

Issues in Recognizing and Realizing the Right to Housing of the Homeless Study of Homelessness vis-a-vis Right to Housing

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Abstract

The concept of home is very complex and comprehensive in nature. The very essence of well being in the nature of comfort, belongingness, societal identification and social security is promised by the concept of home. Many sociological thinkers have made efforts to understand and deliver a universal definition to this dynamic concept of home and it's opposite, homelessness. Somerville has given 'Shelter, hearth, heart, privacy roots abode and paradise' as seven significant indicators of the concept of home . Along with these indicators, the concept of home features the ideas of warmth, love, relaxation happiness, homeliness, stability, and psychological and emotional security⁹ . On contrary to this homelessness denies the above indicators resulting in discrimination, neglect, banishment, misery, instability and precariousness. Home ensures emotional, economic and social stability and is the most vital factor for overall growth of an individual. The concept of home is very complex and comprehensive in nature. The very essence of well being in the nature of comfort, belongingness, societal identification and social security is promised by the concept of home. Many sociological thinkers have made efforts to understand and deliver a universal definition to this dynamic concept of home and it's opposite, homelessness. Somerville has given 'Shelter, hearth, heart, privacy roots abode and paradise' as seven significant indicators of the concept of home⁸ . Along with these indicators, the concept of home features the ideas of warmth, love, relaxation happiness, homeliness, stability, and psychological and emotional security⁹ . On contrary to this homelessness denies the above indicators resulting in discrimination, neglect, banishment, misery, instability and precariousness. Home ensures emotional, economic and social stability and is the most vital factor for overall growth of an individual.

Introduction

Background of the Study

Shelter is the only way to get rid of many problems. One-way of approach towards a 'Fundamental Right' is that, it is sine qua non for human existence and preserves human dignity. The actual beneficiaries of fundamental rights would fail in realizing the same unless they don't have the very place to live. Hence, right to education, right to clean drinking water, right to privacy more importantly and the so-called right to life and personal liberty are of no use for those who don't have a roof on their heads. Human Rights are in no way luxury. Housing is nothing but a very elementary thing to keep the Human body safe, and the deficiency of it will make the human life chaotic. House prepares a person to receive education, housing makes a person get ready for work and contribute for him as well as for the society. Housing also constructs a person to do hard work for the further development of his life. A healthy body cannot sit, or remain without work. Right now the author too could able to write these words in this thesis sitting under one roof. Every year hundreds and thousands of Human lives are

at stake just because of lack of a mere shelter. It is an upsetting state of affairs for any so called welfare state to have its citizens lying right on the streets and subject to all kinds of social exclusion and vulnerability. The phenomenal example of the failure of democracy and the concept of 'Welfare state' is very well manifested in the extent of the spread of homelessness, which is one of the by product of poverty and one of the horrible form of social vulnerability. A large extent of poor is falling prey to this evil and it is intolerable in any civilized society. The phenomena of homelessness should be perceived in holistic approach to understand the depravity, isolation and neglect it is resulting in. Homelessness is not limited to certain boundaries, rather its reach is very well spread across the world, both in rich and poor countries. Homelessness is so multifaceted that it is one of the major causative factors of injustice, discrimination, social 2 exclusion, dehumanization and creation of socio-economic and political divides. Homelessness is more glaring in the folds of urban conglomerations since they have always been hubs for providing implied promises to provide livelihood and better standard of living. Many cities in India such as Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Pune etc., have witnessed many neglected lives destroyed in the folds of homelessness. The inherent flaw lies in the mindset of treating homelessness as lack of roof and four walls rather it should be perceived as lack of home which provides Physiological, Emotional, Territorial, Ontological and Spiritual support. Any Policy aiming less than this cannot be said to have a holistic approach. It is also important to identify the homeless people as a heterogeneous group comprising of huge diversity with respect to age, gender, livelihood, places of origin, causative factors etc. Children, Women, Old aged, specially Disabled and people with special needs all are equally victims in the vicious cycle of Homelessness. Therefore, this complex issue of homelessness needs the comprehensive legal framework and effective public policy to ensure socio-economic and cultural rights to homeless.

Homelessness is not only confined to India, it is an increasing problem of the world both in developed and developing world. According to the Global Survey conducted by United Nations in 2005, it is identified that more than 100 million People are homeless and around 1.6 billion people are deprived of adequate housing. Estimating and identifying the homeless is in itself an intrinsic and complex issue. Though there are many parameters identified in estimating the homeless, the real failure in accurate and efficient results is due to heterogeneous nature of the subjects. According to 2011 Census in India there are 1.77 million populations who are not having shelter.

There can be many causes for the problem of homelessness, the primary causes have been search of employment, job, livelihood in urban cities. However other factors like natural as well as man made calamities, riots and massacres, family disputes or disintegration, displacement due to disintegration, Destitution, displacement due to industrialization and consequent illegal land acquisition also plays a significant role in pushing people to urban cities. Moreover, greater possibilities of opportunities of livelihood, as a result of numerous developmental activities taking place in urban areas.

