

HUMAN RIGHTS LAW AND THEORY
INTERNAL ASSESSMENT – RESEARCH PAPER

**“HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF
HOMELESSNESS”**

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ABSTRACT

The importance of the right to housing has increased drastically as a paramount social and economic liberty. People experiencing homelessness lack assurance of protected, acceptable, and durable housing, along with the resources to obtain it. Public administration with the relevant powers bears a key part in managing and handling the country, contributing immensely to societal development, law enforcement, and policy enactment. One of its responsibilities is the sustenance of homeless individuals, addressing their lack of shelter, food, and clothing, and facilitating their integration into society. This paper examines the potential of international human rights as a strong tool against the injustices faced by the homeless, studying the circumstances in India and the nation's procedures for such challenges.

INTRODUCTION

Even in nations with ample financial resources, the rise of homelessness has grown into a global human rights concern. Yet, States have rarely addressed this form of a human rights violation and have largely refrained from taking on liability for it, especially for something that necessitates proactive steps on their part to prevent and eradicate it. Being homeless signifies more than simply a state's inability to provide suitable shelter for its citizens; it also implicates a situation for them where they are unable to exercise their other human rights as well. An individual's right to the "highest attainable standard of health" is undermined when they are exposed to homelessness, for example, as it significantly impacts their physical well-being¹. Furthermore, the frigid temperatures in various parts of India claims several hundred lives each year, which are premature and avoidable, demonstrating how the State has fallen short of upholding the right to life of such individuals². Such right encompasses elements that transcends mere survival, since all individuals has the right to live a life of dignity³.

Violence, incarceration, and aggressive measures are often used to combat the stigma attached to homelessness which further infringes on the rights of the homeless. In addition, the lack of "an official address" is another basis for discrimination against these individuals, which has an impact on their social, political, and economic rights, including the ability to vote, work, getting social benefits, and so on. Seldom do States and Courts recognize the need to incentivize public authorities to take reasonable action to end homelessness, and only a very small number of them have laws that enable homeless persons to seek access to adequate housing.⁴

Definition of Homelessness

It is widely assumed that homelessness is merely a problem with securing a place to reside, but homelessness involves much more than that. The loss of social connection and marginalization that a homeless person experiences goes unacknowledged if its meaning is reduced to the

¹ ICESCR, art. 12.

² MINT, <https://www.livemint.com/news/india/delhi-ngo-claims-106-homeless-deaths-due-to-cold-in-january-11642939170594.html>,

³ India Const. art. 21.

⁴ United Nations High Commissioner for Human Rights, *Homelessness and human rights: Special Rapporteur on the right to adequate housing*, <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights>.

simple deprivation of physical shelter. It should be highlighted that based on the socioeconomic circumstances, the impacted communities, language, traditions and customs in a particular culture, and the reason for which it is being defined, governments, international bodies, researchers, and even civil society adopt diverse definitions. As a result, the term "homelessness" lacks a globally recognized definition⁵. In 2004, the United Nations Economic and Social Affairs division defined a homeless household for statistical reasons as “households that would be considered living quarters but lack a shelter. With their minimal material possessions, they sleep in sporadic locations such as doorways, piers, streets, and other places⁶.”

It becomes crucial to mention here that at the 2009 "United Nations Economic Commission for Europe, Conference of European Statisticians (CES)", a group of specialists in housing and population censuses divided the homeless population into two main groups: primary homelessness, sometimes known as “rooflessness”, as well as a category termed secondary homelessness⁷. In the former, those without a place to live are included, whereas in the latter, those without a fixed address who frequently migrate between different accommodations are included⁸. The CES acknowledged that, nevertheless, this method did not offer a precise definition of homelessness.

If a person lacks sufficient access to a secure space to reside that would enable them to live in dignity and peace, the "United Nations Committee on Economic, Social, and Cultural Rights" classifies them as homeless⁹. The European Federation of Organizations Working on Homelessness (FEANTSA), the Secretary-General of the United Nations, the Institute of Global Homelessness, and other organizations all share some further descriptions of homelessness that have been used by UN Habitat¹⁰. It includes: "people living in women's shelters, camps, or other temporary accommodations provided to internally displaced persons,

⁵ Esteban Ortiz-Ospina and Max Roser, *Homelessness*, OUR WORLD DATA, (2017), <https://ourworldindata.org/homelessness>.

⁶ United Nations, Department of Economic and Social Affairs Statistics Division, Demographic and Social Statistics Branch, *United Nations Demographic Yearbook Review: National Reporting of Household Characteristics, Living Arrangements and Homeless Households*, U.N. Doc. ESA/STAT2004/6 (Apr. 14, 2004).

