



HOUSING AND LAND RIGHTS NETWORK (INDIA)

Special Rapporteur on Violence against Women:

**Submission related to Shelters for Homeless Women
from**

Housing and Land Rights Network (HLRN), India¹

Introduction

According to the Census of India 2011, India has more than 1.7 million homeless persons, of which 938,384 are located in urban areas. These figures, however, grossly underestimate the real number of homeless persons. Civil society organizations estimate that at least one per cent of the population of urban India (about 378 million) is homeless. Based on this estimate, it can be extrapolated that the population of the urban homeless is at least three million. The Indian government considers the official Census of India definition of homelessness and defines ‘houseless people’ as, persons who are not living in buildings or ‘census houses.’ A census house refers to ‘a structure with roof.’ Hence, for measuring the extent of homelessness or determining eligibility programmes and services, the government considers those who “live in the open on roadside, pavements, in hume pipes, under flyovers and staircases, or in the open in places of worships, *mandaps* (porch), railway platforms, etc.”, as “houseless people.”²

Homelessness constitutes the worst violation of the human right to adequate housing, and homeless people, especially women, are among the most marginalized, ignored, and discriminated against in the country. Living on the streets without any form of shelter greatly increases the vulnerability of homeless women to abuse, sexual violence, injury, disease, mental illness, and death. At the same time, a large number of women are homeless because they have escaped situations of violence at home or are turned out of their homes for various reasons, including HIV and mental illness.

Homeless women, particularly young women, suffer the worst kinds of violence and insecurity, and are vulnerable to sexual abuse, exploitation, and trafficking. Instances of rape, molestation, and women spending sleepless nights guarding their young adolescent girls are a common feature among homeless women. Accessing healthcare is a tremendous challenge for homeless people, especially women. There are countless incidents of women being denied treatment and turned away from hospitals.³

¹ Housing and Land Rights Network, India, is a human rights organization based in New Delhi, India. It works on the promotion, protection, and realization of the human rights to adequate housing and land, especially for the most marginalized. More information can be obtained at: www.hlrn.org.in or by writing to: contact@hlrn.org.in

² Census of India 2011. Document available at: http://censusindia.gov.in/Data_Products/Data_Highlights/Data_Highlights_link/concepts_def_hh.pdf

³ Chaudhry, Shivani et al. ‘Violence and Violations: The Reality of Homeless Women in India,’ New Delhi, 2014. Available at: http://hlrn.org.in/documents/Violence_and_Violations_Homeless_Women_in_India_2014.pdf

State Response and Law and Policy Framework

The government aims to provide shelter facilities under its social welfare schemes to those who fall in the category of the homeless, as per the official Census definition.

In 2010, through the intervention of special commissioners, the issue of homelessness was brought under the purview of the ‘right to food’ case (*PUCL v. Union of India and Others*)⁴ in the Supreme Court of India. The Court ordered that shelters must be sufficient to meet the need of the homeless, in the ratio of at least one shelter per 100,000 population, in every major urban centre. It also stated that shelters should be functional throughout the year for 24 hours, and not as a seasonal facility only during the winters and at night.

National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless

The National Urban Livelihoods Mission – Scheme of Shelter for Urban Homeless (NULM–SUH) was launched by the Ministry of Housing and Urban Poverty Alleviation in 2014. It provided policy direction to the Supreme Court’s orders on homelessness. The Scheme⁵ aims to provide permanent shelter and essential services to the urban homeless population in the country. It sets specific norms and standards for the distribution, location, and design of permanent and all-weather shelters for the urban homeless, who presently have no access to shelter or public services such as health, education, food, water, and sanitation. Further, the Scheme specifies that the requirements for vulnerable homeless groups vary, and hence, the nature of the homeless population in a location should dictate the type of shelter to be constructed. There should thus be separate shelters for men, women, families, and special shelters for older persons without care, persons with mental illness, and recovering patients and their families. The Scheme also provides for convergence of service delivery and provision of entitlements including social security, food, education and healthcare, as well as identity proof, address proof, pension, Below Poverty Line (BPL) cards, ration cards, Integrated Child Development Services (ICDS) centres, free legal aid, and admission to government schools and public hospitals for urban homeless residents.

