



Right to Housing under Article 21 in light of Judicial Pronouncements

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Abstract

Right to adequate housing is recognized as basic human rights at the international level in various instruments like UDHR, ICESCR, CEDAW, CRC, CERD etc. which are very crucial for India. Indian Constitution also guaranteed number of rights but nowhere right to adequate housing is mentioned specifically, though India has signed and ratified many international instruments which talk about this right. In the landmark case of *Olga Tellis v. Bombay Municipal Corporation*^[1], the Supreme Court elaborated on the right to adequate housing, shelter and livelihood being part of the all-encompassing Right to Life under Article 21 of the Indian Constitution.

Therefore, the project aims to study and analyze the emerging scenario in regards to Right to housing in India in light of legal framework at international and national level in respect of right to adequate housing and to examine how the Indian Judiciary interprets the Constitution on enforceability of the social right to adequate housing in the context of these pressing housing needs and frequent forceful evictions of people and to make suggestions to strengthen this right in India.

Keywords: UDHR, ICESCR, CEDAW, CRC, CERD etc.

1. Introduction

The most important housing rights case that the Supreme Court confronted in 1985 was *Olga Tellis v. Bombay Municipal Corporation*^[2]. The court for the first time held that the Right to livelihood and shelter as being an important component of the Right to Life. In this case, the PIL was filed on behalf of the pavement dwellers of Bombay city in the Bombay High Court. This judgment expanded scope of the right to life guaranteed under Article 21 Constitution to be wide enough to include within its scope, the right to livelihood which was translated in this context to mean the right to be allowed to remain on the pavements. Therefore, it is truly a remarkable judgment in the history of right to housing in India.

Thereafter, there were number of cases that reached the Supreme Court, which vigorously followed the *Olga Tellis case*. Some of such cases were *Shantistar Builders v. Narayan K Totame*^[3] and *Chameli Singh v. State of UP*^[4] concerning allotment of land or flats for weaker sections of the society such as Dalits or Scheduled Castes and Scheduled Tribes. Few years later, the significant advance in the commitment to housing right was made in *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan*^[5], a case and order of case similar to *Olga Tellis* wherein the Court allowed the removal of the pavement dwellers by the State but on the condition that alternate accommodation may be made available to them under a Scheme of the State Corporation which served to provide housing for weaker sections.

All these cases lead to the jurisprudence of right to housing in India to the status of the right to housing as a distinct constitutional obligation of the State both under the Article 21 that guarantees right to life and Article 19(1)(e) which

guarantees the right of every citizen to reside and settle in any part of the country.

However, the in case of *Narmada Bachao Andolan v. Union of India*^[6], the Supreme Court turned its back on all the developments in the area of housing rights and displayed a complete disregard for both fundamental human rights and India's obligations under the ICESCR. This case was concerning the issue in regards to the continued construction of the Sardar Sarovar Project dam and its significant impact on both the environment and hundreds and thousands of tribal people in the Narmada valley, who have been displaced with inadequate resettlement and rehabilitation plans.

Therefore, the researcher feels and realizes that there is a lot of scope for research in the direction mentioned in the above paragraph and therefore, takes an initiative to work and make the study of emerging scenario in regards to Right to housing in India.

2. Historical background

Article 21 of the Constitution of India, 1950- Protection of life and personal liberty- *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

The Article 21, though couched in negative language, confers on every person the fundamental right to life and personal liberty which has become an inexhaustible source of many other rights as stated by Justice Bhagwati in *Maneka Gandhi v. Union of India*^[7]. These rights are as much available to foreigners as to citizens. These rights have been given paramount position by courts in number of landmark decisions. So, Article 21 has proved to be multi-dimensional. This extension in the dimensions of Article 21 has been made

possible by giving an extended meaning to word ‘life’ and ‘liberty’ in Article 21. These two words in Article 21 are not to be read narrowly. These are organic terms which are to be construed meaningfully. The court in *Francis Coralie v. Administrator, Union Territory of Delhi* ^[8], took a grand step and expanded the scope of Article 21 by asserting that Article 21 does not mean merely animal existence but living with human dignity. Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. Justice P.N. Bhagwati stated that:

“We think that the 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. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.”