⁷ Group of Experts on Population and Housing Censuses, *Enumeration of Homeless People*, UNECE 1, 2-3 (2009).

⁸ *Id.*

⁹ CESCR, general comment No. 4, *adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights*, 1991.

¹⁰ Special Rapporteur on Adequate Housing, *Guidelines for the Implementation of the Right to Adequate Housing*, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).

refugees, or migrants; people living in severely inadequate and insecure housing, such as residents of informal settlements; people living in the streets, in open spaces, or in cars¹¹.”

The United Nations recognized the problem of homelessness in both developing and established countries, impacting people from a variety of social, economic, and cultural backgrounds, in its report "Affordable Housing and Social Protection Systems for all to Address Homelessness¹²." The lack of a widely recognized definition of homelessness means that not much is known about the extent of this issue, which makes it more difficult to create persuasive plans and regulations to stop and control it.

INTERNATIONAL LEGAL STANDARDS

Given that homelessness is defined as the lack of a place where one is safe, it is imperative to ask the question that what are the kinds of human rights issues that can be raised? The first human right to be addressed is the right to an adequate place to reside. This is followed by other rights including the right to attain the best possible health, social security, education, life, liberty, and security standards; the right to vote; privacy; the enjoyment of culture and participation in it¹³; freedom of movement; freedom of association; freedom of expression; the right to be treated with humanity and dignity; and, at the end, the human right to non-discrimination. It is quite reasonable that not every homeless person would be denied access to all 13 of these fundamental rights, but it is highly likely that they would be unable to exercise at least one of them. In certain communities, there is also a substantial decrease in the likelihood that a homeless person will exercise all the aforementioned rights. The paragraphs that follow will address a few of these rights.

Right to Adequate Standard of Living

¹¹ *Id.*

¹² U.N. Secretary-General, *Affordable Housing and Social Protection Systems for all to Address Homelessness*, U.N. Doc. E/CN.5/2020/3 (Nov. 26, 2019).

¹³ Georgopoulos et al. v. Greece, Communication 1799/2008, Human Rights Committee, (July 10, 2020) <http://sim.law.uu.nl/SIM/CaseLaw/fulltextccpr.nsf/160f6e7f0fb318e8c1256d410033e0a1/579b76f009639c37c12578cb0049a150?OpenDocument>.

One right that almost certainly no homeless person has is the right to an adequate standard of living, which includes the rights to appropriate housing¹⁴, clothes, food, and living conditions. Article 27 of the Convention on the Rights of the Child ("CRC")¹⁵, Article 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW")¹⁶, Article 25(1) of the "Universal Declaration of Human Rights"¹⁷ ("UDHR"), Article 11(1) of the ICESCR¹⁸, Article 21 of the "Convention Relating to the Status of Refugees" ("CRSR")¹⁹, and Article 2 of the "Convention on the Rights of Persons with Disabilities" ("CRPD")²⁰ all guarantee this right. Moreover, denying these people access to food lowers their standard of health, which is against Article 12 ICESCR²¹, which states that the State recognizes each person's right to the "highest attainable standard of physical and mental health."

The United Nations estimates that over a billion people worldwide lack access to adequate housing, and that around 100 million individuals live without a place to call home.²² Everybody has the right to a sufficient standard of living for themselves and their families, regardless of their age, financial situation, membership in a particular group, or any other status or affiliation.²³ Whether or not someone has an acceptable housing situation depends on several factors, including affordability, legal security of tenure, accessibility, location, habitability, availability of facilities, materials, and infrastructure, as well as cultural adequacy.

Right to Life, Liberty, and Security

A person's right to human dignity is violated when they are labelled as homeless, as stated in Article 1 of the UDHR²⁴. Article 10 of the "International Covenant on Civil and Political Rights" (ICCPR) also states that such a violation takes place²⁵. Article 3 of the UDHR is

¹⁴ López Albán v. Spain, Communication 037/2018, Committee on Economic, Social and Cultural Rights [CESCR], (June 20, 2018), <https://juris.ohchr.org/Search/Details/2606>.

¹⁵ CRC, art. 27.

¹⁶ CEDAW, art. 14, § 2.

¹⁷ UDHR, art. 25, § 1.

¹⁸ ICESCR, art. 11, § 1.

¹⁹ CRSR, art. 21.

²⁰ CRPD, art. 2.

²¹ ICESCR, art. 12.

²² The Right To An Adequate Standard Of Living, ICELANDIC HUMAN RIGHTS CENTRE, <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living>.