NULM–SUH mandates a space of at least 50 square feet per person in a homeless shelter. In most cities, however, the homeless are provided only about 15 square feet per person in a shelter, which is not sufficient to live with dignity. The lack of adequate space also results in overcrowding and congestion, leading to adverse health impacts on shelter residents. There is also an acute shortage of shelters for women, families, women with children, working men, and shelters for people with special needs such as older persons, persons with disabilities, persons living with mental illness or HIV/AIDS, and chemically dependent persons.⁶

NULM–SUH, however, does not address the structural causes of homelessness; neither does it adopt a human rights approach. The policy response to the issue of homelessness in India has always been to provide temporary shelters for the homeless, not to enable them to access affordable permanent housing. The majority of the homeless in India are, thus, left to fend for themselves and suffer from harsh weather and climate conditions as well as the travails of living in the open without security. Shelters, however, are only the first step, an emergency

⁴ *PUCL v. Union of India and Others*, W. P. (C) 196/ 2001.

⁵ National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (Operational Guidelines), Ministry of Housing and Urban Poverty Alleviation, December 2013. Available at: http://mhupa.gov.in/NULM_Mission/docs/NULM-SUH-Guidelines.pdf

⁶ *Supra*, note 3.

requirement, on the housing rights continuum. The provision of adequate and affordable housing for all must be the ultimate goal of the government.

Currently, the issue of national homelessness is being reviewed by the Supreme Court in another public interest litigation case.⁷ Interim orders of the Court have pulled up state governments for their failure to provide adequate and sufficient shelters to the homeless and for discrepancies in spending of funds under the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless. Recently, the Court appointed an independent committee to review the situation of homeless shelters.

Despite strong orders from the Supreme Court, the situation in most cities across India is still abysmal with regard to provisions for the homeless, especially for homeless women.

Shelters for the Homeless in Delhi

In January 2010, after the eviction of homeless persons by the state government from a homeless shelter, the High Court of Delhi initiated a *suo moto* case⁸ on the issue of homelessness in the nation's capital. After five years, 100 hearings, and over 85 orders from the Delhi High Court, while the city has witnessed significant improvements in the number of homeless shelters (from 17 to 266) and a greater awareness within the government of the special needs and concerns of the homeless, the human rights and quality of life of the city's homeless, unfortunately, has not improved much.

For the homeless residents of Delhi, the Delhi Urban Shelter Improvement Board has set up 266 shelters (of which 81 are permanent, 115 are porta cabins, 68 are tents set up for the winter (December to March), and two are temporary subway shelters).⁹ Twenty of these shelters are exclusively for women and their children. DUSIB has stated that the combined space in all the 266 shelters can accommodate 21,724 people. While Delhi has the highest number of shelters for the homeless in the country, these are still not sufficient to accommodate its entire homeless population of 100,000-150,000. It is estimated that there are at least 10,000 homeless women in Delhi. By the NULM–SUH benchmark of 50 square feet per person, reportedly, the space in these 266 shelters actually accommodates fewer persons. Many shelters in Delhi also have low occupancy because of their uninhabitable state, especially the lack of adequate space for sleeping and storing personal possessions; the absence of cleanliness and hygiene; dirty bedding; the presence of mosquitoes, rats, dust; and the lack of safety and security, especially for women.

While there is greater political will to improve the lives of Delhi's homeless, their living conditions are still far from adequate and dignified. All shelters in Delhi are stocked with *durries* (floor mats) and blankets, meant to be used by homeless persons sleeping on the premises. However, these are not washed regularly. The *durries* provided are thin and tattered, and do not provide protection from the hard and cold ground. Most shelters still do not provide mattresses and sheets to the residents. The lack of hygienic conditions in some shelters promotes the spread of infectious diseases and also acts as a deterrent to the homeless from sleeping in shelters.