3. Legal framework

3.1 At International Level

Right to adequate housing is recognized as basic human rights at the international level in various legally binding human rights instruments like UDHR, ICESCR, CEDAW, CRC, CERD etc. which are very crucial for India.

The Universal Declaration of Human Rights (UDHR) of 1948, clearly states under Article 25 (1) that, “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, 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.”

The International Covenant on Economic, Social and Cultural Rights of 1966, clearly states under Article 11, para. 1 that “The States 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

According to General Comment No. 4 on the right to adequate housing adopted in 1991 by the United Nations Committee on Economic, Social and Cultural Rights, in order for housing to be adequate it must provide more than just four walls and a roof over one’s head; it must, at a minimum, include the following elements: legal security of tenure, availability of services, affordability, accessibility, habitability, location and cultural adequacy.

The right to adequate housing is also recognized under the following:

- The non-discrimination provisions found in Article 14, paragraph 2 (h), of The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Article 27, para 3 of The Convention on the Rights of the Child, 1989.
- Article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965

3.2 At National Level

The Constitution of India, 1950 provides as under:

Article 21 - Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 38 provides that: *State to secure a social order for the promotion of welfare of the people.*—(1) The State shall 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.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Under this Article, the State is under positive duty to maintain a social order where everyone can taste the fruit of justice. Further, Article 39 mentions that: *Certain principles of policy to be followed by the State.*—The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

4. Right to housing and its development in India

India, the country of taking care of vulnerable communities, is facing many problems. On one hand, the country is fighting with terroristic activities and on other hand, the nation, after many years of independence, could not avail minimum requirements to citizens for living a life like a human being. Till date, many people are unable to get *roti, kapda* and *makan* ^[9].

Housing is at the centre of an ensemble of life issues, including the child’s right to be brought up in a safe environment. The rights to housing and security are interconnected. While poor housing conditions affect health, homelessness and frequent displacements are shown to impair the child’s learning. Although housing remains as fundamental as food and security and the number of the “house-poor” is on a perpetual ascent, the issue has not yet received the top priority it deserves. The right to adequate

housing has been widely recognized and accepted as a part of the right to life by international community as well as in India. Despite having ensconced the right to housing as a part of the larger right to human dignity, right to equality, social and economic rights, the basic provisions, which form the spirit of right to housing are blatantly violated all across the country.

The major Issues of Concern are ^[10]:

- Forced Evictions
- Violations of pro poor housing provisions within the Master Plan
- Legal, administrative and policy barriers to the right to adequate housing
- Impact of globalization on the housing situation of the urban poor.

India is the second most populated country in the world, with over 1.3 billion people. It is proudly known as the 'largest democracy in the world'. From a human rights perspective, their housing and living conditions are often inhumane, and an affront to human dignity – the essence of the right to adequate housing. India must ensure right to adequate housing and non-discrimination under international law ^[11].

5. Judicial scenario

During the 1970's and 80's, the Supreme Court of India engaged in a phase of strong judicial activism whereby several socio-economic rights in Part IV of the Constitution, that were previously thought to be unenforceable, were given legal force by bringing them within the sphere of the Fundamental Rights. Hence, while the Indian State was previously only under the negative duty not to interfere with the life or liberty of an individual without the sanction of law, activist judges of the Supreme Court now imposed a positive obligation to take steps for ensuring to the individual a better enjoyment of life and dignity.

i) Olga Tellis v. Bombay Municipal Corporation ^[12].