²³ Ben Djazia & Bellili v. Spain, Communication 005/2015, Committee on Economic, Social and Cultural Rights [CESCR], (Feb 20, 2015), <https://juris.ohchr.org/search/details/2407>.

²⁴ UDHR, art. 1.

²⁵ ICCPR, art. 10.

violated when it comes to a homeless person's right to life, liberty, and security²⁶. Articles 6 of the CRC²⁷ and the ICCPR²⁸ also follows on this facet. The court decided in *Victoria (City) v. Adams* that "the prohibition on taking refuge in public jeopardized an individual's life, liberty, and security," and that such "prohibition does not adhere to the fundamental justice principles because it is excessive and arbitrary²⁹."

It is not difficult to imagine that being homeless will make people more open to assaults and unforeseen harassment, with women being particularly vulnerable to these forms of violence and abuse. As a result, the security of the individual is the next most crucial issue, and it is protected by Article 9 of the ICCPR³⁰. In addition, the UDHR's Article 22 guarantees the right to social security, which is crucial for those who are homeless³¹.

Right to Non-Discrimination

There are safeguards in place to ensure that someone cannot be treated discriminatorily simply because they cannot afford housing. A person's social, economic, and cultural rights should be "exercised without any discrimination of any kind as to... national or social origin, property, birth or other status," which includes the person's housing status, according to Article 2(2) of the ICESCR³², requiring the State to guarantee this. Both Article 5³³ of the "Convention on the Elimination of All Forms of Racial Discrimination" (CERD) and Article 26 of the ICCPR³⁴ also recognizes this.

Right to Vote

Even though a homeless person is legally entitled to vote under Article 21 of the UDHR³⁵, if the situation is attempted to be understood practically, the person may not be able to exercise that right. According to projections made in 2020, as few as 1 in 10 homeless persons in the

²⁶ UDHR, art. 3.

²⁷ CRC, art. 6.

²⁸ ICCPR, art. 6.

²⁹ (2009) BCCA 563 (Canada).

³⁰ ICCPR, art. 9.

³¹ UDHR, art. 22.

³² ICESCR, art. 2, § 2.

³³ CERD, art. 5.

³⁴ ICCPR, art. 26.

³⁵ UDHR, art. 21.

US are registered to vote³⁶. A homeless person finds it extremely difficult to enrol and provide identification, which is the reason for this ratio. Moreover, they will need to have their enrolment updated prior to each election because they frequently change their addresses.

HOMELESSNESS IN INDIA

As per the 2011 census report, India has 17,73,040 homeless individuals, consisting of 10,46,871 men, 7,26,169 women, and 2,70,605 children within them.³⁷ This demonstrates unequivocally the startlingly high number of homeless persons in the nation. These people are the victims of the State's incapacity and carelessness in not providing them with shelter, which exposes them to severe weather, starvation, a lack of access to healthcare, and other issues that lead to thousands of deaths annually.

The right to "equality before the law or the equal protection of the laws" is guaranteed to all people by Article 14 of the Indian Constitution,³⁸ and one such right is the ability to house the homeless. The freedom to live and settle wherever in the nation that Article 19 guarantees is therein being violated.³⁹ Indian courts have ruled in multiple cases that the Article 21 right to life,⁴⁰ includes the right to food, water, shelter, electricity, hygienic conditions, and a means of subsistence.⁴¹ Moreover, the Indian Constitution's Articles 38,⁴² and 39⁴³ are also broken because they address the obligation of the State to ensure the welfare of its people.

Nonetheless, there are several state-sponsored initiatives and plans with favourable provisions for marginalized groups, including those with disabilities. For example, the "Pradhan Mantri Awas Yojana" oversees giving housing preference to people who identify as minorities, women, transgender individuals, manual scavengers, people with disabilities, and members of Scheduled Castes, Tribes, and Other Backward Classes.⁴⁴ In a similar vein, the "Smart Cities

³⁶ U.S. NEWS, <https://www.usnews.com/news/cities/articles/2020-10-15/as-few-as-1-in-10-homeless-people-vote-in-elections-heres-why>, (last visited Oct. 29, 2022).

³⁷ The Office of Registrar General & Census Commissioner India, Ministry of Home Affairs, India, Census 2011, (2011), <https://censusindia.gov.in/census.website/data/population-finder>.

³⁸ INDIA CONST. art. 14.

³⁹ INDIA CONST. art. 19.

⁴⁰ INDIA CONST. art. 21.