Problem Statement

Ours is a world where the most prosperous states have homeless population. One billion people in the world are homeless, one in three urban dwellers are crowded into informal settlements on the margins of economic and political life. Law alone did not yield meaningful or coherent answers on the right to housing. Homelessness is an outcome of world's many different events such as war, natural disaster, city regeneration, mortgage repossession, international sport and rural development schemes. These displace great waves of people across international borders and many more within their own states. Housing provides and protects some of the most fundamental human needs. Those whose housing is inadequate, who are forced from their homes, and who are homeless, suffer severe personal and social deprivations with both psychological and material impacts. The human right to housing is 8 directly protecting housing. The problem comes, when it remains unknown that what such a human right should look like in law. On the one hand the said right appears in major human rights conventions but on the other hand the status of the right is greeted with skepticism.

Aims and Objectives

To assess the gaps in the existing research

To find out the how Indian Judiciary has perceived the problem of homelessness and till what extent the interpretation of the existing article 21 has been expanded.

To know the position of housing as human right

Literature Review

There have been land mark cases Indian and International cases which have been reviewed such the Grootboom case of South Africa through which the reasonableness approach has come and been adopted by future other cases. The Indian case of Olga Tellis is very much been highlighted with respect to the right to housing wherein the right to life was connected with the right to livelihood and therefore the question of right to housing came. Almitra Patel judgment on solid waste has been reviewed as it moved from the judgment of Olga Tellis and went onto say that rewarding an encroacher on public land with free alternate site is like giving a reward to pickpocket. The reports of Ashray Adhikar Abhiyan have also been reviewed which gives a data of homeless people especially of Delhi state. There has been research on the said topic of homelessness on the point of Right based approach to development, which can be substantiated by saying that right to home can lead to development. There has been research on the point of unreliable data and statistics on homeless. The researcher on the other hand takes the research ahead to question of making home as a matter of right which has been remained in law theory and practice.

In domestic Legislation of India Housing receives an incidental protection as an Fundamental Right the one and only Article 21 of the Indian Constitution states in this that Right to life and personal liberty, since because of these words, this article is considered to be pregnant with many rights and it will be the Judiciary to expand the horizon of this article because there is no specific right to home for homeless.

The basic municipal law and the constitution of India in spirit comprises that any person who is in distress, it is the duty of the law to help him, the Indian Supreme Court every time speaks about the homeless people because there've been many deaths of homeless persons especially in extreme cold and extreme hot. The apex court in India has widely employed international norms to inform its understanding of the Indian human rights system; the Indian Jurisprudence on the right to housing is analytically separate from the right to housing in International Human rights Covenants. *K Chandru v. Tamil Nadu* tackled slum clearances in the city of Madras, and which held that the State of Tamil Nadu was governed by the same constitutional points a have been set out in *Olga Tellis*.

The traditional judgments of Indian Supreme Court showcase a strict interpretation of the text of the legislations but it is only after 1969, the Supreme Court has adopted more right based approach through its so called Judicial Activism. After *Maneka Gnadhi v. Union of India* , the Supreme Court has done a major expansion of Article 21. Hereafter the court embarked upon the major expansion of this provision in favor of the impoverished. The year 1985 has given an historic Judgment on Housing rights *Olga Tellis v Bombay Minicipal Corporation* , the point was that what remedy the unorganized dwellers have if they are evicted, it was argued that eviction would prevent them to have their livelihood (Vitkauskaite-Meurice, 2010).

Methodology

There have been many international and national reports, which have been consulted while preparing this thesis. National Report on The Status of Shelters for Urban Homeless in 2014, it was recommended in this report that the construction of shelters must be in accordance with the norms laid out by the Supreme Court. As per the Supreme Court orders there should be a minimum of 30% of the total number of shelters kept for sensitive class of homeless such as women, children, old age persons, physically challenged etc. The other report, which was 9 considered, is the third India's Universal periodic review by United Nations Human Rights Council. In its concluding observations it was recommended to implement recommendations of the UN Special Procedures, treaty bodies including the CESCR. It was also recommended that to integrate the sustainable development goals and corresponding targets into policy implementation. Rajasthan has drafted a progressive policy that includes a broader definition of homeless people. But it falls short on other counts. The said draft policy includes a broader definition of homeless people as those who live and sleep on the streets, pavements and areas where they work. The major source, which is reviewed, is the Habitat document of UN fact sheet no. 21 which has given an overview of the key aspects of right to housing and also how does the right to adequate housing apply to specific

groups. There are several Indian, European and South African case laws, which are the important contribution on the existing, research on the right to adequate housing. In India, *Olga Tellis v Bombay Municipal Corporation*, *K Chandru v Tamil Nadu*, *Shantistar Builders v. Narayan Khimalal*. The seminal South African cases are *Government of the Republic of South Africa and others v. Grootboom and others*, *Joe Slovo case*. The other international cases are *Hajrizi Dzemajl et al v Serbia and Montenegro*, *Autism Europe v. France* (Davis, 2007).

