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# AMU LAW SOCIETY REVIEW

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## **ABOUT AMU LAW SOCIETY REVIEW 2023**

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The AMU Law Society Review is the flagship journal of the Faculty of Law, Aligarh Muslim University, Aligarh (U.P.). It is an annual journal which provides an extensive platform for academicians, practitioners, researchers, and students to assimilate, exchange and extend their ideas to facilitate the debate on contemporary legal issues through their scholarly articles and research papers. The journal assumes an interdisciplinary orientation and is wide enough to include national as well as international legal and policy-based issues within its sweep. The Review has received enthusiastic responses over the years, having continually aimed at raising the bar of academic research with insightful and pertinent contributions to the legal discourse.

The Editorial Board, Law Society, Faculty of Law, Aligarh Muslim University is pleased to present the 2023 Edition of the annual AMU Law Society Review. AMU Law Society Review 2023 invited chapters in the form of Research Papers, Case Comments/Legislative Comments, Articles & Essays, Book Reviews and other such submissions for its flagship publication.

The AMU Law Society Review 2023 features a curated collection of academic works, systematically categorized to enhance the reader's engagement with diverse legal topics. The published pieces are grouped under key themes to provide a coherent flow of ideas. This edition includes sections on Cultural Heritage and Social Transformation, offering insights into the protection of intangible cultural heritage in armed conflicts and the broader role of law in societal change. Legal and Institutional Analysis features comparative studies on affirmative action, inclusivity in the workplace, and the effectiveness of the 'NOTA' voting option. The International Law and Trade section discusses the implications of sports industry dynamics on geopolitical conflicts, critiques of the UNCITRAL Model Law, and compliance issues with TRIPS in India. Furthermore, the Technology, Environment, and Law section delves into the impacts of blockchain, AI, green federalism, and the plight of climate refugees. Finally, Historical and Critical Studies provide a review of landmark legal histories and global trends in cryptocurrency regulation. This structured approach ensures a comprehensive exploration of contemporary legal issues, fostering enriched academic discourse.

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# RIGHT TO LIFE AND THE DOWNTRODDEN

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## ABSTRACT

*After the adoption of the Constitution of India, several fundamental rights were guaranteed to its citizens, most essential being the Right to Life and Personal Liberty under Article 21 of the Constitution. The Right to Life is considered to be most essential for a person's existence and makes an individual's life meaningful, complete and worth living. It is among other basic human rights without which an individual cannot experience growth and development. Over a period of time, the Apex Court expanded its ambit and came to rescue of the poor and underprivileged by including the right to livelihood, shelter, food, clothing and adequate housing into the Right to Life. This paper would examine the growth of Right to Life vis a vis the underprivileged and whether the State has been successful in fulfilling the Constitutional mandate by ensuring these fundamental rights to the weaker section of the society.*

**Keywords:** Indian Constitution, right to life, Apex Court, fundamental rights, underprivileged, society

## INTRODUCTION

The Constitution of India is the fountainhead of all laws. It is the longest written Constitution in the world and consists of 22 Parts and 12 Schedules. India being a diverse nation culturally, faces a number of issues and it is the duty of each organ of the State to ensure that laws protect the citizens of the nation equally irrespective of their status, religion, caste or colour.

Article 21 of the Constitution of India guarantees the right to life and personal liberty to every individual, citizen or an alien, which he cannot be deprived except in accordance with procedure established by law. The Right to Life is essential for our existence and it includes all main aspects which make an individual's life meaningful, complete and worth living. Article 21 or the Right to Life is considered to be the heart of Fundamental Rights in Constitution of India. This Article has been interpreted in many instances by the Supreme Court of India which eventually widened its scope and applicability to include other rights such as –

- Right to livelihood
- Right to shelter
- Right to clothing
- Right to health
- Right to pollution free air and water
- Right to live with human dignity

- Right to privacy etc.

According to census report 2011-12, around 270 million people were considered to be below poverty line. Whether we as nation have been able to ensure these basic fundamental rights to the underprivileged? This paper will examine the sweep of Right to Life so as to guarantee the right to food, clothing, shelter, livelihood etc by the Constitution of India, especially to the people belonging to the weaker section of the society.

## **SOURCES OF THESE RIGHTS**

**Article 21 of Constitution of India** – This important provision of Constitution states, “No person shall be deprived of his life and personal liberty except according to procedure established by law.”

According to Justice P.N Bhagwati, “Article 21 of the Constitution of India embodies a constitutional value of supreme importance in a democratic society”.

