

# KNOW YOUR RIGHTS

RIGHT TO ADEQUATE SHELTER



National Human Rights Commission

**Know Your Rights Series**

**RIGHT  
TO  
ADEQUATE SHELTER**



**National Human Rights Commission  
Faridkot House, Copernicus Marg  
New Delhi-110001**

## **Know Your Rights Series:**

### **Right to Adequate Shelter**

This publication is intended to assist a wide audience to achieve a better understanding of the basic human rights.

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# RIGHT TO ADEQUATE SHELTER

## INTRODUCTION

The human right to housing is the right to live in adequate shelter in security, peace, and dignity. The right to housing is not merely having a roof over one's head; rather, it requires an accessible habitable space that fulfils the basic needs of humans to personal space, security, adequate lighting and ventilation, safe infrastructure, protection from weather, and adequate location with regard to work and basic facilities– all at a reasonable cost. As described above, multiple elements are required in order to ensure that people are able to live in safe and healthy housing and habitats. Providing affordable **adequate** housing for all should be the government's priority. A shift in outlook that recognises the inter-related nature of human rights – both economic, social and cultural rights as well as civil and political rights – and a shift from a project-based commodity approach to a human rights-based approach would help reach the goal of adequate housing for all.

### ***Homelessness- What is it?***

*Homelessness* is the condition and social category of people who lack housing, because they cannot afford, or are otherwise unable to maintain, a regular, safe, and adequate shelter.

### ***Who are Homeless?***

*A homeless person is defined into three categories:*

In general it is said about an individual who lacks a fixed, regular, and adequate night time residence; and an individual who has a primary night time residence that is:

1. A publicly supervised or privately operated shelter designed to provide temporary living accommodation (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
2. An institution that provides a temporary residence for individuals intended to be institutionalized; or
3. A public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings.

## Homelessness- The Fact

Housing is a basic human need, yet the statistics of *United Nations Commission on Human Rights* in 2005 notes that an estimated **100** million people i.e. one-quarter of the world's population, live without shelter or in unhealthy and unacceptable conditions.

## Homelessness in India

With a population of well over 1 billion people, India is the second most populous nation in the world. According to **UN-HABITAT**, India is home to 63% of all slum dwellers in South Asia. This amounts to 170 million people, 17% of the world's slum dwellers. India's per capita income, although rising, rank's it **124th** in the world. This low per capita income is one factor that marks the sharp divide between India's wealthiest and poorest citizens. Approximately 35 % of India's 260 million people (a group almost equal to the entire population of the United States) still earns \$1 or less a day. As India continues to grow in economic stature, there's much debate over the country's ability to tackle poverty and urban homelessness. Census 2001 reported that 78 million people across India were living without a home, many in overcrowded urban environments.

## Factors Contributing to Homelessness

A wide array of factors contributes to homelessness, but they can be thought of as falling into one of two categories: *structural problems* and *individual factors that increase vulnerability*.

### Structural problems

- Lack of affordable housing
- Changes in the industrial economy leading to unemployment
- Inadequate income supports
- The de-institutionalization of patients with mental health problems and the erosion of family and social support.
- Factors that increase an individual's vulnerability
  - Physical or mental illness

- Disability
- Substance abuse
- Domestic violence
- Job loss

Reducing *homelessness* will mean addressing issues such as these.

Since *homelessness* is a concept which covers a broad range of people and circumstances, factors that contribute to homelessness are also broad. They include:-

1. Poverty: - Homelessness and poverty are linked together. Poor people are not in a position to pay for housing, food, child care, health care, and education.
2. Drug Addiction: - Data indicates that alcohol and drug abuse are excessively high among the homeless inhabitants. People who are poor and addicted are obviously at augmented risk of homelessness.
3. War: - It causes unexpected homelessness.
4. Unemployment: - unemployment leads to loss of income and may lead to homelessness.
5. Divorce: - Anyone in a family whether mother, father or child can become homeless due to separation. Single parents with dependent children are mostly at risk of homelessness.
6. Natural disaster: - Cyclone, Tsunami and other calamities lead to destruction of homes and families get dislocated and suffer homelessness.

