

Competitive Exams: Right To Shelter

Unlike certain other ESC rights, the right to shelter, which forms part of the right to an adequate standard of living under article 11 of the ICESCR, finds no corresponding expression in the DPSP. This right has been seen as forming part of article 21 itself. The court has gone as far as to say, The right to life ... Would take within its sweep the right to food ... And a reasonable accommodation to live in. However, given that these observations were not made in a petition by a homeless person seeking shelter, it is doubtful that this declaration would be in the nature of a positive right that could be said to be enforceable. On the other hand, in certain other contexts with regard to housing for the poor, the court has actually refused to recognize any such absolute right.

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 excellence. 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.