⁷ *E. R. Kumar and Anr. v. Union of India and Ors.*, W.P. (C) 55/2003.

⁸ *The Court on its Own Motion v. Govt. of Delhi and Anr.*, W.P. (C) 29/2010.

⁹ 'Night Shelter Occupancy Report,' Delhi Urban Shelter Improvement Board, Government of National Capital Territory of Delhi. Available at: <http://www.delhishelterboard.in/occupancy-report/>

Many shelters are located in inconvenient locations, and preclude families and women from staying in them. Most of the porta cabins have tin roofs, which makes it difficult for homeless persons to stay in them during the harsh summer and winter conditions.

While facilities in some women’s shelters have improved, toilets, bathrooms, and water are not easily accessible to the homeless. Having to pay to use public toilets, coupled with the lack of access to secure toilets and bathing areas, often means that homeless women must relieve themselves in the open, bathe less frequently or in the open/behind plastic covers, and access unclean water through public taps and leaking pipelines. This is most difficult for women, especially those who are out on the streets, rendering them vulnerable to violence and abuse. The lack of a secure place to undress and change clothes, and bathing in public spaces also makes women vulnerable to gender-based violence.¹⁰ Drinking water is supplied through tankers that visit homeless shelters.

Shelters for Homeless Women in Delhi¹¹

	Name of Shelter	Type: Permanent or Temporary	Capacity	Area (square feet)	Management Agency
1.	Community Centre, Hanuman Mandir, Yamuna Bazar	Permanent Building	210	3189	NGO
2.	Kharian Mohalla, Roshanara Road	Permanent Building	210	3695	NGO
3.	Chander Shekhar Azad	Permanent Building	14	3015	Delhi government
4.	Sector 3, PH-II, Dwarka	Permanent Building	70	1999.75	NGO
5.	Shelter Home For Destitute, Pregnant and Lactating Women, Block-A Jahangir Puri	Permanent Building	10	1506	Delhi government
6.	Property No. 2819/VIII, Turkman Gate, Gali Shanker	Permanent Building	20	321	NGO
7.	Bangla Sahib - 1	Porta Cabin	50	801	NGO
8.	Lodhi Road, near Indian Social Institute	Porta Cabin	50	775	NGO
9.	Munirka, near Masjid Sector 4, R. K. Puram	Porta Cabin	50	801	NGO
10.	Jama Masjid	Porta Cabin	50	877.45	NGO
11.	Raja Garden	Porta Cabin	50	781.18	NGO
12.	Nizamuddin	Porta Cabin	50	801	NGO
13.	Mansarover Park 2, Lal Bagh	Porta Cabin	50	775.03	NGO
14.	Kalkaji Mandir	Porta Cabin	50	807	NGO

¹⁰ Supra, note 3.

¹¹ Source: Delhi Urban Shelter Improvement Board (DUSIB): <http://delhishelterboard.in/occupancy-report/index-ag2.php>

15.	Akshardham Temple near Metro Station	Porta Cabin	50	775	NGO
16.	Pushta Usmanpur	Porta Cabin	50	775.03	NGO
17.	Kali Mandir, Sector 3, Rohini	Porta Cabin	50	796.24	NGO
18.	Jama Masjid - 5	Porta Cabin	50	815.49	NGO
19.	Bangla Sahib Gurudwara Site - 6	Porta Cabin	50	801	NGO
20.	Anand Vihar - 2	Porta Cabin	50	800	NGO

Source: DUSIB, January 2017

The greatest shortcomings are the insufficiency of shelters for the over 10,000 homeless women of Delhi, the lack of space for storage of personal belongings, the absence of kitchens/spaces to cook, the absence of secure bathing areas and hot water, and the lack of adequate security for women in these shelters.

Violence against Homeless Women

India faces an acute shortage of shelters for homeless women, who do not feel safe sleeping in crowded shelters with men. Instances of sexual abuse, including rape of women, have been reported in homeless shelters but action is not taken to meet the concerns of homeless women.¹² The perpetrators of such violence include the police, shelter managers, government officials and passers-by who do not let homeless women sleep, ask them for sexual favours, abuse them verbally and physically, and frequently destroy their temporary accommodation.