⁴¹ Millennium Educational Trust v. State of Karnataka, ILR 2013 KA 1452; Pani Haq Samiti v. Brihan Mumbai Municipal Corporation, MANU/MH/2705/2014.

⁴² INDIA CONST. art. 38.

⁴³ INDIA CONST. art. 39.

⁴⁴ PRADHAN MANTRI AWAS YOJANA: HOUSING FOR ALL (URBAN), (Govt. of India 2015).

Mission," an additional central government urban renewal and retrofitting initiative, seeks to develop "barrier-free" inclusive cities for "universal access."⁴⁵ However, the issue with these schemes is that they don't specifically forbid discrimination against homeless people or offer any kind of remedy.

Indian Judiciary

The Supreme Court has repeatedly noted how the State has failed to uphold the rights of those who are homeless. The Karnataka High Court examined whether the State had violated the right to life of the urban homeless as guaranteed by Article 21 of the Indian Constitution by neglecting to provide them with basic shelter in the case of PUCL v. Union of India.⁴⁶ The Dr. Ashwani Kumar v. Union of India case followed,⁴⁷ in which the Court clarified what the right to life entails as "right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings".

The Supreme Court directed the "Ministry of Housing and Urban Affairs" to establish a committee and begin an inspection of the homeless shelters that are available in each State or Union territory through a writ petition.⁴⁸ Verifying that the shelters have been operating in accordance with the "Scheme of Shelters for Urban Homeless" under the "National Urban Livelihoods Mission" would also fall under the purview of the committee.⁴⁹ In addition, it will investigate the reasons behind the slow construction of shelter housing, the non-utilization and/or diversion of funds, and it will provide the State Governments with the necessary recommendations to ensure that the homeless have access to temporary shelters, particularly during the winter months.

⁴⁵ SMART CITIES MISSION (Govt. of India 2015).

⁴⁶ AIR 1997 SC 568.

⁴⁷ (2020) 8 SCC 808.

⁴⁸ E.R. Kumar v. Union of India, (2016) Writ Petition (Civil) No. of 55 of 2003.

⁴⁹ SCHEME OF SHELTERS FOR URBAN HOMELESS (OPERATIONAL GUIDELINES): NATIONAL URBAN LIVELIHOODS MISSION (Govt. of India 2013).

The Court's opinions on handling cases involving forced evictions have been wildly divergent. In *Sudama Singh v. Government of Delhi*,⁵⁰ the Delhi High Court, on the one hand, mandated that the government provide alternative housing to those facing eviction. On the other hand, the Gujarat High Court stated in *PUCL v. State of Gujarat*⁵¹ that providing alternative housing might encourage "encroachers," so the government wouldn't have to.

Indian Legislature

India has numerous housing policies and programs that address the issue of providing enough housing for citizens. The first policy to be implemented to end homelessness was the "National Housing Policy of 1988".⁵² As a result, these people's housing circumstances were to be improved, and they were to receive basic services and amenities.⁵³ The "National Housing Policy of 1994" was created, centred on the overall development of the nation's rural and urban poor, because of the changes that occurred in the nation in 1991.⁵⁴

The nation's 8th five-year plan was then implemented,⁵⁵ which tasked the government with removing any obstacles to housing-related activities, expanding the availability of basic services, emphasizing the modernization and standardization of housing, and, finally, attending to the needs of those who are homeless. The Plan was followed by the "National Slum Development Programme of 1996,"⁵⁶ which included a section devoted to the construction and renovation of new homes in addition to focusing on infrastructure, education, and health care.

The government established guidelines in the "National Housing Policy of 1998"⁵⁷ to guarantee the availability of affordable, high-quality housing in addition to basic sanitary facilities and water supply. The "Jawaharlal Nehru National Urban Renewal Mission" was introduced in

⁵⁰ (2010) SCC OnLine Del 612.

⁵¹ (2001) 1 GLR 547.

⁵² THE NATIONAL HOUSING POLICY (Govt. of India 1988).

⁵³ *Id.*

⁵⁴ THE NATIONAL HOUSING POLICY (Govt. of India 1994).

⁵⁵ 8th Five-year Plan, Planning Commission of India, (Aug 3rd, 1992), http://14.139.60.153/bitstream/123456789/2056/1/EIGHTH%20FIVE%20YEAR%20PLAN%201992-97_D-7346.pdf.

⁵⁶ THE NATIONAL SLUM DEVELOPMENT PROGRAMME (Govt. of India 1996)

⁵⁷ THE NATIONAL HOUSING POLICY (Govt. of India 1998).