### **Directive Principles of State Policy**

**Article 39(a)** of the Constitution of India reads as “The State shall, in particular, direct its policy towards securing the citizens, men and women equally, the right to an adequate means to livelihood.”

**Article 41**, also one of the Directive Principles of State Policy states that “The State shall, within limits of its economic capacity and development, make effective provisions 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 46** also requires State to promote with special care the educational and economic interests of the weaker sections of the people, including that of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

### **International Covenants as incorporated into Protection of Human Rights Act, 1993<sup>211</sup>**

With the incorporation of two international covenants into definition of Human Rights under Protection of Human Rights Act, the provisions thereof have become enforceable. These covenants are International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the General Assembly of the United Nations adopted on 16<sup>th</sup> December, 1966.

Article 11 (1) ICESCR, which is relevant for the present purposes, reads as:

"The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

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<sup>211</sup> [www.mha.gov.in](http://www.mha.gov.in)

General Comment No. 4 to the Covenant expresses the view of the Committee on Economic, Social and Cultural Rights (CESCR):

"The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing."

In terms of General Comment 4, among the aspects of the right to adequate housing were: (i) legal security of tenure (ii) availability of services and materials, facilities and infrastructure (iii) affordability (iv) habitability (v) accessibility (vi) location and (vii) cultural adequacy.

### **JUDICIAL PRECEDENTS**

The judicial precedents, expanding the Right to Life, to include other rights, such right to shelter, food, clothing, livelihood, are mentioned below-

#### **Francis Coralie Mullin vs. U.T. of Delhi<sup>212</sup>**

The petitioner was a British national arrested for allegedly trying to smuggle hashish out of the country and was detained under section 3 of the Conservation of the Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA). She was not permitted to meet her lawyer and family. The Court, while setting aside these restrictions observed:

“But the question which arises is whether the Right to Life is limited only to protection of limb or faculty or does it go further and embrace something more. We think 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 and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable fair and just procedure established by law which stands the test of other fundamental rights.”

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<sup>212</sup> (1998)1SCC 608 - Writ Petition No. 3042 of 1980

### **Olga Tellis & Ors vs. Bombay Municipal Corporation<sup>213</sup>**

The petitioner, a journalist filed a suit for injunction in High Court of Bombay for quashing the orders of Bombay Municipal Corporation evicting the pavement and slum dwellers out of the city and demolish the structures raised for living.

Although the Court held that dwellings on pavements and slums created on public places were illegal and that no person had the right to encroach upon public places. However, while recognising their Right to Livelihood as a part of Right to Life under Article 21 of Constitution of India, the Court directed allotment of alternative sites to them not far away from places of their work. While interpreting the Right to Life, the Court observed that-

“The argument which bears on the provisions of Article 21 is elaborated by saying that the eviction of pavement and slum dwellers will lead, to the deprivation of their employment, their livelihood and, therefore, to the right to life in a vicious circle. The right to live and the right to work are integrated and independent on each other and therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his right to life is infringed and put in jeopardy. It is urged therefore that the economic compulsions under which these persons are forced to live in slums, jhuggis or on pavements impart to their occupation the character of a fundamental right”.

The Court considered whether Right to Life would include Right to Livelihood and observed that “The sweep of the right to life conferred by Article 21 is wide and far-reaching. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation”.

### **Shantistar Builders vs. N.K. Totame<sup>214</sup>**

The matter arose out of the writ petition filed by a section of people challenging the enhancement of prices for construction of flats on piece of land allotted to builder under the Urban Land (Ceiling & Regulation) Act, 1976. The surplus land originally was exempted under the said Act for housing purposes for the weaker section of the society.

While streamlining the allotment process, the Supreme Court deliberated on Right to Life and observed that the basic needs of all men are clothing, food and shelter and that these needs should be made inclusive within the Right to Life under Article 21 of the Constitution of India.

It was so laid down:

“Basic needs of man have traditionally been accepted to be three which are food, clothing and shelter. The right to life has been ensured and guaranteed in any civilised society. That would take within its sphere the right to food, the right to clothing, the right to decent environment along with a reasonable accommodation to reside in. The Constitution aims at ensuring the full

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<sup>213</sup> (1985)3SCC 545 - Writ Petition No. 4610-4612 of 1981

<sup>214</sup> (1990)1SCC 520 - Civil Appeal no. 2598 of 1989

development of every child. That would only 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 fire-proof accommodation”.