Shahri Adhikar Manch: Begharon Ke Saath (Urban Rights Forum: With the Homeless)—a collective working on issues of homelessness in Delhi—organized a public hearing on violence against homeless women in Delhi in 2013. The public hearing brought to light the multiple violations of the rights of homeless women and presented recommendations from the jury to the government of Delhi.¹³

Accessing healthcare is a tremendous challenge for homeless people. Most shelters do not provide any form of healthcare for homeless residents; including for women. Homeless persons, including women and older persons, suffer from several diseases and illnesses due to inadequate living conditions and extreme weather conditions. They are vulnerable to the heat, rain, and cold, and have insufficient clothes, bedding, and shelter. This reduces their immunity and increases their vulnerability to numerous health problems. In most instances, their illnesses go untreated or are detected too late, making them more susceptible to infection and death. There are countless incidents of women being denied treatment and turned away from hospitals.¹⁴ This has resulted in homeless women being forced to deliver babies on the road, thereby increasing their and their infants' mortality. Shelters for homeless women, including for pregnant and lactating women, continue to be insufficient and inadequate.

¹² See, 'Homeless Women: Easy Targets,' *Hindustan Times*, 17 August 2016. Available at: <http://www.hindustantimes.com/static/roofless-in-delhi-women/>

¹³ The report of the public hearing, which includes the statement of the jury, is available at: http://hlrn.org.in/documents/Public_Hearing_on_Violence_against_Homeless_Women_in_Delhi_Report.pdf

¹⁴ *Supra*, note 3.

Cases of the High Court of Delhi on Homeless Women

In August 2010, Laxmi Mandal, a destitute pregnant woman, died on the street while giving birth to a baby girl. Prior to her death, Laxmi had been denied access to Delhi hospitals. At that time, many hospitals run by the Delhi government did not admit destitute pregnant women, forcing women to give birth on pavements and in inadequate conditions. On 29 August 2010, the Hindustan Times reported the matter and highlighted Laxmi's death. Following the news article, the High Court of Delhi took *suo moto* action. (W.P. (C) 5913/2010). Ultimately, the Court issued multiple orders calling for the Delhi government to establish shelters for destitute/homeless pregnant and lactating women throughout the city.¹⁵ The Court held that under Article 21 of the Constitution of India, the government must create at least five shelters exclusively for pregnant and lactating women with medical aid and food so that no destitute woman would be compelled to give birth on the street.¹⁶

On 1 February 2013, the High Court of Delhi heard opening arguments in the case *Priya Kale vs. Government of NCT Delhi and Ors.* (W.P. (C) 641/2013). The case concerned the living conditions in government homeless shelters in Delhi, particularly for pregnant and lactating women. The petitioner, Priya Kale, was a resident of the government-run family shelter home, Motia Khan, in Paharganj district in Delhi. On 6 January 2013, Priya's two-month-old daughter, Priti, died unexpectedly, most likely due to her and Priya Kale's lack of access to nutritional and medical health services at Motia Khan and the inadequate protection it offered its residents during Delhi's harsh winter months. The High Court of Delhi issued orders dictating certain immediate improvements at Motia Khan to prevent any future tragedies like Priya Kale's.¹⁷

Securing Access to Justice

According to Article 21 of the Constitution of India, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Under this and Articles 19(1)(d), 19(1)(e), and 19(1)(g) of the Constitution, which provide for the rights to move, settle, and carry out trade, respectively, in any part of the country, the Constitution guarantees protection of the right to life, residence, and livelihood in India. However, there is no specific constitutional provision or national and state laws that address the issue of homelessness or inadequate housing in the country. Though policies and schemes are available to address the issue of homelessness and inadequate housing, they are not legally enforceable and hence not sufficient to address the violation of housing rights of the majority of the people. Since India's independence, there have been a host of urban and rural policies and schemes; some of these have been phased out, while others have been renamed or recently announced.

