
LEX LUMEN RESEARCH JOURNAL

VOLUME 2 - ISSUE 1

2025

EDITOR-IN-CHIEF: DR. RAZIT SHARMA,
PUBLISHER: MRS. RACHANA

This is an **Open Access** article brought to you by **Lex Lumen Research Journal** made available under the terms of Creative Commons-Attribution Non-Commercial-Share Alike 4.0 International (**CC-BY-NC-SA 4.0**) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

It has been accepted for inclusion in the Journal after Due-review process.

© 2025. LEX LUMEN RESEARCH JOURNAL

ADMINISTRATIVE LAW AND THE RIGHT TO HOUSING: A COMPARATIVE STUDY OF LEGAL PROTECTIONS FOR MARGINALIZED GROUPS

By- Harshita Bhola¹

ABSTRACT

The right to housing is integral to the fundamental rights of dignity, equality, and life. In India, marginalized groups, especially Scheduled Tribes (ST), Scheduled Castes (SC), and forest-dwelling communities, often face forced evictions due to developmental projects and land acquisitions. This paper explores the legal framework surrounding forced evictions in India, focusing on the constitutional and statutory protections for marginalized communities. It highlights the role of National Legal Services Authority (NALSA) in providing legal aid and examines judicial precedents, particularly the Olga Tellis case and Banwasi Sewa Ashram v. State of Uttar Pradesh (2019), which call for better legal safeguards. A comparative study of the eviction laws in the UK, US, and Kenya provides valuable insights into alternative models for protecting the rights of displaced persons. The paper proposes a Transparent Eviction Regulation and Housing Justice Act (EJRA, 2025) as a solution for ensuring transparency, accountability, and fairness in eviction processes.

KEYWORDS: marginalized communities, Forced Evictions in India, Right to Housing, Administrative Law,

¹Student, Vivekananda institute of professional studies.

INTRODUCTION

Housing is a critical part of the socio-economic fabric in any society. It is not merely a shelter but a space where individuals exercise their right to family life, community, and livelihood.² The right to housing is enshrined under several international human rights laws, but in India, forced evictions remain a severe concern for marginalized communities. Indigenous communities, such as Scheduled Tribes and Castes, often face disproportionate eviction threats when state or private developmental projects encroach upon their land.³ This issue is compounded by a lack of legal frameworks that ensure transparency and fairness in the eviction process.

This paper will analyse the challenges surrounding the right to housing, with a particular focus on the legal protections (or lack thereof) for marginalized groups in India. We will explore landmark cases that have shaped the legal landscape, compare India's eviction laws with the practices in other countries, and propose a more robust framework for ensuring housing justice.

METHODOLOGY

This research adopts a doctrinal research methodology, which is primarily concerned with analysing, interpreting, and systematizing existing legal rules, principles, and concepts. The doctrinal approach allows for a detailed examination of statutory provisions, judicial decisions, and scholarly writings to construct a coherent understanding of the legal issue under study.

² Special Rapporteur on the Right to Adequate Housing, The Human Right to Adequate Housing, U.N. Off. High Comm'r for Hum. Rts, <https://www.ohchr.org/en/special-procedures/sr-housing>.

³ Housing & Land Rights Network, United Nations Documents Related to Housing and Land Rights in India, https://hlrn.org.in/documents/UN_Documents_Housing_Land_Rights_India.pdf.

