



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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BALANCING RIGHTS AND DEVELOPMENT: A CASE ANALYSIS OF OLGA TELLIS V. BOMBAY MUNICIPAL CORPORATION

AUTHORED BY: VISHUCHI SHRIVASTAVA

CASE ANALYSIS

Case Name: *Olga Tellis v. Bombay Municipal Corporation*

Citation: *[1985] SC 180.*

Bench: *Justice Y.V. Chandrachud, Justice Syed Murtaza Fazalali, Justice V.D. Tulzapurkar, Justice O. Chinnappa Reddy and Justice A. Varadarajan.*

Author: *Justice Y.V. Chandrachud*

INTRODUCTION

The case of Olga Tellis was decided by the Supreme Court of India in 1985.¹ In 1981, the then CM of Maharashtra, made a public announcement concerning the residents of Bombay who were residing in informal settlements or squatting on pavements along major roads. He declared that individuals in these circumstances who did not possess photo passes would face forceful eviction, potentially leading to their deportation to their respective places of origin or relocation to areas outside of Bombay. Furthermore, the CM directed the Commissioner of Police to collaborate with the BMC in executing this large-scale eviction initiative.

The CM provided an apparent justification for this action, citing that the living conditions of slum and pavement dwellers in Mumbai were profoundly inhumane. These structures are flimsy and open to the elements. During monsoon, there is no way these people can live comfortably.”²

The petitioners argued that they possessed the right to life and personal liberty as enshrined in Article 21 of the Constitution of India. They asserted that this right inherently encompassed the right to livelihood. Consequently, the central issue presented to the Supreme Court was to find a

¹ Olga Tellis & Ors vs Bombay Municipal Corporation [1985] SC 180.

² Ibid.

harmonious balance between the right to life of the pavement dwellers and the interests of the broader community. Amidst several issues being discussed in the judgement, this paper however has tried to comprehensively analyse--- The petitioners argued that the right to life is not limited to the absence of physical harm but it also encompasses the protection and access to the essential conditions and resources required to live a meaningful and dignified life. This would serve as the focal point of this research.

RESEARCH METHODOLOGY

The petitioners' contentions of a connection between the "right to life" and "right to livelihood" under "Article 21 of the Constitution."

Researcher is employing a doctrinal research methodology for this paper.

The paper is based purely on Doctrinal Research as there was not ample time to conduct non-doctrinal research. Hence, the data provided is not independent.

LITERATURE REVIEW

1. **'Visions of Social Transformation and the Invocation of Human Rights in Mumbai: The Struggle for the Right to Housing'**, by **Jessie M. Hohmann, Yale Human Rights and Development Law Journal, Volume 3, Issue 1, 2010**: It is discussed in this paper that the SC's stance mirrored its changing role within the nation's democratic governance. Typically, the Court refrains from getting involved in government policy matters. However, the Olga Tellis case marked one of the initial instances where the Supreme Court, ostensibly upholding a fundamental right, actually intervened in such matters. Although the court's remedies were unconventional and faced doubts regarding their effectiveness, they have mostly been acknowledged as valid.
2. **'Law Commission of India: 138th Report on Legislative Protection for Slum and Pavement Dwellers'**, 1990: The Law Commission acknowledged that while the existing statutory laws did not offer sufficient protection for slum and pavement dwellers, the court took a compassionate stance by providing them with reasonable protection.
3. **'Pro-Human Rights but Anti-poor? A Critical Evaluation of the Indian Supreme Court from a Social Movement Perspective'**, by **Balakrishnan Rajagopal, Human Rights Review, Volume 8, 2007**: Regarding the Narmada Bachao Andolan, the SC's decision to permit the construction of the dam resulted in the displacement of 320,000

individuals through the project, effectively endorsing the world's largest court-sanctioned forced eviction.

4. **‘PROBLEMS OF SHELTER, Shelter in Developing Countries’, by Alfred P. Van Huyck, 34 Howard L.J. 65, 1991:** The author emphasized the importance of housing as a fundamental human right and explored how legal frameworks contribute to this recognition. They also discussed the Vancouver Declaration, which called on governments and international donors to enhance housing conditions for the world's most impoverished populations. The author expressed their view that, to date, no government has fully met the criteria of housing as a human right. This includes countries often cited as models, such as Singapore and Hong Kong, despite substantial investments attributed to their unique status as city-states.

SCOPE OF RESEARCH

The scope of this research is to achieve:

- To examine the legality for the “right to life and personal liberty in Article 21”, focusing on its extension to include the right to livelihood and dignified living conditions.
- To assess the impact of the Olga Tellis case on Indian law, policy, and marginalized communities, considering the broader socio-economic implications of an expanded right to life, especially in forced eviction scenarios.

ANALYSIS

Judgement’s Implementation and Implication

The Supreme Court's judgment stood out for its straightforward analysis of the case, emphasizing the harsh living conditions faced by pavement dwellers.³

In a significant departure from its 35-year history, the Court unequivocally affirmed that the right to life encompasses the right to livelihood. The Court's rationale rested on the critical premise that excluding livelihood from the constitutional right to life would create a dangerous precedent, allowing for the potential erosion of an individual's right to life through the deprivation of their means of livelihood.