In addition to specific orders related to cases on homelessness, the Supreme Court of India, in several judgments, has linked the right to shelter with the right to life, stressing that the right to housing is implied under the fundamental right to life (Article 21) in the Constitution of India.

Poor homeless families have limited access to remedy and largely depend on civil society groups or activist lawyers to take on action or inaction by government or private actors to address the issue of homelessness. The grievance redress mechanisms and helplines to assist

¹⁵ For more information, see:

<https://www.escr-net.org/caselaw/2014/court-its-own-motion-v-union-india-wp-59132010>.

¹⁶ A report by Human Rights Law Network on the condition of these shelters in 2012 is available at: <http://www.hrln.org/hrln/reproductive-rights/reports/1613-fact-finding-report-on-shelters-for-pregnant-and-lactating-women-throughout-delhi-march--april-2012.html#ixzz4PJ23dels>

¹⁷ For more information, see: <http://www.hrln.org/hrln/reproductive-rights/reports/1632-fact-finding-report-priya-kale-vs-gnct-of-delhi-and-ors-w-p-c-6412013.html#ixzz4PJ4VdhYV>.

poor homeless persons in need are not effective. In Delhi, the High Court initiated a *suo moto* case on homelessness, while the cases in the Supreme Court have been filed as public interest litigations. Human rights defenders in several other states have also taken up the issue of homelessness in state courts, including in Rajasthan. In Tamil Nadu, collaboration between the state and civil society organizations has resulted in positive outcomes, including an improvement in shelters for the homeless.

Criminalization of Homelessness/Destitution

Homelessness is considered a crime in the country under some laws. For example, under the Delhi Police Act 1978, any person found under ‘suspicious circumstances between sunset and sunrise’ can be apprehended by the police. Homeless people are often stigmatized as criminals and/or their mere existence is deemed illegal due to the perceived danger posed by their presence. Their dwellings in public spaces, too, are also targeted. Certain municipal laws consider bathing and living in the open as punishable offences. Homeless people are also rounded up routinely by the police to maintain ‘peace’ under Sections 109 and 151 of the Criminal Procedure Code 1973. Beggary preventions laws such as the Bombay Prevention of Begging Act 1959 and other state laws, also punish vagrancy. All these laws allow the police to detain or arrest anyone who is poor or homeless.¹⁸

A positive initiative taken by the central government has been the drafting of The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill 2016, which would decriminalize homelessness and poverty. The government needs to open this draft for discussion and then finalize and pass this bill, in order to make it law.

Recommendations to Improve Living Conditions of Homeless Women:

- Ensure that all shelters conform to standards of ‘adequate housing’ as mentioned in General Comment 4 of the United Nations Committee on Economic, Social and Cultural Rights, and elaborated by the UN Special Rapporteur on adequate housing. These include: availability of basic services, accessibility, habitability, location, security of tenure, affordability, cultural adequacy, freedom from dispossession, and protection from violence, especially for women.
- Implement norms specified in the Supreme Court Commissioners’ manual¹⁹ and the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless²⁰ for building new and adequate permanent shelters, including the following:
 - Locate shelters close to areas with high densities of homeless people and work sites. Instead of building shelters in peripheral regions of the city, new shelters should be located in areas with high homeless populations.
 - Build adequate permanent shelters of concrete or durable and weather-proof material. Ensure that shelters are open twenty-four hours and equipped for all weather conditions.
 - Create adequate shelters for women, including recovery homes for women survivors of violence and abuse, working women’s hostels, and special homes for women with mental illness.

¹⁸ *The Trajectory of a Struggle, Shahri Adhikar Manch: Beharon Ke Saath*, March 2014. Available at: http://hlrn.org.in/documents/SAM-BKS_The_Trajectory_of_a_Struggle.pdf

¹⁹ Available at: http://www.sccommissioners.org/Homelessness/shelter_manual.pdf

²⁰ Please see Scheme Guidelines: *National Urban Livelihoods Mission: Scheme of Shelters for Urban Homeless - Operational Guidelines* (Ministry of Housing and Urban Poverty Alleviation, Government of India).