### **Chameli Singh vs. State of Uttar Pradesh<sup>215</sup>**

The petitioners in this case were the owners of the land which was compulsorily acquired by the Government of Uttar Pradesh for making housing facilities available for the weaker section of the society.

The Apex Court, while upholding the acquisition of land, held that the Right to Shelter was a fundamental right which came under the purview of Article 21 of the Constitution of India. It further explained that right to shelter did not only mean that there must be a roof over one’s head but all those basic amenities which would help an individual in his overall development. Hence these basic necessities forming right to shelter included pure water, clean air, adequate light, adequate living space and clean surroundings.

The Apex Court further stated –

“In any organised society, 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 develop himself and is freed from restrictions which inhibit his growth. Right to Life is guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights”.

While emphasising the duty of State to take measures for uplifting the weaker sections, the Court observed:

“The 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. 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, the State should be deemed to be under an obligation to secure it for its citizens of course subject to its economic budgeting. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional right.”

### **Ahmedabad Municipal Corporation vs. Nawab Khan Gulab<sup>216</sup>**

The appeal had arisen from a writ petition filed in the High Court of Gujrat by 29 pavement dwellers who were dwelling in an unauthorised manner at pavements and footpaths in Ahmedabad. The Ahmedabad Municipal Corporation had subsequently sought to remove these

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<sup>215</sup> (1996)2SCC 549 - Civil Appeal No. 12122 of 1995

<sup>216</sup> (1997)11SCC 121 - Civil Appeal No. 12992 of 1996



illegal encroachments, but the Hon'ble court granted an interim stay on the orders of removal of illegal encroachments and had directed the Municipal authorities to not do so until some other suitable accommodation was provided to these pavement dwellers.

While hearing the appeal filed by the Ahmedabad MC, the Apex Court stated that "It would be for the Court to decide in exercise of its Constitutional power of Judicial Review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public roads".

Thus, it was held that the action of the pavement dwellers to construct huts on pavements and footpaths was an obstruction to passage of the pedestrians and their safety and security as well. And that it was the duty of the competent authority to remove such encroachments from pavements or footpaths from the public areas respectively.

The Supreme Court further stated that "The Constitution does not put an absolute embargo on the deprivation of life but such a deprivation must be according to the procedure, and in the given circumstances, fair and reasonable".

"Socio-economic justice, opportunity and dignity of person and equality of status to foster the fraternity among all the sections of the society in an integrated India is the arch of the Constitution laid down in its Preamble. According to Articles 39 and 38 of the constitution, it is the responsibility of the State to provide facilities and opportunities to the weaker sections of the society. Furthermore, Articles, 38 and 46 of the Constitution say that the state shall promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and also aspire to eliminate inequalities in status as well."

The Apex Court while referring to the judgments in Shantistar Builders and Olga Tellis cases observed that everyone has a right to life and that the economic, social and cultural rights are indispensable for the dignity and development of an individual's personality. The court further remarked that though no person has a right to encroach upon public places and erect structures but 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 and fruitful. Right to livelihood is meaningful because no one can live without means of his living that is the means of livelihood. It would, therefore, be the duty of State to provide the right to shelter to the poor and weaker sections of the society in the fulfilment of the Constitutional objectives.

While referring to an Empirical study conducted on urban and rural population in India, The Supreme Court stated that more than 70 percent of population in India lives in rural areas and practices agriculture as a primary occupation but due to lack of civic facilities and means of livelihood, people from rural areas are forced to migrate to urban areas and big cities in search for employment and better opportunities. Therefore, it should be the duty of the Union government, State Governments and the Planning Commission to constitute such policies

which are essential to provide continuous means of employment in the rural area and that the state has to ensure that such policies are implemented in letter as well as spirit.

The Apex Court further held that “The policy or principle should be such that everyone should have an equal opportunity to migrate and settle down in any part of India where opportunities for employment or better living conditions are available and that it would be unconstitutional to prevent the people from migrating and settling at places where they find their livelihood and means of avocation”.

### **P.G. GUPTA VS. STATE OF GUJARAT<sup>217</sup>**

In this case the court had considered the human right to shelter read with Article 19(1)(e) along with Article 21 of the Constitution and the Universal Declaration of Human Rights and the Convention of Civic, Economic and Cultural Rights and had held that it was the duty of the State to construct houses at a reasonable cost and make them easily accessible to the weaker section of the society.