The Court underscored that evicting slum and pavement dwellers without due consideration for

³ Olga Tellis & Ors vs Bombay Municipal Corporation, [1985] SC 180 [1].

the consequences on their livelihoods would be unjust. It aptly recognized that the right to life remains incomplete and ineffective if individuals are denied the means to exercise it meaningfully. This landmark decision marked a pivotal moment in the interpretation and application of constitutional rights in India.⁴

The Court emphasized that any deprivation of the right to livelihood must follow a fair, just, and reasonable legal procedure. It found that Section 314 of the BMC Act, which gave the “municipal commissioner” discretion to remove unauthorized encroachments, was not inherently unfair or unreasonable. However, this discretion had to be exercised reasonably, guided by constitutional principles. Consequently, the Court upheld the BMC's right to carry out the eviction drive, stating that no one had the right to encroach upon land designated for public purposes.⁵

Although the SC ruled in favor of the BMC, it did so based on several assurances from the statutory body. These assurances included providing alternative accommodation, implementing rehabilitation policies, and taking affirmative action to address the needs of marginalized communities.

Implementations of the Judgement

The SC's role in India's democracy has evolved. In the Olga Tellis case, it departed from its usual practice of avoiding interference in government policies by using a fundamental right. Though the remedies offered were unconventional and faced doubts about their effectiveness, they have largely been accepted as legitimate. However, Olga Tellis was just one example of a series of cases where the Court refrained from granting immediate relief to litigants. Instead, it directed the government to actively implement policies for the welfare of marginalized groups. Rather than focusing on individual cases, the Court concentrated on broader institutional and policy issues. Olga Tellis demonstrates how the Indian judiciary has sparked political discussions on issues that may go unnoticed by the public otherwise.

The Aftermath of Olga Tellis

In just a matter of a few years, the Olga Tellis case garnered significant global attention, particularly among developing nations grappling with similar urban migration challenges. While the SC's ruling did not explicitly endorse homelessness, its real triumph lay in the commitments

⁴ Olga Tellis & Ors vs Bombay Municipal Corporation, [1985] SC 180 [32].

⁵ H.M. Seervai, Constitutional Law of India (4th edn, New Delhi: Universal Book Traders, 1999), 1185.

made by the “Bombay Municipal Corporation (BMC)”, which signaled the state's acknowledgment that slum dwellers were entitled to alternative housing solutions.

By 1990, the “Law Commission of India” recognized that although statutory law fell short in adequately safeguarding the rights of slum and pavement dwellers, the courts had taken a compassionate stance by providing them with reasonable protection. Throughout the 1990s, Indian courts largely upheld the foundational principles established in the Olga Tellis case. They affirmed that the state bore a constitutional duty to provide housing for economically disadvantaged and vulnerable segments of society.

Many court decisions explicitly referred to the right to shelter as outlined in international treaties such as the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social, and Cultural Rights (1966). These decisions asserted that this right was inherently encompassed within the provisions of Art. 19 and 21 further strengthening the legal framework for the protection of vulnerable populations' housing rights.

Unaddressed Aspects

The Court aimed to strike a balance between the interests of pavement dwellers and the rights of the public. Granting dwellers the right to continue living on the sidewalks could hinder development and discourage affordable housing initiatives by the State Government. On the other hand, an immediate eviction would have infringed upon their right to livelihood and, by extension, the “right to life”. However, the Court's attempt to balance these interests created a gap in the judgment and its implementation.

The Court's focus on written and positive law, particularly the BMC Act, which was enacted during a different era without the pavement dwelling issue in mind, may have missed an opportunity to address the current situation more compassionately. While the judgment acknowledged the dire conditions of pavement dwellers, it fell short of providing effective solutions to alleviate their plight.

SUGGESTIONS

Courts alone cannot address the challenge of redeveloping and rehabilitating slums effectively. They require the support of well-implemented social welfare policies and economic development

strategies. To ensure the progressive realization of the right to housing, involving slum and pavement dwellers through an inclusive and participatory process is advisable.

It is important to note that how the courts handle issues related to these communities significantly influences the attitudes of policymakers and society as a whole. In the future, Indian courts will need to strike a delicate balance between the “right to shelter”, creating a healthy environment, fostering economic development, and maintaining a sustainable ecosystem.

CONCLUSION

Addressing slum redevelopment and rehabilitation requires a multifaceted approach that combines judicial intervention with comprehensive social welfare policies and sustainable economic development strategies. Courts must engage slum and pavement dwellers through inclusive processes to ensure the right to housing is progressively realized.

While *Olga Tellis* has not been officially overruled, its influence and impact has notably diminished since 1990. Room for improvement would lie in enhancing coordination among stakeholders, streamlining legal frameworks, and raising public awareness to create a more equitable and sustainable urban ecosystem.

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