



International legislative framework on the right to housing

Ravi Bundela

Research Scholar, NLU Delhi, New, Delhi, India

Abstract

Housing has its own importance for a human being. Although, all human rights are equally important and interdependent, yet housing places itself to the primary position. Since, housing establishes a link between other basic rights. Human right to housing has been recognized right from UDHR to many widely ratified international conventions, subject specific conventions and many other regional covenants.

Keywords: housing, homelessness, UDHR, right to housing, ICESCR, CRC

Introduction

The right to housing has been Nationally and Internationally recognized in the twentieth century under various conventions. Housing is generally seen under the domain of Adequate Standard of Living. Human Rights are universal in nature so as the right to housing. In specific jurisdictions the right to housing has been made as a fundamental right. The Jurisprudence on the right to housing has been developing and many nations have acknowledged it as an important aspect of life.

Human rights in general and human right to housing in particular if checked Internationally, Universal Declaration of Human Rights (UDHR) 1948, is the origin as well as benchmark and International Covenant on Economic, Social & Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) are the two lion's share wherein the dictum of UDHR are rewritten. These two conventions are largely ratified which gives an overall picture of documents of International Human Rights. These International documents have become the yardstick against which other human rights have been deliberated. They are not only traditional but also rational, to launch a human rights scrutiny.

Udhr's Right To Adequate Standard of Living: Magna Carta of Right to Housing

UDHR is considered to be the seed through which many rights are the end products. The legislative framework on the Right to Housing at the International level begins from Article 25 of the UDHR 1948. In this declaration housing has been explicitly included as an aspect of *Right to Adequate Standard of Living*.

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

Right to housing has been enshrined as one of the aspect of *right to adequate standard of living*. Adequacy is seen in light

of wellbeing of the people. Contrast does not depict between Economic, Social and Cultural Rights and Civil Political Rights in the UDHR. The momentum for the inclusion of Right to Adequate Standard of living is highlighting the fact that achieving the basic needs is indispensable for a life lived in dignity and liberty. The idea of Art. 25 is to empower the individual to develop and enable him to be a part of mainstream and to remove unnecessary impediments so that he can fulfill his basic demands.

UDHR applies to the whole world and not only the parties to the treaty. The preamble of the treaty includes "every individual and every organ of the society".

Recognition of the Right to Housing in the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The fair statutory expression of the convention is enshrined in Article 11(1) of the said convention:

"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 state parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent".

Article 11 has brilliantly translated the substance of UDHR Art. 2 (1). The duo has the right to food and right to housing as its elements of an *adequate standard of living*. Nonetheless, ICESCR is different from UDHR since the element of adequate standard of living has been separated and even seen individually from the adequate standard of living together. Article 11 (1) is not of concrete character since it asks states only to take steps for the progressive realization of the said right in question and that too in concert with other states. Moreover Article 2(1) defines a complicated duty of the states to abide by the minimum core obligation but the fact is that the duty of the states is restricted to the available resources they have. As per the Committee on Economic, Social and Cultural Right (CESCR), *which has monitored the*

implementation of the ICESCR, it's indeed problematic to know about the available resources. However, the committee's analysis of Article 2 is not achieved. Even the wealthiest nations consistently fail to furnish the basic core of the rights, therefore obligations under the covenant are underperformed. There can be many problems in practically realizing the right's enjoyment under the present covenant like the problem of interpretation by the member states.

Moreover, the ICCPR has the mechanism to have individual and collective complaints but in case of ICESCR it lacks this complaints mechanism. The committee has recommended for optional protocol for the said goal since 1992, since the committee well recognized that the complaint mechanism system will have a concrete effect in the implementation and it will substantially eradicate the problem of homelessness in the member states. The committee played an effective role in simplifying the obligations and duties under the convention through its General Comments on ICESCR. There are two general comments which the committee has given affiliated to the right to housing which is General Comment 4 which is exclusively on the Right to Housing and General Comment 7 which is on Forced Evictions.