### **AJAY MAKEN VS UNION OF INDIA<sup>218</sup>**

The matter arose when Ajay Maken, a former Member of Parliament filed a writ petition before the Delhi High Court challenging the demolition drive at Shakur Basti at Delhi conducted by the Indian Railways along with Delhi Police and Delhi Municipal Corporation authorities. The demolition drive was conducted at Shakur Basti, a slum situated near West Delhi Railway Station which stood on the land owned by the Indian Railways. As a result, around 5000 slum dwellers including women and children were rendered homeless at a time when Delhi was witnessing extreme winters.

The Court observed that the action of forced eviction of jhuggi and slum dwellers of Shakur Basti was conducted in contradiction to guidelines issued by the Supreme Court in **Sudama Singh vs Union of India** as no survey of the slum was conducted by the Railway authorities before going ahead with demolition of the illegal structures. This action had resulted in grave violation of Right to life under Article 21 of the Indian Constitution including the loss off shelter and personal belongings and putting the lives of slum dwellers at a grave risk in peak winters. It was held that the demolition drive conducted by the railways was contrary to the requirements of the law and the constitution of India.

The court had also ordered the railway authorities to provide immediate relief to the effective persons in form of food, lighting and medical aid.

The court also placed reliance on legal provisions contained in international as well as domestic regimes to uphold the right to adequate housing, shelter and the right against forced evictions.

### **Indian Population Census Reports & the Fundamental Rights of the Downtrodden<sup>219</sup>**

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<sup>217</sup> (1995) Supp (2) SCC 182 - Civil Appeal No. 1529 of 1988

<sup>218</sup> (2019)260 DLT 58 - Writ Petition (Civil) No. 11616 of 2015

<sup>219</sup> Censusofindia.gov.in

India is considered to be the second most populated country in the world with the official estimate of 1.38 billion people. The population of India is growing at a fast pace with a growth rate of 0.98% and India is expected to become the most populous country by 2030. With increasing population and current world scenarios such as economic meltdown, India is witnessing a rise in unemployment and poverty which means a rise in number of people living with petty or no income at all. According to India's Census Report of 2011, around 2.7 million people in India are considered to be living below the poverty line with meagre or no income and are deprived of the basic fundamental and Constitutional rights of livelihood, shelter, clothing and food. With an unprecedented increase in unemployment, many people have been driven towards poverty with the percentage of homeless persons increasing at a steady rate. Around 1.8 million individuals are estimated to be living without a roof over their heads with 52% of homeless population living in cities and urban jungles.

The Constitution of India guarantees its citizen certain basic human rights. But it is to be examined whether we as nation have been successful in ensuring the basic Fundamental Rights to the weaker section of the society or not.

According to the **Indian Census Report, 1991**, the total population of India was estimated to be around 89.13 crores with the homeless population of 24 persons per 10,000 persons.

According to the **Indian Census Report on population, 2001**, the total population was estimated to be 107.5 crores with a homeless population of an estimated *19.43 lakh*. Another **52.4 million people** were estimated to be slum dwellers living in harsh unlivable conditions.

According to the **Indian Census Report on Population, 2011**, the total population in India was estimated to be 125 crores with a homeless population of about *17.73 lakh*. The population of slum dwellers also saw an increase with **65.5 million people** or living in slums and jhuggis.

According to official **Government Reports on population, 2021**, the total population of India has increased to 139 crores with a homeless population of about *18 lakh* people with more than 5 percent of total population living in slums.

As stated in the above-mentioned statistics, the number and percentage of homeless people has remained nearly unchanged for the years 1991-2021. On the other hand the population of people living in slums has been increasing at a steady pace. These harsh facts have revealed that the state has failed in its duty to ensure the basic fundamental rights guaranteed in our Constitution to the downtrodden. The Apex Court too on various occasions has expressed its disappointment in the way the Centre and the State Governments have shown a casual approach in providing adequate housing facilities to the weaker section of the society.

## **CONCLUSION**

As such it can be seen that the Apex Court has expanded the Right to Life to include right to livelihood, adequate housing, clothing and food especially for the underprivileged. It is the responsibility of State to ensure that underprivileged section of our society is not denied of this basic right, without which, the existence is meaningless. However, the data shows that the percentage of population living without a roof over their heads has remained unchanged over

the years. The number of people living in slums or jhuggis in India has been increasing at a steady pace. It shows that the State has not been able to deliver and has failed in its duty to ensure these basic fundamental rights to the weaker section of the Society in long period of 75 years post-independence. The State has not been up to mark in fulfilling this Constitutional mandate, which has directly led to the deprivation of these important fundamental rights to the downtrodden.