## **INTERNATIONAL LEGAL OBLIGATIONS**

India's international legal obligations with respect to the right to adequate housing are set out in a body of binding international treaties, which India has ratified. These instruments include: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International

Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a signatory to these conventions, India is obligated to ensure that the economic, social and cultural rights set out in each of them are promoted and protected in Indian society.

General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (CESCR) on “The right to adequate housing” sets out minimum core obligations towards the right contained in Article 11(1) of the ICESCR that must be immediately fulfilled. These minimum core obligations are as follows:

- ***Legal Security of Tenure:*** There should be protection against forced eviction and harassment.
- ***Availability of services, materials, facilities and infrastructure:*** There must be made available facilities essential to health, security comfort and nutrition. These facilities include, but are not limited to, safe drinking water, sanitation, washing facilities and energy for cooking, heating and lighting.
- ***Affordability:*** Expenditures for housing should be commensurate with income levels. Basic needs should not be compromised.
- ***Habitability:*** There should be adequate space and protection from the elements. Conditions conducive to disease and structural hazards should be eliminated.
- ***Accessibility:*** All should have access to adequate housing. The government must ensure that everyone has access to a secure place to live in peace and dignity
- ***Location:*** Adequate housing must allow for access to employment options (the right to livelihood), healthcare, schools and other social services.
- There must not be excessive financial or temporal demands on the household in respect to transportation.
- ***Cultural Adequacy:*** The housing configuration must not compromise cultural expression.

Resource constraints do not in any way eliminate a State's obligation



to fulfil these minimum levels of rights. To this end, General Comment No. 3 of CESCR (The nature of States Parties obligations) instructs that ensuring the “*Minimum essential levels of each of the rights are incumbent upon every State party. Thus, for example, a State in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant...even where the available resources are demonstrably inadequate, the obligation remains for a State party.*”

Furthermore, the Covenant calls for progressive realisation of all rights, which is elucidated in General Comment 3:

*“It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”*

Apart from the legally binding international human treaties (Annex. A) is the body of declarations, recommendations and resolutions (Annex. B). These are generally documents of intent often perceived as “soft law,” and in most cases do not create legally binding obligations on the countries that have signed them. In some instances, a declaration and/or recommendation may gain the force of binding law if its contents are widely accepted by the international community.

Accordingly, the courts, the legislature and executive bodies must abide by international law in their decision-making, policies and practices.

Apart from women and children, the human right to adequate housing and land has been provided in international law for historically marginalised and discriminated groups, who deserve specific attention. Some of the relevant international human rights documents pertaining to **special groups** are mentioned below.

## **A. Migrant Workers**

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

- International Labour Organization Convention on Migrant Workers, 1949
- International Labour Organization Social Policy (Non-Metropolitan Territories) Convention, 1947

## **B. Older Persons**

- General Comment No. 6: 'The economic, social and cultural rights of older persons', Committee on Economic, Social and Cultural Rights, 1996;
- United Nations Principles for Older Persons, 1991, General Assembly resolution 46/91;
- Integration of older women in development, 1994, General Assembly resolution 49/162.

## **C. Persons with Disabilities**

- General Comment No. 5: Persons with disabilities, Committee on Economic, Social and Cultural Rights, 1994
- The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2005, Commission on Human Rights resolution 2005/24
- Declaration on the Rights of Disabled Persons, 1975, General Assembly resolution 3447 (XXX)

## **D. People Living with HIV/AIDS**

- International Guidelines on HIV/AIDS and Human Rights, 1997, UN Commission on Human Rights resolution 1997/33
- The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), 2005, Commission on Human Rights resolution 2005/84
- Declaration of Commitment on HIV/AIDS, 2001, General Assembly resolution S-26/2

## **E. Minorities (including religious, linguistic, descent-based)**

- International Convention on the Elimination of All Forms of Racial Discrimination
- Article 27, International Covenant on Civil and Political Rights, 1966
- General Comment No. 23: Article 27 (Rights of minorities), Human Rights Committee, 1994
- General Recommendation No. XX on article 5 of the Convention, Committee on the Elimination of Racial Discrimination, 1996
- General Recommendation No XXIX on article 1, paragraph 1 of the Convention (Descent), Committee on the Elimination of Racial Discrimination, 2002
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, General Assembly resolution 47/135
- Durban Declaration, 2001, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001
- Rights of persons belonging to national or ethnic, religious 2005, Commission on Human Rights resolution, 2005/79