There is a case study in the thesis, which have assisted the topic by finding out the gaps. In the case study of Bangladesh has become pertinent for the said research topic. The police have demolished the Titipara Basti (Slum), the largest slum of Dhaka for improving the law and order situation of the country. Thereafter there were three leading organization which works for the said issue have a writ petition in the High Court Division bench of Bangladesh which has sought the restoration of the slum dwellers from where they have been evicted, this made the uproar in the housing rights and hence has been elaborately described in the thesis.

The developed countries have adopted the wider interpretation of homelessness by giving room to the people who inhabit inadequately constructed houses. This category includes those households, which have not satisfied the mandatory construction regulations according to local laws and have potential to expose the occupants to dangerous living conditions. Though developed countries have adopted this interpretation, third world countries cannot afford this definition and hence those who live in the substandard residential buildings are not considered to be homeless. In the report given by UNCHS in 1999, it is mentioned that one fourth of houses in third world countries are built with sub-standard and non-durable material, whereas in case of African Countries, this percentage stands at forty. It is also reported that almost one third of the houses in third world countries violate the local building rules.

Result and Discussion

Many philosophers from John Rawls to Tom Paine have argued that a just society must guarantee equal distribution of basic resources to its citizens and if it fails in doing so, it fails the test of justice. This theory is an idea wherein the society needs to guarantee and ensure minimum income to each individual so that they can have access to basics of life required for survival. This is in the form of social security for all citizens who will receive a regular, unconditional amount of money from the government. This concept leads in upholding the basic dignity of the individual and promoting equality by reducing poverty. In India the UBI concept is much more relevant because of the weaknesses in the existing welfare policies. The said scheme is required to be unconditional and universal. UBI enhances productivity by cutting leakages in state transfers. Moreover, UBI has been endorsed both by philosophers of the left and the right. The homeless receive the said income then it will help them in caring their physical body by utilizing the same for house. Thus to much extent the problem of homelessness can be resolved (Episten, 1996).

Indian Economist and Philosopher Amartya Sen first articulated capability approach in 1980's. The starting phase of capability approach can be seen from the era of Aristotle to Adam Smith. The stress of this approach is on the capabilities of the individuals as to what they can do. It is further defined by its choice of focus upon the moral significance of individual's capability of achieving the kind of lives they have reason to value. This approach recognizes the fact that people have different capacities. This approach observed as the development of the state in the sense of expansion of basic freedom of people or their capabilities, because people's capabilities plays an important role in expanding economic growth. This approach makes the people capable to utilize opportunities before them because if there's no capability among people there will be no use of opportunities. Hence, home is essential for making people capable (Daly, 1996).

It has been generally a set culture that development is counted on the basis of GDP and economic growth. In the contemporary parameters of development the rights based approach has been adopted according to which the well being of the human being has been assessed. It is very well accepted by the world that sustainable development is not possible without human rights. The right-based approach is assisted by the unanimous acknowledgment of the interdependence between human rights and development by the international community of nations. The Declaration on the Right to Development (DRD) 1986, has also endorsed the 7 indivisibility and interdependence of human rights. This Declaration has placed individual at the center of the development activities and it becomes an interconnection of different categories of human rights (Davis, 2007).

Conclusion

There have been suggestion and recommendations given in this thesis. The broad conclusion is that there are gaps in the existing research on housing especially on the right to housing firstly, it has not been made as right through which the homeless can claim secondly, the definition of housing is quite bleak and intermittent and also the marginal right to housing has been made overly procedural and programmatic which has kept its stake holders away from claiming it. The recommendations are many firstly, that the right to housing must be made as a constitutional right since the importance of housing has been clearly mentioned in this thesis. Secondly, there can be a homelessness alleviation cess on the similar lines of swach bharat cess for the generation of finance for the said purpose. The third recommendation is, as is also published in the 2017 economic survey by the central government to support the concept of Universal Basic Income (UBI). The last recommendation is to religiously utilize the concept of Corporate Social Responsibility (CSR) for the purpose of solving the issue of homelessness; it can be made as an obligation of the corporates to look after this problem (Ennew and Milne, 1990).

An analysis of the social and cultural conditions which brings the right to housing might be productive for the international and regional bodies which considers housing in light of nuanced forms of discrimination. The Inter-American system of human rights has provided the jurisprudence in the same lines of Indian jurisprudence. In

South Africa the Joe Slovo case is a brilliant example, which is an indication of the willingness of the judges to take a different approach to their Constitution. The right has not been embedded with the actual circumstances of deprivation and violation which portrays the lives of many people around the world, hence the legal interpretation of the right operates at a high level of abstraction.

It is clearly demonstrated by the available evidences that homelessness is the consequence of economic and social injustice in India. In the past decades homelessness has become rampant. The hypothesis of the research talks mainly about the existing law and the interpretation of right to housing's substantial inability to tackle the problem of homelessness as has been analyzed that housing is the base of other basic things. One of the chapters of the thesis discussed that the real development cannot be measured in terms of GDP rather in terms human well being. Therefore housing has a concrete role in the well being of human. Moreover, the society cannot run, if its people are exposed to extreme cold or hot climate and therefore prone to death. The state has to make its people participative in the development process and that cannot happen without principally caring the well being of the people. The rights based approach to housing highlights the requirement to address homelessness. Sadly, there is no concrete definition of homelessness.

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