The study employed the following methods:

- **Primary Sources of Law:** The research extensively relied on legislation and statutory instruments relevant to the subject matter. Specific acts and statutes were analysed to understand the legal framework, interpret provisions, and assess their applicability to the issues identified.
- **Judicial Precedents (Case Law):** Relevant court judgments and rulings were examined to explore how the law has been interpreted and applied by the judiciary. Cases were selected based on their significance, relevance, and authority in shaping the legal principles under discussion.
- **Secondary Sources:** The study also reviewed academic research papers, commentaries, and legal journals to gain insight into scholarly opinions, debates, and critiques on the topic. These sources provided a critical perspective and enriched the analysis of existing legal doctrines.
- **Analytical Process:** Through critical evaluation of statutes, cases, and scholarly work, patterns, inconsistencies, and gaps in the law were identified. The doctrinal method facilitated a systematic synthesis of legal materials, highlighting the strengths and weaknesses of current legal provisions.
- **Proposed Solution:** Based on the comprehensive doctrinal analysis, the researcher crafted an original solution to address the identified legal gaps. This solution was developed by integrating insights from existing laws, judicial reasoning, and scholarly discourse, ensuring both practicality and compliance with established legal principles.

THE RIGHT TO HOUSING AND FORCED EVICTIONS IN INDIA:

Right to Housing as a Fundamental Right:

The right to housing is implied within the broader right to life and personal liberty guaranteed under Article 21 of the Indian Constitution. The Supreme Court of India has recognized the necessity of housing as an essential component of the right to life

in various judgments. Housing provides the physical and emotional security necessary for individual and community development.⁴ However, in the case of marginalized groups such as SCs, STs, and forest-dwelling communities, housing rights often go unprotected.

Forced Evictions:

Evictions in India frequently result from development projects, such as infrastructure development, mining, and the creation of protected forest areas. These evictions disproportionately affect marginalized communities, who are often displaced without adequate compensation, resettlement plans, or legal recourse. This situation exacerbates socio-economic inequality and violates human rights.

For instance, in the *Banwasi Sewa Ashram v. State of Uttar Pradesh* (2019),⁵ the Uttar Pradesh government sought to declare forested areas as reserved forests under the *Indian Forest Act, 1927*⁶, affecting Adivasi communities who had lived on the land for generations. The forced eviction and displacement of these communities not only endangered their livelihoods but also threatened their cultural identity and access to essential resources. This case underscores the vulnerabilities of marginalized groups to forced eviction, calling for an independent and transparent authority to safeguard their housing rights.

Evictions affecting Scheduled Castes (SC) and Scheduled Tribes (ST) in India have been central to several significant legal cases, highlighting the intersection of land rights, social justice, and legal protections for marginalized communities. For instance, In February 2003, tribal communities protesting for land rights in Kerala's Muthanga

⁴ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545 (India).

⁵ *Banwasi Seva Ashram v. State of U.P.*, [1992] INSC 56 (India).

⁶ The Indian Forest Act, 1927, No. 16 of 1927 (India).

village faced police action resulting in fatalities. In July 2019, a land dispute in Uttar Pradesh's Sonbhadra district led to the deaths of 11 tribal individuals. These massacres underscored tensions between indigenous land claims, disadvantageous position of marginalised communities and state authorities.

Legal Frameworks Protecting SC/ST Eviction Rights are as follows:

1. **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006:**⁷ Recognizes Forest dwelling communities' rights to land and resources, aiming to prevent unlawful evictions.
2. **Protection of Civil Rights Act, 1955:**⁸ Prohibits discrimination against SC/ST individuals, including in housing and land matters.
3. **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:**⁹ Provides safeguards against atrocities and discrimination, including unlawful eviction.
4. **Empowering Gram Sabhas under the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA Act):** The PESA Act gives Gram Sabhas (village councils) in Scheduled Areas the power to manage local resources and approve development projects. This ensures that tribal communities have a key say in decisions that impact their land and way of life.

Administrative norms

In the context of evictions for marginalized communities, the principles of legitimate expectation and natural justice are key to ensuring fairness.

⁷Act No. 2 of 2007 (India).

⁸Act No. 22 of 1955 (India).

⁹Act No. 33 of 1989 (India).

Legitimate expectation means that communities have the right to expect fairness based on laws and past actions¹⁰. For example, tribal communities can expect their land rights, as defined by the Forest Rights Act or PESA Act, to be respected before any eviction takes place. They should be consulted and their claims properly considered.