## **F. Indigenous Peoples**

- United Nations Declaration on the Rights of Indigenous Peoples, 2006
- International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989
- General Recommendation No. XXIII on the rights of indigenous peoples, Committee on the Elimination of Racial Discrimination, 1997
- Human rights and indigenous issues, 2005, Commission on Human Rights resolution 2005/51

## **G. Non-nationals/Non-citizens**

- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live, 1985 General Assembly resolution 40/144

## **H. Internally Displaced Persons**

- Principle 14, 18, Guiding Principles on Internal Displacement, 1998, Commission on Human Rights
- Copenhagen Declaration, 1995, World Summit on Social Development

## **NATIONAL LEGAL OBLIGATIONS**

India has certain constitutional provisions and laws that make it obligatory for the state to provide the right to adequate housing to all its citizens. The Constitution of India is firmly grounded in the principles of liberty, fraternity, equality and justice. The list of constitutional provisions that have a bearing on the right to adequate housing including women's and children's rights to adequate housing, are:

### **A. Fundamental Rights**

- a. Equality before the law (Article 14)
- b. Non-discrimination on grounds of religion, race, caste, sex, place of birth (Article 15 (1))
- c. Special provisions in favour of women and children based on the principle of protective discrimination (Article 15 (3))
- d. Equality of opportunity in matters relating to employment or appointment to any office under the State (Article 16)
- e. Freedom to move freely throughout the territory of India (Article 19(1) (d))
- f. Freedom to reside and settle in any part of the territory of India (Article 19 (1) (e))
- g. Right of all citizens to practice any profession, or to carry on

any occupation, trade or business (Article 19 (1) (g))

h. Right to life and personal liberty (Article 21)

## **B. Directive Principles of State Policy**

- a. State policy to be directed to securing for both men and women equally, the right to an adequate means of livelihood (Article 39 (a))
- b. State policy to be directed to ensure equal pay for equal work for both men and women (Article 39 (d))
- c. State policy to be directed towards securing that the health and strength of workers, men and women and children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Article 39 (e))
- d. State policy to secure equal justice and free legal aid to ensure that opportunities of securing justice are not denied to any citizen (Article 39-A)
- e. Provisions to be made by the State for securing just and humane conditions of work and for maternity relief (Article 42))
- f. State to secure a Uniform Civil Code for the citizens (Article 44)
- g. Duty of the State to raise the level of nutrition and the standard of living and to improve public health (Article 47)
- h. State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another (Article 51 (c))

## **C. Fundamental Duties**

- A fundamental duty of the State and all citizens to renounce practices derogatory to the dignity of women (Article 51(A)).

## **D. Legal Right to Property**

- No man or woman shall be deprived of their right to property by the State except by authority of law (Article 300-A).

## Pronouncements/ Decisions of Apex Court

In **Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545** the court held that the right to life included the right to livelihood. The petitioners contended that since they would be deprived of their livelihood if they were evicted from their slum and pavement dwellings, their eviction would be tantamount to deprivation of their life and hence be unconstitutional. The court, however, was not prepared to go that far. It denied that contention, saying:

No one has the right to make use of a public property for a private purpose without requisite authorisation and, therefore, it is erroneous to contend that pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon . . . If a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his use of the pavement would become unauthorised.

Later benches of the Supreme Court have followed the *Olga Tellis* dictum with approval. In **Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101**. The court held that the Municipal Corporation of Delhi had no legal obligation to provide pavement squatters alternative shops for rehabilitation as the squatters had no legal enforceable right.

In **Sodan Singh case (1989) 4 SCC 155** a constitution bench of the Supreme Court reiterated that the question whether there can at all be a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trade must be answered in the negative.

These cases fail to account for socioeconomic compulsions that give rise to pavement dwelling and restrict their examination of the problem from a purely statutory point of view rather than the human rights perspective.

Fortunately, a different note has been struck in a recent decision of the court. In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123** in the context of eviction of encroachers in a busy locality of Ahmadabad city, the court said:

Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39

and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status.