Beginning of A Specific Right to Housing from the General Comments 4 And 7

The General Comments are of non-binding character but nevertheless, they've got a special relevance and they have largely spread its importance through its interpretation on the subject of right to housing. General Comment 4 has given a thorough substantial legal analysis on the said right. The committee's statement on the right is considered to be climax of the statutory interpretation. The CESCR has meticulously thrown light on the specific right to adequate housing making it more nuanced and refined in General Comment 4 and on Forced Eviction in General Comment 7. The General Comments has intimated the most elaborate work of the CESCR to broaden the scope of right and removed the ambiguity of Article 11(1). The impact of general comments on the right to housing has gone even on many other conventions and also on the human rights cases.

General Comment 4

"An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services".

General comments has given seven elements of the right to housing, which are the central part of the committee and these are considered to be crucial for adequate housing. The committee's approach is to realize the right in spirit through these seven ingredients.

1. Legal Security of Tenure
2. Availability of Services, Material Facilities and Infrastructure
3. Affordability
4. Habitability
5. Accessibility

6. Location

7. Cultural Adequacy

Enforcement of Icescr through the Optional Protocol

The optional protocol to the ICESCR ^[1] has been adopted unanimously by the United Nations General Assembly at the end of 2008. The optional protocol gives a process under which the CESCR can sit in judgment on individual violations of the ICESCR. This protocol is one step ahead in giving meaning to the convention and its better interpretation. Optional protocol takes individual complaints, which generally have a concrete backing to the words of the CESCR. It provides a mechanism through which CESCR can sit in judgment on individual violations of the ICESCR. The optional protocol is better than concluding recommendation on periodic reports. The said protocol can never alter the content of the covenant.

Article 8(4) provides that:

"When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the implementation of the rights set forth in the Covenant."

Article 8(4) overtly brings about the provision of Part II of the ICESCR. Nevertheless, observation of the committee under the optional protocol is non-binding. Moreover, the committee is assigned with specifying the standard of Article 2(1) and the new reasonableness standard in the optional protocol. So, the committee will face these challenges once the optional protocol comes into force.

Analysis of the Interpretation on Right to Housing Under The ICESCR

The right to housing has been vaguely defined in the ICESCR, the right is not nuanced, because of which there is a difficulty in giving a proper definition to the right and its interpretation. Nevertheless, the interpretation of the right substantially comes from the CESCR General Comment 4 and 7, which attempted to give a clear and unambiguous meaning to the right. The CESCR interpretation of the right is a starting point for the right to have its interpretation and which has been of a great help for majority of the international and national statutory standards because they draw the interpretation from CESCR.

The main criticism goes to the fact that the CESCR experts while assessing the sufficiency of governmental policies in the light of available resources and there are no parameters to evaluate the available resources. Secondly, the seven elements make it more procedural which gives an uncertain picture as to what can actually be claimed before a court or from the state. It is widely unknown that which of seven elements represents immediate attention by the states. Nonetheless, of the fact that the CESCR has substantially defined the right but attention has never been paid to recognize the interlink age of the right to housing with other human rights as can be seen in the CESCR's failure to meaningfully explore the connection between rights regarding tenure and rights respecting land and ownership also the right currently stands isolated from the issues of inequality and discrimination and related human

right. Moreover, the inefficient experiment of the role of cultural norms that excludes woman as land and property holders. The right to housing is deeply interlinked with rights of women especially in light of domestic violence and also linked with the right to freedom, right to work, privacy etc. The CESCR is not restricted to any adjudication approach despite it ignores to cover these issues.

Protection of Existing Right to Housing under International Covenant on Civil and Political Rights (ICCPR)

There is no overt and direct right to housing but it is known for its optional protocol for individual complaints, which has been ratified widely ^[2], it has gained publicity because of the decisions of the protocol in dealing with individual cases. However the committee has restricted itself for directly recognizing this right even though there are very few individual complaints which deals with the periphery of the right to housing such as allegations of discrimination or unlawful interference. In nutshell ICCPR is not about housing or right to housing but it protects the existing housing rights, the right coming from a different channel, which is why for ICCPR it is already existing.

