a more cohesive legal framework that explicitly recognizes and protects the right to shelter as a fundamental right.

3. Land Acquisition Issues:

- The complex and lengthy process of land acquisition poses a major barrier to developing affordable housing. Delays in acquiring land lead to prolonged project timelines and increased costs.

4. Insufficient Financing:

- Limited financing options for affordable housing projects are a significant challenge. There is a need for innovative financial instruments and greater investment to bridge the financing gap.

5. Lack of Coordination:

- The absence of effective coordination among different government agencies involved in housing development leads to inefficiencies and delays in project execution.

Prime Minister's Vision on the Right to Shelter

The current Prime Minister of India has articulated a clear vision for ensuring the right to shelter, reflected in several policy initiatives:

1. Affordable Housing:

- The government's focus on affordable housing is evident in initiatives like the Pradhan Mantri Awas Yojana (PMAY), which aims to provide affordable housing for all urban poor households. Additionally, the Affordable Rental Housing Complexes (ARHCS) scheme caters to migrant workers and other urban poor by offering rental housing options.

2. Slum Rehabilitation:

- The government has launched the Slum Rehabilitation and Redevelopment Scheme, which seeks to improve living conditions for slum dwellers by providing essential services such as water, sanitation, and electricity.

3. Disaster Relief:

- Recognizing the vulnerability of populations affected by natural disasters, the government has established the National Disaster Response Fund (NDRF) to offer immediate relief, including shelter, to disaster-affected individuals.

4. Inclusive Development:

- The government's approach emphasizes inclusive development, ensuring that marginalized communities, including Scheduled Castes, Scheduled Tribes, and Other Backward Classes, have access to housing and basic amenities.

5. Empowering Women:

- The PMAY includes provisions for female ownership or co-ownership of housing, reflecting the government's commitment to empowering women. The Swachh Bharat Abhiyan, aimed at providing toilets to households, has also particularly benefited women by improving sanitation facilities.

Suggestions for Strengthening the Right to Shelter

To further fortify the right to shelter, several measures are suggested:

1. Recognize the Right to Shelter as a Legal Right:

- Governments should explicitly recognize the right to shelter as a legal right in national laws and policies, ensuring that it is protected and enforced.

2. Increase Funding for Affordable Housing:

- Greater investment in affordable housing is necessary. Governments should provide subsidies and incentives to encourage developers to build more affordable housing units.

3. Provide Emergency Shelters and Services:

- Emergency shelters and essential services should be made available to those who are homeless or at risk of homelessness, offering them a safe place and access to basic needs.

4. Address Discrimination and Inequality:

- Housing policies must address discrimination based on race, ethnicity, gender, and other factors that hinder access to safe and adequate housing.

5. Collaborate with Civil Society Organizations:

- Governments should partner with civil society organizations and NGOs to develop and implement housing policies that are responsive to the needs of the people.

6. Ensure Access to Legal Remedies:



- Legal remedies must be accessible to individuals whose right to shelter has been violated. This includes providing legal aid and support to challenge discriminatory housing practices.

Conclusion

The right to shelter is a fundamental human right, recognized by international law and supported by the Indian Constitution. Despite various policies and programs aimed at improving housing access, significant challenges remain. The government must take proactive steps to educate citizens about their rights and ensure mechanisms for enforcement. Addressing homelessness and providing adequate housing requires collective efforts from the government, civil society, and individuals. By working together, we can make significant progress in reducing homelessness and ensuring that everyone has access to safe and adequate housing in India.