

Homelessness and Right to Adequate Housing in India- A Human Rights Perspective

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INTRODUCTION

Every human being on the earth is entitled to a meaningful life which necessarily includes adequate food, cloth and shelter. However, these basic necessities of human life are not equally enjoyed by human being due to prevalence a host of reasons. Among these three basic needs of human being, a comfortable shelter in the form of a home is must for leading a meaningful social life. Housing is must for the development, security of a human being. A person without a home or an adequate shelter is not only deprived from availing various Government related facilities and entitlements but also exposes a person to various health related complications and derogation in the social status. However, homelessness has emerged as one of the major problems faced by both developed and underdeveloped countries of the world. Homeless is a multidimensional problem as it is caused by numerous factors. The present paper is an attempt to discuss the problem of homelessness from a human rights perspective specially one's right to adequate housing.

Basic concept:

The term homeless has been defined from various angles. Further, it is incapable of a precise definition due to its multifaceted aspects. In general parlance homeless

is one who does not possess any home or reside in roofed accommodation. In the words of Caplow and others homelessness is "a condition of detachment from society characterized by the absence or attenuation of the affiliative bonds that link settled persons to a network of inter connected social structures."¹ This definition of Caplow and others views homelessness from a social exclusion and social aloofness perspectives. In the Indian context, homeless has been defined as who do not live in census houses but rather stay in pavements, roadsides, railway platforms, pipes, temples, open spaces etc.² A homeless individual is defined in section 330(h)(5)(A) as "an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility (e.g., shelters) that provides temporary living accommodations, and an individual who is a resident in transitional housing." A homeless person is an individual without permanent housing who may live on the streets; stay in a shelter, mission, single room occupancy facilities, abandoned building or vehicle; or in any other unstable or non-permanent situation.

In United States of America, the term homeless has been defined in Public Health Service Act in the following manner- 'The term "homeless individual" means an

1. Men of Uncertainty: The Social Organization of Day Laborers in Contemporary, State University of New York Press, Albany, 2001 at p. 127
2. Homelessness in India, Available at https://en.wikipedia.org/wiki/Homelessness_in_India (Last accessed on 23rd January, 2019 at 12.30 P.M.)

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individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing.³

The United Nations Centre for Human Settlements has attempted to define homelessness “as not having an acceptable level of housing provision. It would include all states below what may be regarded as adequate for the reference society. To classify someone as homeless indicates a state in which ‘something must be done’ for the victim of such circumstances.”⁴ In Czech Republic homeless person has been defined as one who is not having a permanent residence and who sleeps in public areas (parks, railway stations, etc.), in abandoned buildings, basements, etc., and occasionally also in shelters.⁵

The Canadian Observatory of Homelessness has defined homelessness as-

“Homelessness describes the situation of an individual, family or community without stable, permanent, appropriate housing, or the immediate prospect, means and ability of acquiring it. It is the result of systemic or societal barriers, a lack of affordable and appropriate housing, the individual / household’s financial, mental, cognitive, behavioral or physical challenges, and/or racism and discrimination”

Causes of homelessness:

There are many causes for the problem of homelessness. Some of the primary causes are-

- Due to natural as well as manmade calamities.
- Due to riots and massacres.
- Due to search of employment, job, livelihood in urban cities.
- Family disputes or disintegration.
- Displacement due to disintegration.
- Displacement due to industrialization and consequent illegal land acquisition.

Right to adequate housing is an economic, social and cultural right which encompasses different dimensions. The right to adequate housing entitles one to the following freedoms⁶ -

- Protection against forced evictions and the arbitrary destruction and demolition of one’s home;
- The right to be free from arbitrary interference with one’s home, privacy and family; and
- The right to choose one’s residence, to determine where to live and to freedom of movement

Further, the right to adequate housing contains the following entitlements:

- Security of tenure;
- Housing, land and property restitution;
- Equal and non-discriminatory access to adequate housing;
- Participation in housing-related decision-making at the national and community levels

Recognition of right to housing at the International Level:

The right to housing has been recognized at the international level by various human rights instruments such as Universal Declaration of Human Rights (UDHR) which is considered as the Magna Carta for the right to housing, International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR).

There is no direct definition of homeless in Universal Declaration of Human Rights, 1948 but reference has been made under Article 25 of the UDHR by the United Nations General Assembly where it has been enshrined as-

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of 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”.