It positively charges the State to distribute its largesse to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make life worth living with dignity of person and equality of status and to constantly improve. Though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

## **EFFORTS OF THE GOVERNMENT IN PROVIDING SHELTER TO PEOPLE**

Housing is one of the components considered to be vital for human survival and, therefore, essential for socio-economic development. As part of the efforts to meet the housing needs of the rural poor, Government of India, is implementing **Bharat Nirman**. It is a **flagship Programme** to upgrade rural infrastructure in a time-bound manner.

### **Bharat Nirman Programme**

Rural Housing is one of the six components of Bharat Nirman Programme. Under Bharat Nirman Programme Phase-I, 60 lakh houses were envisaged to be constructed through Indira Awaas Yojana all over the country during the four years, i.e. from 2005-06 to 2008-2009. Against this target, 71.76 lakh houses were constructed with an expenditure of Rs.21,720.39 crore. It has now been proposed to double this target and to construct 120 lakh houses during the next five years period starting from the current year 2009-10.

### **Indira Awaas Yojana (IAY)**

Indira Awaas Yojana (IAY) is the flagship rural housing scheme. It was launched during 1985-86 as a sub-scheme of RLEGP. IAY, thereafter, continued as a sub-scheme of Jawahar Rozgar Yojana (JRY) since its

launching in April, 1989. 6% of the total JRY funds were allocated for implementation of IAY. From the year 1993-94, the scope of IAY was extended to cover below the poverty line Non-Scheduled Castes/ Scheduled Tribes families in the rural areas. Simultaneously, the allocation of funds for implementing the scheme was raised from 6% to 10% of the total resources available under JRY at the national level, subject to the condition that the benefits to Non-Scheduled Castes/ Scheduled Tribes poor should not exceed 4% of the total JRY allocation. IAY was de-linked from JRY and made an independent scheme with effect from 1st January 1996.

## Objective

The objective of the Indira Awaas Yojana is primarily to help construction/upgradation of dwelling units of members of Scheduled Castes/Scheduled Tribes, freed bonded labourers, **minorities in the below poverty line category** and other below poverty line non-SC/ST rural households by providing them a lump sum financial assistance.

## Target Group

The target groups for houses under the IAY are below poverty line households living in the rural areas, belonging to Scheduled Castes/ Scheduled tribes, freed bonded labourers, **minorities in the BPL category** and non-SC/ST BPL rural households, widows/ unmarried women those living below the poverty line and next-of-kin to defence personnel/ paramilitary forces killed in action residing in rural areas (*irrespective of their income criteria*), ex-servicemen and retired members of paramilitary forces fulfilling the other conditions.

## Funding

IAY is a Centrally Sponsored Scheme funded on cost sharing basis between the Government of India and the States in the ratio of 75:25 respectively. **However, in the case of North-Eastern States and Sikkim, funding will be shared between the Government of India and these States in the ratio of 90:10 respectively<sup>2</sup>.** In the case of Union Territories, the entire funds under this Scheme are provided by the Government of India.



## **Valmiki Ambedkar Awas Yojana (VAMBAY)**

The VAMBAY was launched in December 2001 to ameliorate the conditions of the urban slum dwellers living below the poverty line without adequate shelter. Equally important is the objective to provide not just shelter for the urban poor but also a healthy and enabling urban environment, to help them to come out of their poverty level.

The scheme has the primary objective of facilitating the construction and up-gradation of dwelling units for slum dwellers and providing a healthy and enabling urban environment through community toilets under Nirmal Bharat Abhiyan, a component of the scheme. The Central Government provides a subsidy of 50%, the balance 50% being arranged by the State Government.

The target group under the VAMBAY are slum dwellers in urban areas who are living below the poverty line including members of the Economic Weaker Section who do not possess adequate shelter. However, preference is to be given to people living below poverty line.

## **National Housing Bank (NHB)**

The Preamble of the National Housing Bank Act, 1987 describes the basic functions of the NHB as –

*“... to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto ...”*

NHB has launched a programme called Productive Housing in Rural Areas (PHIRA) under which a composite loan of Rs.70,000 will be extended, of which an amount to the extent of 30% is for the income generating activity and balance for construction of housing unit plus work area, including purchase of land.

