

RIGHT TO SHELTER AS A FUNDAMENTAL HUMAN RIGHT

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1. Introduction:

Freedom equality and non-discrimination is the important principle of Universal declaration of human Rights 1948. According to Roscoe pound 'Right is an interned recognized, protected and enforced by Law. Right based notion is individual while goal based notion is collective one. Part III of Indian constitution represents the right based notion and part IV represent goal based. Article 21 of the Indian constitution recognizes the Right to life and personal liberty which includes right to health, right to life with human dignity, right to education ,right to shelter etc. The term adequate housing include: Legal Security; availability of service materials facilities and infrastructure, affordability, habitability, Accessibility, location; and culture adequate¹¹⁷

2. International Instruments¹¹⁸:

The Right to adequate housing is an important component of the right to live with dignity. "Adequate shelter and service are a basic right which place on obligation on Government to ensure their attainment by all people"²"The right to security of place recognizes the importance of tenure right (for tenure owner and those too poor to rent or buy a home) and the critical right to be protected against any arbitrary or forced eviction from one's home the right to adequate housing is the most compressively elaborated in article 11(1) of ICESCR.....India's Commitment to adequate housing under the ICESCR explicitly precludes the practice of forced eviction **General comment 7 of the committee on Economics, Social, and culture** right recognizes this Abrogation of liberty justice security and privacy as violation of human right law.

The UN commission on human rights has also recognized forced eviction as Gross violation of human right, particularly the right to housing.³ Although **India's constitution** does not explicitly refer to the right to adequate housing.³ It is recognized and guaranteed as a subset of other **fundamental rights Aricle21** Provide that no person be deprived of his life and personal

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¹¹⁷ Right to shelter as a fundamental human right

¹¹⁸ International Instruments , The list of international instruments ratified by India that protect the Right to Housing Include:- ICESCR, CEDAW, CRC, (International Covenant on civil And political rights (ICCPR) and Convention on the Elimination of all forms of Racial Discrimination (CERD). Kothari 2003 the human right to adequate housing India's commitment and the struggle toward realization NEW DELHL-Journal of the NHRC Vol-2:136

liberty the supreme court of firms that The right to adequate shelter is a constitutional guarantee because the practice of forced eviction result in the loss of livelihood, it is prime facie transgression of Article 21.⁴

3. Rights of slum dwellers:

The Supreme Court on the issue of right to shelter division Bench of the Gujarat High *people union for civil liberties v/s state of gujrat*¹¹⁹ made following observations: “.....We are aware that law is heartless and therefore, it require medium of mercy implement it, we do not think that in balancing right of individual and society we would be less kind and merciful towards the section which justify deserves it. *Indira sowhney v/s union of india*¹²⁰, The Apex court has clarified that the expression “Weaker Section” of the people is wider than the expression “Back Word class” of citizens, which is only a part of the weaker section. Backward classes Comprise only those which socially or economically backward¹²¹. the term weaker section do not necessarily refer to a group or class can notes all section of society which are rendered weaker due to various causes e g Poverty, natural, calamity or physically handicap. The state has other duties in view of this provision, one thing is certain so far as right to work, to Education and to public assistance in case of unemployment are concerned Article 41 refer to limits of its economic Capacity therefore while security right to work, to education and to public assistance, economic capacity is require to be Considered.

4. Shelter is fundamental to human rights.

Lack of adequate shelter affects, directly or indirectly, all of these other rights¹²².

- Right to an adequate standard of living.
- Right of access to safe drinking water and sanitation.
- Right to the highest attainable standard of physical and mental health.
- Right to a safe and healthy environment.
- Right of the child to an environment appropriate for physical and mental development.
- Rights of access to resources, including for cooking, heating and lighting.
- Right to freedom from discrimination in access to housing and related services based on sex, race or any other status.

¹¹⁹AIR1994 Supreme court

¹²⁰AIR1992 Supp(3)scc21

¹²¹ Constitution of India 1950, Article 21 defines the basic rights of everyone, Press and People – A manual of Human Rights Reporting in India-Right to Shelter.

- Right to choose where and how to live and to freedom of movement.
- Right to privacy.
- Right to security, including security of tenure.
- Right to protection from forces eviction and from the destruction /demolition of one's home in all situations, including military occupation, armed settlements, population transfer and development projects.
- Right to equal protection of the law and judicial remedies for the redress of the violation of the human right to adequate housing.