- Utilize empty/vacant government buildings and convert these into permanent homes for the homeless.
- Ensure that the space of 50 square feet per person is taken as the minimum space to be provided to each homeless person in a shelter.
- Provide adequate street-lighting and fencing around shelter premises, for security.
- Provide three caretakers at each shelter, working in rotating shifts of eight hours each, and ensure the presence of a guard, especially at night.
- Build separate shelters for single men, single women, families, women with children, and chemically-dependent and mentally ill persons. At least 20 per cent of all shelters should be exclusively for women and their dependent children.
- Build and/or upgrade all shelters with requisite infrastructure of sanitation, clean and potable water, heating and cooling arrangements, vector control, and first aid requirements.
- Ensure that secure storage lockers are provided for each homeless family in each shelter, so that they are able to store their belongings.
- Work with public toilet providers (such as Sulabh Shauchalaya) to provide cards for all homeless persons in Delhi, so that they are able to access all public toilets free of charge.
- Ensure that all bedding, including *durries* and blankets, is washed regularly. Provide clean sheets and mattresses in all shelters.
- Ensure that coolers are installed at the onset of summer and heaters at the onset of winter. All shelters should have adequate ventilation facilities.
- Provide daily cleaning in all shelters to protect residents from dust and unhygienic living conditions.
- Ensure that all homeless residents are immediately provided all entitlements – voter cards, ration cards, labour cards, free bus passes, health insurance facilities, and facilities to set up ‘zero balance’ bank accounts.
- Initiate livelihood training activities for women in homeless shelters and in areas where homeless women live.
- Repeal anti-begging/anti-vagrancy laws across India and pass The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill 2016.
- Implement positive orders of the courts on homelessness and the right to housing.
- Set up independent monitoring committees to regularly assess and report on conditions of the homeless. This committee could also monitor implementation of NULM–SUH guidelines and court orders.
- Develop a policy on homelessness that aims to address the structural causes of homelessness and to develop durable long-term solutions. The government needs to move from the mindset of shelters for the homeless to providing permanent housing options for the homeless.
- Set up subsidized canteens (as in Chennai) where the homeless and other low-income populations are able to eat affordable and nutritious food. Provide at least one subsidized hot meal every night for the homeless.
- Ensure access of homeless persons to 15 per cent beds allocated for Economically Weaker Sections in private hospitals.
- Link Community Health Centres of private hospitals with homeless shelters to ensure access to adequate healthcare and hospital facilities, without discrimination.
- Issue instructions to all public hospitals that if a person is certified by a Homeless Rescue Team to be homeless, she/he should not be charged for medical services.
- Provide regular visits (at least bi-weekly) by mobile health vans to all homeless shelters. Conduct regular health camps for homeless persons, including for women and children. Provide free supply of essential medicines to ailing and unwell persons, including those

with chronic health issues. Ensure that adequate healthcare, including reproductive healthcare, is provided to all homeless women free of charge.

- Develop an early warning system or alert mechanism, with the support of hospitals and clinics, which ensures that homeless people who are critically ill can be provided medical attention and do not die on the streets for lack of medical aid.
 - Recognize and protect women's equal rights to adequate housing, land, property, and inheritance.
 - Promote awareness on, and ensure adequate implementation of, the Protection of Women from Domestic Violence Act 2005.
 - Ensure the adequate participation of women in all law and policy-making processes, including those related to housing and land.
 - Promote measures so that state and national human rights institutions work effectively to prevent housing and land rights violations, and provide adequate reparation and restitution to affected individuals, groups, and communities.
 - Implement recommendations of UN Special Procedures, treaty bodies, and the Universal Periodic Review in a timely manner, and ensure that international reporting timelines and schedules are adhered to and that all reports are prepared with the active participation of civil society.
-