## **National Urban Housing & Habitat Policy (NUHHP)**

The Scheme of Affordable Housing in Partnership aims at operationalising the strategy envisaged in the National Urban Housing &

Habitat Policy (NUHHP) 2007, of promoting various types of public-private partnerships – of the government sector with the private sector, the cooperative sector, the financial services sector, the state parastatals, urban local bodies, etc. – for realizing the goal of affordable housing for all. It intends to provide a major stimulus to economic activities through affordable housing for the creation of employment, especially for the construction workers and other urban poor who are likely to be amongst the most vulnerable groups in recession. It also targets the creation of demand for a large variety of industrial goods through the multiplier effect of housing on other economic activities.

### **Jawaharlal Nehru National Urban Renewal Mission (JNNURM)**

JNNURM, which is for a seven-year period from 2005-06, has two main components – Basics Services to the Urban Poor (BSUP) Programme and Integrated Housing & Slum Development Programme (IHSDP). BSUP was launched to assist cities and towns in taking up housing and infrastructure facilities for the urban poor in 63 selected cities in the country. IHSDP, which was launched simultaneously with BSUP in December 2005, is taking up housing and slum upgradation programmes in non-BSUP cities. A budgetary provision of Rs. 4,987 crore has been made in 2007-08 as against Rs. 4,595 crore in 2006-07.

## **Annexure A**

### **A. Binding Instruments**

- a. Article 12, 25(1), Universal Declaration of Human Rights, 1948
- b. Article 17, International Covenant on Civil and Political Rights, 1966
- c. Article 11 (1), International Covenant on Economic, Social and Cultural Rights, 1966
- d. Article 5, International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- e. Article 14, Convention on the Elimination of All Forms of Discrimination against Women, 1979
- f. Article 16.1, 19.1, 27, Convention on the Rights of the Child, 1989
- g. Article 9, International Labour Organization Social Policy (Non-Metropolitan Territories) Convention, 1947.

### **B. Guidelines/Principles/Declarations**

- a. General Comment No. 4, 'The Right to Adequate Housing' (Art. 11 (1) of the Covenant), Committee on Economic Social and Cultural Rights, 1991
- b. General Comment No. 7, 'The Right to Adequate Housing: Forced Evictions'[Article 11 (1) of the Covenant], Committee on Economic Social and Cultural Rights, 1997
- c. General Recommendation No XIX: Article 3 of the Convention, Committee on the Elimination of Racial Discrimination, 1995
- d. United Nations General Assembly resolution 43/181, United Nations Global Strategy for Shelter to the Year 2000, 1998
- e. Housing and property restitution in the context of refugees and other displaced persons, Sub-Commission on Human Rights resolution 2002/7
- f. Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, 2005, Commission on Human Rights resolution 2005/25
- g. Forced Evictions, Commission on Human Rights resolution 1993/77, 1993
- h. Declaration on Social Progress and Development, 1969 General Assembly resolution 2542 (XXIV)
- i. Article 8, Declaration on the Right to Development, 1986, General Assembly resolution 41/128
- j. Principle 1, United Nations Principles for Older Persons, 1991, General Assembly resolution 46/91
- k. Article 21, Convention relating to the Status of Refugees, 1951
- l. Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat I), 1976

- m. The Istanbul Declaration and the Habitat Agenda, Second United Nations Conference on Human Settlements (Habitat II), 1996
- n. Article 10, Plan of Implementation, United Nations World Summit on Sustainable Development, 2002
- o. Principle 18, Guiding Principles on Internal Displacement, 1998, Commission on Human Rights
- p. Guideline 18, UN Comprehensive Human Rights Guidelines on Development-Based Displacement, 1997, adopted by the Expert Seminar on the Practice of Forced Evictions, Geneva
- q. International Labour Organization Recommendation No. 115 concerning Worker's Housing, 1961
- r. Article 43.1, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- s. Basic principles and guidelines on development-based evictions and displacement, March 2006 (Commission on Human Rights, E/CN.4/2006/41)
- t. The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement, adopted by the Expert Seminar on the Practice of Forced Evictions Geneva, 11–13 June 1997
- u. Voluntary Guidelines for the Progressive Implementation of the Right to Food, World Food Summit 2002 (adopted in 2004)

v. Agenda 21, Chapter 7 – Promoting Sustainable Human Settlement Development – adopted at the United Nations Conference on Environment and Development, 1992.

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Right to adequate shelter