Natural justice ensures that administrative decisions are fair and transparent. It involves two key principles: the right to be heard, meaning affected parties must be given a chance to present their case before decisions are made; and the rule against bias, ensuring decisions are made impartially, without conflicts of interest¹¹. In eviction cases, these principles ensure that marginalized communities are properly heard, and decisions are made with fairness.

NALSA'S ROLE IN PROVIDING LEGAL AID:

The National Legal Services Authority (NALSA)¹² plays a pivotal role in ensuring that marginalized groups have access to legal remedies when facing eviction. NALSA operates through state legal service authorities, providing free legal aid to those who cannot afford representation. In cases of forced eviction, NALSA's role becomes indispensable as it ensures that vulnerable communities receive a fair trial and that their claims to land or housing are heard. Eligibility for free legal aid includes various marginalized and disadvantaged groups, such as:

- Individuals with an annual income below a specified threshold (which may vary by state).

¹⁰ Foram R. Patel & Rishin Patel, The Doctrine of Legitimate Expectation: From Development in England to Indian Scenario, *ILI Law Rev.* Winter 2021, at 138.

¹¹ Meenal Krishna, Natural Justice in Indian Administrative Law: Courts and Procedural Fairness, *Law Centre-2, Faculty of Law, Univ. of Delhi*.

¹² Legal Services Authorities Act, 1987, No. 39 of 1987 (India).

- Members of Scheduled Castes (SCs) and Scheduled Tribes (STs).
- Victims of trafficking or beggars.
- Women and children.
- Persons with disabilities.
- Industrial workmen.
- Persons in custody.

The lack of an independent, transparent mechanism for eviction processes often leads to the disenfranchisement of vulnerable groups. This is why NALSA's services are crucial in providing legal protection and representation for marginalized communities, helping them challenge evictions through the judicial system.

JUDICIAL PRECEDENTS IN EVICTION CASES IN INDIA

1. *Olga Tellis v. Bombay Municipal Corporation (1985)*:¹³

In this case, the Supreme Court addressed the issue of evictions of pavement dwellers in Mumbai. The Court ruled that the right to livelihood, which is closely tied to the right to housing, cannot be denied without just cause. The Court held that evictions without due process, including the provision of alternative housing and livelihoods, would be unconstitutional. This case laid the foundation for recognizing housing rights as part of the right to life under Article 21.

2. *Mitu-Bell Welfare Society v. Kenya Airports Authority (2021)*:¹⁴

In this Kenyan case, the Supreme Court looked into the illegal removal of over 3,000 families from Mitumba Village near Nairobi's Wilson Airport. The court said there should be an independent group to monitor and manage evictions,

¹³ 1985 SCC (3) 545 (India).

¹⁴ [2021] KESC 34 (KLR) (Kenya).

making sure they follow the law and protect people's rights. It showed why it's important to have a proper authority to handle eviction matters fairly.

3. *Zulfiquar Haider & Anr. v. State of Uttar Pradesh & Ors*¹⁵

In this case, the Supreme Court strongly criticized the Uttar Pradesh government's actions, calling them "inhuman and illegal." The authorities demolished homes without giving people like a lawyer, a professor, and two women a fair chance to respond or defend themselves. The Court stressed that the right to shelter is a key part of the right to life under Article 21 of the Constitution, and this right was violated because proper legal procedures weren't followed. The judgment highlights how important it is for government actions to follow fair and transparent processes, especially when they affect vulnerable people. It reminds us that people have a right to expect fairness from the authorities, and that decisions must follow natural justice.

COMPARATIVE STUDY OF EVICTION LAWS

United Kingdom

In the UK, eviction laws are governed by a combination of common law and statutory law, particularly the *Housing Act 1988* and *Rent Act 1977*. The UK has a well-established process for eviction, including a mandatory court order for eviction, regardless of the reasons. Eviction laws provide clear guidelines for landlords and tenants, and any action without a court order is deemed unlawful. Importantly, tenants are entitled to adequate notice, and the courts have a strong role in mediating disputes.¹⁶

¹⁵ Special Leave to Appeal (C) No. 6466/2021).