3. Section 330(h)(5)(A)

4. United Nations Centre for Human Settlements, Strategies to Combat Homelessness, at p. 150, Available at <http://mirror.unhabitat.org/documents/HS-599x.pdf> (Last accessed on 23rd January, 2019 at 12.30 P.M.)

5. Ibid at p. 143

6. Office of the United Nations High Commissioner for Human Rights, Right to Adequate Housing, at p. 3 Available at https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf (Last accessed on 05th February, 2019 at 4 P.M.)

The right to adequate housing has been recognized under Article 11 of ICESCR which states 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”.

ICCPR has no direct right to housing but it is known for its optional protocol for individual complaints, which has been ratified widely. ICCPR protects the existing housing rights, the right coming from a different channel, which is why for ICCPR it is already existing.⁷

Besides these the right to adequate housing has been recognized in some of the other major international human rights instruments such as-

Convention on the Elimination of all forms of Racial Discrimination (CERD), International Convention Relating to the Status of Refugees, International Convention on the Suppression and Punishment of the Crime of Apartheid, Convention on the Rights of the Child and Convention on the Elimination of Discrimination Against Women (CEDAW).

Some of the other documents where right to adequate housing has been recognized as an express provision are- The European Social Charter, The European Convention on the Legal Status of Migrant Workers, The European Convention on Human Rights and Fundamental Freedoms, The resolution on the Shelter for the Homeless in the European Community and the Final Act of Helsinki.

Right to adequate Housing has been recognized in a number of international convention and declarations. Some of them are⁸ -

- The 1951 Convention Relating to the Status of Refugees (art. 21)
- The International Labour Organization’s 1962 Convention No. 117 concerning Basic Aims and Standards

of Social Policy (art. 5 (2))

- The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e)(iii))
- The 1966 International Covenant on Civil and Political Rights (art. 17)
- The 1979 Convention on the Elimination of All Forms of Discrimination against Women (arts. 14 (2) and 15 (2))
- The 1989 Convention on the Rights of the Child (arts. 16 (1) and 27 (3))
- The International Labour Organization’s 1989 Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (arts. 14, 16 and 17)
- The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 43 (1)(d))
- The 2006 Convention on the Rights of Persons with Disabilities (arts. 9 and 28)

Right to Adequate Housing and the Role of Indian Judiciary:

In *UP Avas Evam Vikas Parishad vs. Friends Cooperative Housing Society Limited*⁹, the Supreme Court of India held that the right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1) (e) and the right to life under Article 21.

In *Olga Tellis vs. Bombay Municipal Corporation*¹⁰, the Supreme Court held that Article 21 of the Constitution also encompassed the right to livelihood and that this right was indivisible from the right to shelter.

In *Francis Coralie Mullin vs. Union Territory of Delhi*¹¹, the Supreme Court held 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 over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings”

Again in a significant judgment, the Court stated

7. Ravi Bundela, Issues in recognising & realizing the right to housing of the homeless: study on homelessness *vis-à-vis* right to housing, An unpublished thesis Submitted to National Law University, Delhi, 2017 p.67

8. *Supra* Note 6 at p. 11

9. AIR 1996 114

10. 1985 3 SCC 545

11. AIR 1981 746

“Shelter for human being, therefore, is not 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, include living space, safe and decent structure, clean and decent surrounding, sufficient light, air and water, electricity, sanitation, and other civic amenities like roads etc., so as to have easy access to his daily avocation”¹²

Policy initiatives:

The Union Government and state Governments have different policies on housing. In the Federal structure of the Indian polity, the matters pertaining to the housing and urban development have been assigned by the Constitution of India to the State Governments. However, the Union government is responsible for formulation and implementation of social housing schemes

Union Government Schemes:

The Union Government’s commitment to provide adequate housing specially to rural mass started after the independence of the country with the rehabilitation of refugees. After that it has been viewed as a major instrument of poverty alleviation. The rural housing scheme of the Union Government started in the year 1996 in the form of Indira Awaas Yojana (IAY) . The evaluations and the performance Audit by Comptroller and Auditor General (CAG) detected a few gaps in the implementation of Indira Awaas Yojana. Some of the gaps identified by the Comptroller and Auditor General (CAG) include the non assessment of housing, less transparent system of selecting beneficiaries, low the quality of the house and lack of technical supervision etc. to address these gaps a new scheme for rural housing has been introduced in 2016. The name of the scheme is Pradhan Mantri Awaas Yojana –Gramin (PMAY-G). The present scheme aims providing a pucca house, with basic amenities, to all houseless householder and those households living in kutcha and dilapidated house, by 2022.