5. Rehabilitation of slum dwellers:

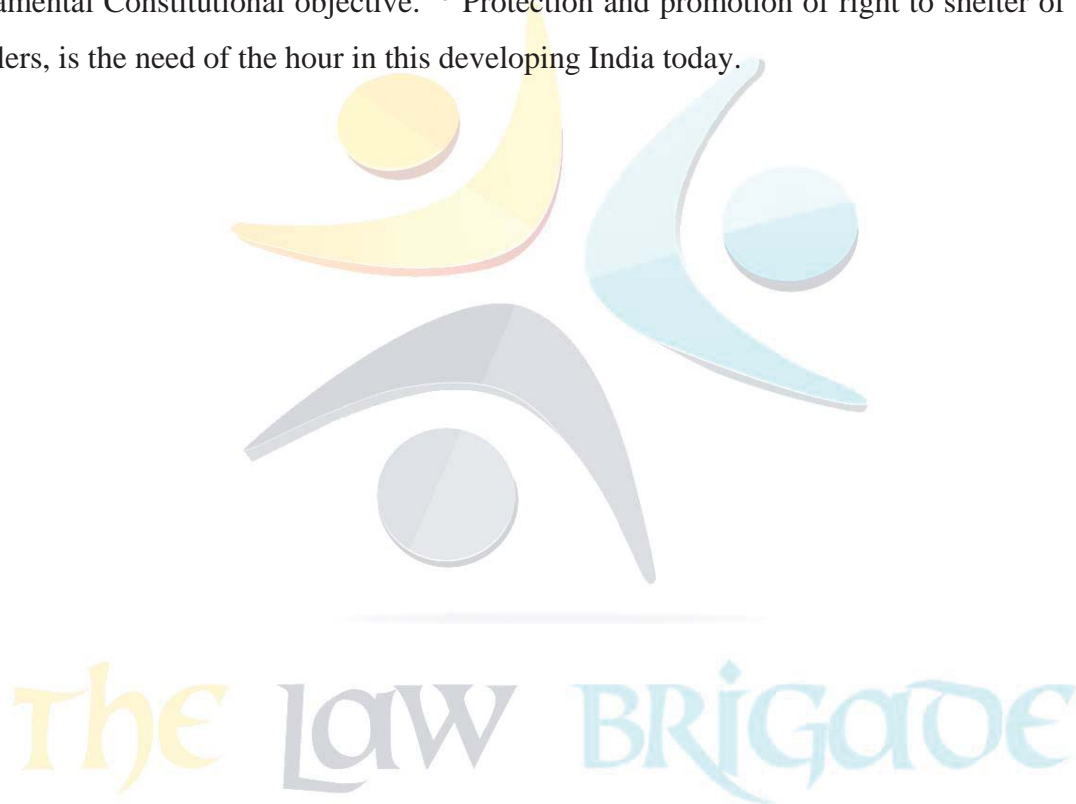
The Afzulpurkar committee¹²³ estimated that the slum and hutment dwellers of unauthorized structures form an integral part of this vibrant metropolis. All of them and undoubtedly have a share in the growth, status and prosperity of this great city They have had and continue to have a share in building up and maintaining the commercial , industrial and economic importance of Brihan Mumbai A large percentage of them belong to the scheduled casts and scheduled tribes we cannot be oblivious of the fact that slum dwellers have not willingly chosen their shanty structures and unhygienic environment but have been driven to this option due to compelling circumstances as they were threw out of formal housing sector latter being unaffordable and much beyond their income levels it is imperative to enhance their standard of living and for which an authorized dwelling unit is a first step in right direction this will bring about a marked improvement in their hygiene and health as well as raise the level of public hygiene which has fallow for lifting them from their present levels, cross substitution of the cost of dwellings Units and allotting them free of charge, though not supported by housing philosophy had become necessity and a given situation, The slum dweller deserve it se preferential –probably Unequal treatment to bring them in to the mainstream of the social, culture, and economic fabric of this pulsating city .The study group has relied on this philosophy that: “If inequality has to be remove, there have to be unequal rules”¹²⁴.

6. Conclusion:

¹²³ AIR Afzulpukar committee report 1995

¹²⁴ <http://www.sra.gov.in>

Article 14, 21 and 15 of Indian constitution gives guarantee of substantive equality, obliging the state to take affirmative action in facilitating opportunities for the disadvantages and prohibiting discrimination on the ground of religion, race, caste, sex or place of birth read together this provision not only prohibit the exclusion of those marginalized from basic housing needs and land rights, but also implicate state action in redressing these deprivations. The right to adequate housing is an important component of the right to Equality. It is linked with our social and economic rights-the one set of rights providing some of the context within which the other set can stand. The Indian Supreme Court has placed great emphasis on guaranteeing housing right as part of the larger goal of achieving social and economics, which is also a fundamental Constitutional objective.¹²⁵ Protection and promotion of right to shelter of slum dwellers, is the need of the hour in this developing India today.



¹²⁵ Right to housing, Articles by Jayne Kothari 2001. Published by India Together.