This was one of the first and most important housing rights case that went to the Supreme Court in India in 1985. The Court held that the Right to livelihood and shelter as being an important component of the Right to Life. This PIL was filed on behalf of the pavement dwellers of Bombay city in the Bombay High Court. The Petitioners argued that they could not be evicted from their squalid shelters without being offered alternative accommodation. They told the court that they chose a pavement or slum to live in only because it was nearest to their place of work, and that evicting them from the pavements would result in depriving them of their livelihood. The Petitioners (living in around more than 10,000 hutments) were to be evicted under Sections 312 to 314 of the *Bombay Municipal Corporation Act*, (BMC Act) which empowered the Municipal Commissioner to cause to be removed encroachments on footpaths or pavements over which the public have a right of passage or access. This judgment expanded scope of the right to life guaranteed under Article 21 Constitution to be wide enough to include within its scope, the right to livelihood which was translated in this context to mean the right to be allowed to remain on the pavements. Therefore, it is truly a remarkable judgment in the history of

right to housing in India. Justice Chandrachud observed: "It is a notorious fact of contemporary life in metropolitan cities that no person in his senses would opt to live on a pavement or in a slum, if any other choices were given to him. Anyone who cares to have even a fleeting glance at the pavement or slum dwellings will see that they are the very hell on earth. But though this is so, the contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice... *The eviction of the pavement or the slum-dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life.*" The Court held that Section 314 of the BMC Act could not be regarded as unreasonable, unfair or unjust as per Article 21 and was constitutional but the eviction of the slum and pavement dwellers could be done only after arranging alternative accommodation for them and not before that.

ii) Soodan Singh v. New Delhi Municipal Committee ^[13]

In this case, the five-judge bench of the Supreme Court has held that the right to carry on any trade or business is not included in the concept of right to life and personal liberty. Article 21 is not attracted in case of trade or business. The petitioners, hawkers doing business of pavements of the roads in Delhi, had claimed that the refusal by the municipal authorities to them to carry on business of their livelihood amounted to violation of their right under article 21 of the Constitution. The court distinguished then ruling of the *Olga Tellis Case* and held that it is not applicable in this case.

iii) Shantistar Builders v. Narayan K Totame ^[14]

In this case, the issue was regarding allotment of nearly 1500 flats for members of weaker sections. The Government of Maharashtra exempted under Sections 20 and 21 of the *Urban Land Ceiling and Regulation Act, 1976*, (ULCRA) certain excess land from the provisions of the Act for the purpose of constructing dwelling houses under a Scheme for the weaker sections of the society on conditions specified in the order. The Respondents, who belonged to the weaker sections of the society filed a writ petition contending that the builder had violated the conditions imposed; that the need of the weaker sections was not being attended to and a racket had been formed by real estate speculators to eliminate the weaker sections and persons genuinely in need of housing accommodation. The High Court dismissed the petition, but the Supreme Court upheld the validity of exemption and gave directions to effectively implement the Scheme. The Supreme Court while considering all the issues reiterated that: "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. 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 that every citizen must be ensured of living in a well-built comfortable house but a

reasonable home particularly, can even be mud-built thatched house or a mud-built fire-proof accommodation.”¹⁹

To ensure effective implementation of the Scheme, the Supreme Court called upon the builders not to make any allotment of flats until all the claims of the applicants were scrutinized as to whether they fall within the definition of ‘weaker sections’ based on a means test and allotment for such number of persons as are found entitled is provided.

iv) P.G. Gupta v. State of Gujarat and others^[15]

In this case, the Supreme Court ruled 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.

v) Chameli Singh v. State of UP^[16]

In this case, Justice Ramaswamy, combining the obligations of the State under the Right to Life (Article 21), the Right to Residence and Settlement under Article 19(1)(e) and the international obligations (UDHR and ICESCR), gave a very progressive interpretation to the Directive Principles and held that:

“The 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 for its citizens, of course subject to its economic budgeting”.

He therefore succeeded in formulating a distinct right to housing and founded it in the aim of the Indian Constitution in securing economic and social justice as stated in the Preamble and held:

“Want of decent residence, therefore, frustrates the very object of the constitutional animation of the right to equality, economic justice, fundamental right to residence, dignity of person and the right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights”.

vi) Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan^[17]

In this case, the Court allowed the removal of the pavement dwellers by the State but on the condition that alternate accommodation may be made available to them under a Scheme of the State Corporation which served to provide housing for weaker sections.

vii) Narmada Bachao Andolan v. Union of India^[18]

In this case, the Indian Supreme Court turned its back on all the developments in the area of housing rights and displayed a complete disregard for both fundamental human rights and India’s obligations under the ICESCR. The issue in this case was the continued construction of the Sardar Sarovar Project dam and its significant impact on both the environment and hundreds and thousands of tribal people in the Narmada valley, who have been displaced with inadequate resettlement and rehabilitation plans. What raises concern is that despite knowledge of the inability of the authorities to determine the total number of people to be displaced and to find adequate

land for their resettlement, the incomplete resettlement for those already displaced, the Supreme Court ruled that:

“...displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights...” and held that the construction of the dam would continue.