¹⁶ Protection from Eviction Act 1977 (United Kingdom).

United States:

In the United States, eviction procedures vary by state, but generally, tenants are entitled to notice and an opportunity to dispute the eviction in court. Federal protections, such as the *Fair Housing Act*, safeguard against discriminatory evictions based on race, colour, religion, sex, or national origin. In cases of forced eviction, displaced individuals are often entitled to temporary relocation assistance, compensation, and support services.¹⁷

Comparison to India:

In contrast, India's eviction laws lack the same level of judicial oversight and transparency as those in the UK and the US. The absence of an independent body to review evictions and ensure that marginalized groups receive adequate compensation and resettlement makes the process more prone to exploitation and injustice. Evictions in India are often carried out without proper notice or consideration for the affected individuals' right to livelihood.

THE TRANSPARENT EVICTION REGULATION AND HOUSING JUSTICE ACT (EJRA, 2025)

Proposal for Reform

To address the gaps in India's eviction laws, this paper proposes the Transparent Eviction Regulation and Housing Justice Act (EJRA, 2025). The key features of the EJRA include:

- **Establishment of the Eviction Review and Justice Authority (ERJA):** A semi-autonomous body under the Ministry of Law and Justice, responsible for

¹⁷ The Fair Housing Act, 42 U.S.C. 3601 et seq. (United States).

overseeing the eviction process, ensuring transparency, and protecting the rights of marginalized groups.

- **Pre-Eviction Review:** No eviction can take place without clearance from the local District Eviction Review Cells (DERCs), which must review all eviction notices and their potential impact on affected communities.
- **Free Legal Aid Guarantee:** Provisions for automatic assignment of pro bono legal representation for individuals below a defined income threshold, ensuring that marginalized groups have access to justice.
- **Public Registry and Digital Portal:** A public platform for all eviction notices and related proceedings, enabling transparency and accountability.
- **Compensation and Resettlement:** Mandates rehabilitation before eviction, including financial compensation or alternative housing for displaced individuals within a 5 km radius.
- **Protection for Marginalized Groups:** Any eviction affecting SCs, STs, and forest-dwelling communities requires heightened scrutiny and approval from the state-level ERJA.
- **Grievance Redressal Mechanism:** A dedicated system for individuals to file grievances related to evictions, with the opportunity for appeals to the State ERJA Appellate Panel.

CONCLUSION

The right to housing is fundamental to ensuring dignity, security, and social justice for all individuals, particularly marginalized communities. In India, forced evictions remain a critical issue, exacerbated by gaps in legal protections, transparency, and accountability. Landmark cases like *Olga Tellis* and *Banwasi Sewa Ashram* have highlighted the need for a comprehensive legal framework to address the inequities faced by vulnerable communities. By learning from international models and implementing reforms like the EJRA, 2025, India can create a more just, transparent,

ADMINISTRATIVE LAW AND THE RIGHT TO HOUSING: A COMPARATIVE STUDY OF LEGAL PROTECTIONS FOR MARGINALIZED GROUPS

Volume-2, Issue-1

Pages: 195-205

and accountable eviction process, ensuring that marginalized groups are protected and their rights upheld.

REFERENCES

1. *Olga Tellis v. Bombay Municipal Corporation*, 1985
2. *Banwasi Sewa Ashram v. State of Uttar Pradesh*, 2019
3. *Mitu-Bell Welfare Society v. Kenya Airports Authority* (2021)
4. *Zulfiquar Haider & Anr. v. State of Uttar Pradesh & Ors* (Special Leave to Appeal (C) No. 6466/2021).
5. *National Legal Services Authority v. Union of India*, 2014
6. Housing Act 1988 (UK)
7. Rent Act 1977 (UK)
8. Fair Housing Act (US)