2005,⁵⁸ and it was succeeded by the "National Urban Housing and Habitat Policy" in 2007.⁵⁹ Both initiatives shared the same goals and objectives as the previous ones.

Administrative measures passed for the welfare of people are largely developed by the legislature. The proposed legislation known as the "Homeless Pavement Dwellers (Welfare) Bill, 2011"⁶⁰ requires the government to establish a nationwide welfare program for impoverished individuals who are homeless and live on the streets, also known as "pavement dwellers." This program must be administered uniformly throughout the country. Other bills that the Parliament introduced included the "Homeless Pavement Dwellers (Welfare) Bill, 2014"⁶¹ and the "Homeless Pavement Dwellers (Welfare) Bill, 2016,"⁶² but none of them were able to pass into law.

The "Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016"⁶³ was later drafted by the "Ministry of Social Justice and Empowerment," and it defined "persons in destitution" as those who were homeless and/or had physical or mental disabilities. The "Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016" was later drafted by the "Ministry of Social Justice and Empowerment," and it defined "persons in destitution" as those who were homeless and/or had physical or mental disabilities.

CONCLUSION AND SUGGESTIONS

Mumbai gained popularity as a slum tourist destination after the 2008 release of *Slumdog Millionaire*, which allowed visitors to see slum dwellers and the homeless in the open. This demonstrates the dire circumstances facing India's homeless population. Although there are many laws protecting and preserving the rights of the homeless, they are not always implemented well. One's perspective on homelessness is altered when it is discussed as a human rights issue. In addition to giving homeless people a sense of empowerment, it places moral responsibility on those in positions of authority to address this problem.

⁵⁸ THE JAWAHARLAL NEHRU NATIONAL URBAN RENEWAL MISSION (Govt. of India 1988).

⁵⁹ THE NATIONAL URBAN HOUSING AND HABITAT POLICY (Govt. of India 2007).

⁶⁰ The Homeless Pavement Dwellers (Welfare) Bill, 2011, Bill No. 4 of 2011, (Dec 7th, 2012).

⁶¹ The Homeless Pavement Dwellers (Welfare) Bill, 2014, Bill No. 27 of 2014, (Nov 28th, 2014).

⁶² The Homeless Pavement Dwellers (Welfare) Bill, 2016, Bill No. 10 of 2016, (Feb 26th, 2016).

⁶³ The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016.

A rights-based perspective also emphasizes how important it is to involve homeless people in the creation of relevant services. Put another way, the framework that has been proposed seeks to shift the rhetorical power from the State to the individual. I believe that the human rights framework should be used to examine homelessness. More significantly, human rights provide us with a framework and a language that can change the conversation from one of pity and welfare to one of rights and empowerment.

The worldwide crisis of homelessness is far more than just not having a place to live; it is a serious infringement of one's basic human rights. Notwithstanding the seriousness of the issue, a common understanding of homelessness is still unclear which makes it difficult to create practical solutions. The deliberate denial of internationally recognised human rights, including the right to an acceptable quality of life, life, liberty, and non-discrimination, to the homeless requires immediate action on a worldwide level. An analysis of the homelessness situation in India exposes a significant discrepancy between the intentions of the law and its actual application. The judiciary's recognition of the homeless people's right to life and dignity clashes with the difficulties in successfully implementing this right. Although legislative efforts such as the "National Housing Policy" and bills show that the government recognises the problem, their effectiveness is limited by the absence of clarity in anti-discrimination laws and the slow pace of execution. In order to tackle homelessness holistically, countries, especially India, need to embrace a rights-based strategy that gives the greatest importance to providing homeless people security, well-being, and dignity. It is crucial to address the underlying issues, such as prejudice and poverty, in addition to supplying shelter. Cooperation across borders is also essential for exchanging best practices and creating a cohesive action plan for homelessness as a worldwide human rights issue.

A combined effort from governments, civic society, and the international community is required to combat homelessness. The main goal should be to guarantee that each and every person may live with dignity and in accordance with their inalienable rights, free from the catastrophic stigma of homelessness. It is critical to go beyond hyperbole and put into place and enforce laws that take into account the complex issues that homeless people experience in order to create a society in which everyone has true access to human rights, not just those that are acknowledged on paper. In the end, to refer to Anne Coleman,⁶⁴ “a rights-based approach

⁶⁴ NCOSS Conference: Perspectives on Poverty, *Australian Human Rights Commission* (Oct. 17, 2007).

behooves us to recognise what has always been true. Homelessness is the result of social, economic, and political processes of which we are all a part and to which, to a greater or lesser degree, we are all vulnerable.”