Provisions under ICCPR on Discrimination, Unlawful and Inhuman Treatment in Housing

According to Article 26 and Article 17, discrimination, unlawful interference with a person's right to housing is a violation. There are cases against Czech Republic for the violation of Article 26, which provides:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

In the instant case of Czech Republic which made Czech citizenship mandatory for claiming compensation or restriction of housing ^[3] the committee was nuanced while finding violation as it keeps the claim of the right to housing per se on the one hand and the right against discrimination along with unlawful interference on the other. As, according to the committee discrimination itself is a violation ^[4]. It is Article 17(1), which provides the intercommunication to the right to housing as it guarantees:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation".

Article 17(2), is also important for the protection against interference. The committee has found a violation in a case wherein the tenant had left the tenancy under duress, in fear for his safety and that of his family due to discrimination based on Serbian ethnicity. Article 17 has the potential to enjoy the enjoyment of existing housing rights. The committee has given very important view in 2010 on Israel. In the report it mentions the link between the destruction and denial of housing and the violation of civil and political rights. In the West Bank and East Jerusalem the Israeli state resorted to

house demolitions which violates the covenant, the committee has noted it. Substantially Art. 17, Article 26 and Article 7 mentions absolute prohibition on torture, cruel, inhuman and degrading treatment and punishment and Art. 23 protection of family on the fundamental group unit of the society, the committee states ^[5]:

"Israel continues its practice of demolishing property and homes of families whose members were or are suspected to be involved in terrorist activities, without considering other less intrusive measures. This practice was exacerbated disproportionately during the State party's in recent military intervention in the Gaza Strip leading to the destruction of housing, as well as schools in the West Bank and East Jerusalem due to the absence of construction permits, their issuance being frequently denied to Palestinians. Furthermore, it is concerned at discriminatory municipal planning systems disproportionately favoring the Jewish populations of these areas".

Housing or Home is the Central point within which discrimination and interference can be experienced but in fact that this analysis is not substantiating the right to housing per se, although it highlights the enjoyment of other human rights to home.

Conclusion

All subject specific conventions have their specific concern such as the CRC has its concern for the rights of child and providing assistance to those who have a responsibility of the child.

CEDAW considered the women rights with a different approach and CERD and CAT endeavors to put forth its agenda and while doing so housing related rights are getting covered intermittently. However, for the protection of housing in the conventions appears as a link to or from the realization of another human right goal, rather than as a right to housing per se. In all the conventions housing certainly can be a locus of human rights violation but it is difficult to culminate that how much that right is adding to the jurisprudence of human rights to housing. The CERD and CEDAW although specific on discrimination and on rural women respectively but the cases dealt by the respective committees gives an opportunity to see housing from a different view point and thereby illustrate the fundamental, physical and psychological importance of housing. LR v. Slovak Republic decision is a great motivation for those who are denied the material conditions of a good life and wherein it ordered that the complainant be provided a dwelling itself.

This study found that the most developed jurisprudence on the right to housing is the regional framework on housing in the world, most specific is with the Revised European Social Charter and the series of case laws which has made the African and Inter-American systems more stronger. It is observed by studying the varying approaches to the right to housing that inadequate housing impact many human rights. The analysis of the judgment suggests that the violations of housing closely connects with traditional, civil and political rights as different as the right to be free from cruel, inhuman and degrading treatment and the right to property, as well as with other economic, social and cultural rights such as health and the right to food. The cultural aspect of housing has also

gained sufficient recognition as the African and Inter-American institutions acknowledged the affect of housing rights losses on the rights of individuals to the development and to the rights of indigenous communities.

Nevertheless, the niceties of the regional example and the flip side is the complications faced by the courts in explaining economic, social and cultural housing problems via human rights texts which do not specifically give domain over the right to housing. For instance the European Court of Human Rights has acknowledged the concrete chain of rights ^[6] economic, social, and cultural protections are nevertheless conveyed through the logic of civil and political rights into which they are incorporated ^[7]. The problem of realizing economic and social rights through the frame of civil and political rights too emanates from the IACtHR's progress of the right to life with dignity. Nonetheless, at least for the European world, substantially the problem is with implementation because the provision as to the right to housing is there, since some jurisdictions lack completely the specific provision.

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