As an immediate objective, the scheme aims to cover 1.00 crore household living in kutcha house/ dilapidated house in three years from 2016-17 to 2018-19.

Under the scheme the minimum size of the house has been increased to 25 sq.mt from 20sq.mt with a provision of hygienic cooking space.

On the other hand , Pradhan Mantri Awaas Yojana -Urban will be implemented during 2015-2022 and this 1.1 Mission will provide central assistance to implementing agencies through States and UTs for providing houses to all eligible families/beneficiaries by 2022.

Apart from the initiatives of Union Government, discussion about schemes implemented by few states has been also included.

Government of Odisha Scheme on Housing:

The Government of Odisha has been implementing the centrally assisted schemes as well as its own schemes. The Government of Odisha with an aim to provide pucca houses for all rural households living in Kutcha houses has launched Biju Pucca Ghar Yojana with effect from 2014. The schemes envisages for two components-

1. Biju Pucca Ghar Yojana (BPGY) (Normal)
2. Biju Pucca Ghar Yojana (BPGY) (Special)

The Odisha Government has another scheme of housing for mining affected districts of the state. The scheme is called the Pucca Ghar Yojana (Mining). Under the scheme all the kutcha households residing in 691 mining affected villages of 08 Districts viz. Angul, Dhenkanal, Jajpur, Jharsuguda, Keonjhar, Koraput, Mayurbhanj and Sundargarh are provided pucca houses.

The Scheme is funded by Odisha Mineral Bearing Areas Development Corporation (OMBADC) and implemented by Panchayati Raj Department.

Further, the Nirman Shramik Pucca Ghar Yojana provides assistance to construction workers.

Kerala Government Scheme on Housing:

The Government of Kerala has launched Livelihood Inclusion and Financial Empowerment plan aims at providing houses to landless and homeless persons. The history of the public housing in Kerala dates back to 1950s when the village housing scheme was implemented with the support of the Community Development Programme sponsored by Government of India. In 1972, MN One Lakh Housing scheme . Further Kerala has a state housing policy called Kerala State Housing Policy 2011. This policy aims at providing sustainable development of the habitat with the objective to ensure adequate and affordable housing for all and ensuring supply of quality basic services.

In state of West Bengal, under the ‘Nijoshree’

12. Chameli Singh And Others Etc. vs State Of U.P. And Another AIR 1996 SC 1051

scheme, two categories of flats would be provided to people whose monthly earnings are not above Rs 30,000. Under the scheme, the Government wants to build 2BHK flats for 9.26 laks of people in the state.¹³ The Government of Assam has launched Apun Ghar Home loan scheme for the state Government employees.¹⁴

Apart from these initiatives almost all the states in India have housing boards which provides housing facilities at subsidized rate.

Discussion and Suggestions:

Providing housing for disadvantaged and marginalized group has been a matter of challenges. The housing policies and schemes have mainly focused on providing pucca houses to the homeless or those who have kutchha houses. However, it has ignored the problems faced by the other marginalized groups of our society such as differently able persons, landless poor, unorganized sector workers etc. The housing schemes and policies must look into the needs of these marginalized groups and accordingly provide adequate support.

The rental policy must be refined to give protection

against forced eviction. In this connection Rent Control legislations of the states must be implemented strictly.

In India developmental projects have made several people homeless. Development at the cost of homelessness creates agony and pain among the common mass. Hence, before executing any development projects impact assessment must be made regarding probable homelessness and adequate strategies should be devised to tackle the issue of homelessness.

As right to adequate housing includes access to adequate services *i.e.*, access to facilities such as health, security, comfort, nutrition, the state machinery must ensure that these services are also made available apart from providing housing facilities to them.

Concluding Observation:

From, the above discussion it appears that although attempt has been made on the part of Government and judiciary to tackle the issue of adequate housing in India, homelessness remains as a major problem in our society. A country governed by rule of law and guided by welfare principles, state must give due importance to the issue of housing needs of the people.

13. DNA India, Bengal govt to give 2BHK flats at Rs 9.26 lakhs under 'Nijoshree', Avialable at- <https://www.dnaindia.com/business/report-bengal-govt-to-give-2bhk-flats-at-rs-926-lakhs-under-nijoshree-here-s-the-full-details-2627566> (Last accessed on 5th February, 2019 at 5 P.M)

14. Available at http://protechgroup.in/blog/2018/05/15/apun_ghar_home_loan/ (Last accessed on 5th February, 2019 at 5 P.M)