

Right to Shelter an Expanded form of Right to Life and Personal Liberty: An Analysis

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***Abstract---** Housing is one of the primary necessities of the civilised society. It has been declared as a basic Human Rights in UDHR, ICESCR, CEDAW, CRC & CERD. The Part III of Indian Constitution provides various Fundamental Rights but it does not expressly guarantee 'Right to Shelter' to citizen or non-citizen. Supreme Court of India has expanded the scope of right to life and personal liberty by inserting 'Right to Shelter' as a fundamental right under Article 21 of Indian Constitution. This research paper will analyze the emerging scenario of right to shelter in India by analysing how the Supreme Court of India interpreting the Constitution to provide the Social Justice to its citizens.*

***Keywords---** Right to Shelter, UDHR, Article 21.*

I. INTRODUCTION

Housing is one of the primary necessities of the civilised society but it is one of the most significant social problems in India. The housing problem in India arises due to many factors which include: population growth, continuous migration of rural population into city, post-war migration of human beings, partition of the country etc.

A large number of people in India are without any roof on their heads. A large number of humanity lives in conditions which are inhumane. It is a disgrace to our democracy and development that people have no house to live in.

Right to Shelter has been declared as basic Human Rights in UDHR, ICESCR, CEDAW, CRC & CERD. The Part III of Indian Constitution provides various Fundamental Rights but it does not expressly guarantee 'Right to Shelter' to citizen or non-citizen. Supreme Court of India in its numerous judgments has been interpreted Right to Shelter as a fundamental right under Article 21 of Indian Constitution.

The right to protection of life and liberty is the main feature of Article 21 and it is a right guaranteed against action of State as distinguished from violation of such right by private individual. Under Article 21 right to life includes the right to live with "**Basic Human Dignity**" with the fundamental requisite of life such as nutrition clothing, foods, shelter over the head, facilities for cultural and socio-economic well being of every individual. Article 21 protects the "Right to life" a guaranteed and derived there from the minimum needs for existence including a better tomorrow.

II. RIGHT TO SHELTER AS HUMAN RIGHT

Right to Shelter is recognized as basic human rights at the international levels. Article 25 of the UDHR 1948, recognises the right to housing as part of the right to an adequate standard of living. It declares that "Everyone has the right to a standard of living adequate for health and well – being of himself and his family including food,

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clothing, housing medical care and necessary social services.”

The same declaration is also given in Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights. It has been declared in covenant that the State will take appropriate steps to ensure realization of this right.

Article 14(2)¹, Article 27 (3)² and Article 5 (e)³ also ensures that State will provide equality of opportunity to all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

India has accepted Human Rights Declaration and ratified all important International Human Rights Instruments and particularly International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, The Convention on the Elimination of All Forms of Racial Discrimination, Convention for Elimination of All forms of Discrimination against Women and the Convention on the Rights of Child.

III. RIGHT TO SHELTER AND CONSTITUTION OF INDIA

Right to Shelter and Fundamental Rights

The Part III of Indian Constitution provides various Fundamental Rights but it does not expressly guarantee ‘Right to Shelter’ to citizen or non-citizen. Supreme Court of India has expanded the scope of Article 21 of the Constitution and has inserted ‘right to shelter’ as a fundamental right.

The Supreme Court of India has held the ‘Right to Shelter’ as a Fundamental Right by taking recourse to Article 19(1) (e) which guarantees fundamental right to reside and settle in any part of the territory of India. Right to Shelter has also been held to be necessary for the enjoyment of ‘Right to life’ guaranteed under Article 21 of Indian Constitution.

Right to Shelter and Directive Principles of State Policy

Socio- economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution as given in the Preamble of the Constitution. The state is directed to promote the justice among the citizens.

Article 38 (1) provides that 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”. While Article 38 (2) directed that “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 group of people residing in different areas.”

According to Article 39(a) State is directed to secure both men and women equally have the right to an adequate means of livelihood.

¹ The convention on the Elimination of All Forms of Discrimination against Women

² The Convention on Rights of Child and in the Declaration on Right to Development

³ International convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 41 provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.”

Article 42 directed the state for securing just and humane conditions of work and for maternity relief.

Article 47 provides the duty of State to raise the level of nutrition and the standard of living and to improve public health.

Right to Shelter: Judicial Interpretation

The Right to Shelter was first mentioned in the case of *Francis Coralie Mullin v Union Territory of Delhi*⁴ where Justice Bhagwati observed 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, education and shelter”.

In *K. Chandru v State of Tamil Nadu*⁵, Justice Chandrachud observed “the right to life includes the right to livelihood. The sweep of the right to life conferred by Article 21 is wide and far reaching.....since the right to life under Article 21 includes the right to livelihood and since the right to life and right to work being integrated the eviction of a person from slum or pavement is violative of Article 21 and 19 (1) (e) and (g) of the Constitution. The Court clearly recognized the relationship between the right to livelihood and right to shelter.”

In *Olega Tellis v Bombay Municipal Corporation*⁶, popularly known as the ‘Pavement Dwellers Case’, the validity of sections 313, 313-A & 314 of Bombay Municipal Corporation was challenged. These are the provisions which empowered the municipal authorities to remove the huts from Pavement and public places. The petitioner contended that the removal of their huts would deprive them to right of livelihood which comes under right to life and personal liberty.

The Constitution Bench in this case considered the right to dwell on pavements or in slums by the indigent and the same was accepted as a part of ‘Right to Life’ enshrined in Article 21. Their ejection from the place nearer to their work was held to be deprivation of their ‘Right to livelihood’.