The judgment contradicted all previous Supreme Court rulings that have upheld the right to shelters related to the right to life, as well as the Narmada Water Disputes Tribunal decisions.

viii) Sudama Singh & others v. Government of Delhi & another^[19]

In this case, the petitions were filed 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). Describing the importance of various international instruments and Special Rapporteur’s report, Delhi High Court allowed the petition. The observation of the UN Committee on Economic, Social and Cultural Rights was quoted by High Court as:

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.

The Judiciary with its innovative and inspiring judgments always has been bedrock of social justice. This concept of social justice would remain a myth if protection could not be provided to evicted people to live in their home. With a collage of constitutional and legislative provisions the judiciary has to take up cudgels against the exploitation of people and wherever called upon gave full protection to the rights of the people in consonance with the international commitments which India has made.

However, the biggest challenge now is to give ‘right to housing’ a status of being a fundamental right guaranteed under Part III of the Constitution within the expanded horizons of right to life and personal liberty under Article 21 of the Constitution.

6. Critical Analysis

The evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land,

as the case may be, is available. So, there should always be harmonious construction between the Human Development and Economic Prosperity.

India is at a critical juncture demanding steps taken that, if vigorously and vigilantly pursued, could result in more than just “housing for all”. It could result in the realization of the right to adequate housing for hundreds of millions of vulnerable people. This more robust goal will, however, require governments to make a firm commitment to human rights in the face of other interests such as real estate development. So, the time has come for India to adopt national housing legislation based in both its national and international human rights commitments.

Thus, addressing several of the most complex housing issues from a human rights perspective, as a matter of urgency and priority, by all stakeholders would not only have positive implications for the current housing backlog, the life of millions of excluded residents, and the increasing unaffordability of adequate housing, but it would also set India on track for addressing inequality and rapid urbanization in the years and decades to come. It would also be timely in light of India’s commitment to implementing the 2030 Agenda of Sustainable Development Goals (SDGs) [20].

Therefore, the right to housing has yet to fully sink its feet into the Indian Constitution’s chapter on fundamental rights (Part III). Any efforts to recognise a fundamental right to housing has only been complicated by the judiciary’s inconsistent responses dating all the way back to the *Olga Tellis case* [21], and finally to a rather depressing interpretation in the *Narmada Bachao Andolan case* [22].

7. Conclusion & suggestions

In the matter of the right to housing, the Court has absolutely failed to show any enforcement with our international commitments especially with respect to some of the recent judgments, the most striking example being the Narmada judgment of 2000.

The Indian Judiciary, the guardian of Constitution, has enlarged, through judicial creativity, the scope of Article 21 and included right to adequate housing. But, all the time, the Judiciary’s role could not favour this right and the aggrieved person, generally, failed to get relief. Though, this right has got place in many international and regional instruments but, in India, after independence housing got low priority at national development programmes.

With the development of welfare state, the state has to play a vital role in every aspects of life for development and progress of common people but there are some areas where state has to take proactive steps to facilitate to live a dignified life.

The following suggestions are to be implemented for the realization of right to housing in India:

- The International human rights law key principles and guidelines can be used as tools to strengthen and inform housing schemes and policies.
- The Central government to do more to ensure all its institutions as well as all states are meeting their obligations on the right to adequate housing and non-discrimination under international law.
- The judiciary, public interest litigators, and government

lawyers to use international human rights law principles in their Constitutional interpretation and in litigation.

The National Human Rights Commission must also take proactive steps to aware the common people about their rights and must provide mechanism to enforce their basic human rights.

8. Reference

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