The Supreme Court of India observed that “the word ‘life’ in Article 21 include the ‘right to livelihood’ also. The Court said that “No person can live without the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional Right to life the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live”.

In *Sodon Singh v New Delhi Municipal Committee*⁷ the Supreme Court held that “the right to carry on any trade or business is not included in the concept of life and personal liberty. Article 21 is not attracted in the case of trade and business. The petitioners doing business on pavements of roads 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

⁴ AIR 1981 SC 746

⁵ 1986 AIR 204

⁶ AIR 1986 SC 180

⁷ AIR 1989 SC 1988

Article 21 of the constitution. The court distinguished then ruling of previous case and held that it is not applicable in present case”.

In *Shantistar Builders v Narayan Khimalal Totame*⁸, the ‘Right to Shelter’ has been recognized as a fundamental Right in the following words “Basic needs of man have traditionally been accepted to be three- Food, Clothing and Shelter. It was observed that the difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is bare protection of the body while 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 of India aims at ensuring full development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well – built comfortable house but a reasonable home particularly for people in India can even be mud- built thatched house or a mud built fireproof accommodation”.

In *D. K. Yadav v J. M. A. Industries Ltd.*⁹, the Supreme Court extended their views on right to livelihood and held that “the right to life enshrined under Article 21 includes the right to livelihood and termination of the service of a worker without giving him reasonable opportunity of hearing is unjust, arbitrary and illegal. The procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14, i.e. it must be just fair and reasonable”.

In *Uttar Pradesh Avas Evam Vikas Parishad v Friends Co-operative Housing Society Ltd.*¹⁰, the Supreme Court observed that “Right to Shelter is a fundamental right which springs from the ‘right to residence’ as assured in Article 19(1)(e) and ‘right to life’ under Article 21 of Indian Constitution”.

In *P.G. Gupta v State of Gujarat and others*¹¹, Court considered the mandate of ‘Human Rights to Shelter’ in Article 19 (1) (g) read with Article 19 (1) (e) and Article 21 of the Constitution , with the aid of Universal Declaration of Human Rights and the Convention on Civil, Economic and Cultural Rights. It was held that “the right to residence and settlement is a fundamental right under Article 19 (1) (e) and it is a facet of inseparable meaningful right to life under article 21”.

In *Chameli Singh v State of U.P.*¹², it has been declared that “the right to shelter is a fundamental right under Article 21. In any organized society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to benefit himself. Right to live includes in any society the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without the basic human rights. Shelter for human being, therefore, is not a mere protection of his life and limb. It is home where he had opportunity to grow physically, mentally, intellectually and spiritually. Right to shelter includes adequate living place, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water,

⁸ AIR 1990 SC 630

⁹ (1993)(3) SCC 259

¹⁰ 1995 Supp (3) SCC 456

¹¹ 1995 Supp (2) SCC 182

¹² 1996 (2) SCC 549

electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation”.

It was also observed that the right to shelter does not mean a mere right to a roof over one’s head but right to the entire infrastructure necessary to live and develop as a human being. 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 (Part IV), the State should be deemed to be under an obligation to secure it for its citizens. It was also observed that in a democratic society as a member of the civilized society one should have permanent shelter so as to a physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the fundamental duties and to be a useful citizen and equal participant in democracy.

In *Bandhua Mukti Morcha v UOI & Ors*¹³ it was held that, “Article 21 assures the right to live with human dignity free from exploitation. The state is under obligation to see that there should be no violation of fundamental rights of any person, particularly when he belongs to weaker section of the community……. It was observed that the meaning of the word life includes right to live in fair and reasonable conditions, right to rehabilitation after release, right to livelihood and decent environment.”

In *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan*¹⁴ Supreme Court directed the State to construct affordable houses for the poor. It was observed that the State has the constitutional duty to provide shelter.

In *Peoples Union For Civil Liberties v State of Gujarat & Ors*¹⁵ it was held that “however right to livelihood and right to shelter has been recognizes as fundamental right under Article 21 but these rights are, however, subject to reasonable restrictions. Nobody can exercise his right so as to cause obstruction to public and public activities or to other section of the society”.

In *Sudama Singh & Ors v Govt. of Delhi & Anr*¹⁶ it was held that “Shelter for a human being, therefore, is not a 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 includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities. Right to Shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being”.

In *Dr. Ashwani Kumar v UOI & Ors*¹⁷ petitioner contended that court recognized the right to shelter or right to reasonable accommodation is one of the basic needs of any human being. Unfortunately, while there has been some positive development in this regards, attention has not been paid to the needs of who require special care and attention it was held that

IV. CONCLUSION AND SUGGESTION

In a plethora of judgments, the Supreme Court made it clear that right to shelter is a fundamental right. This right

¹³ (1997) 10 SCC 549

¹⁴ (1997) 11 SCC 123

¹⁵ (2001) 1 GLR 547

¹⁶ 168 (2010) DLT 218

¹⁷ Writ Petition (c) No 193 of 2016

has been adopted at international level. In India there are several laws, policies and schemes made by the state promising everyone a roof but the ground realities are that most of them are still waiting for effective implementation. Right to shelter for homeless should be recognized and statutory forum be provided to enforce such right. All legislation must be implemented by the Government keeping in view the agreed International Principles. Right to shelter be made an enforceable right but wherever eviction in general interest of public is required, the law can be framed which should follow the principles of Human Rights and others procedural safeguards.

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