



**Submission from Housing and Land Rights Network, India
to the Special Rapporteur on adequate housing as a component of the right to
an adequate standard of living, and on the right to
non-discrimination in this context**

Access to Justice for the Right to Housing¹

1. Are the following components of the right to housing subject to hearings and effective remedies before courts and/or tribunals in your country? If yes, please explain which law provides this protection, who has standing to bring claims forward, and what court or tribunal adjudicates the claim. Provide an example of a leading case and explain briefly how this may have advanced protection of the right to housing.

a.) Non-discrimination (including accommodation of disabilities) Yes/No

The Constitution of India, in Article 14 provides that, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Laws and policies, including those governing the provision of housing, which are manifestly discriminatory and violate the principle of equality as laid out in the Constitution of India, can be challenged by the affected person in the relevant state High Court or the Supreme Court of India, through a writ petition. The courts can invalidate the law, policy or provision, if it is found to be discriminatory and in violation of the right to equality.

Several state-sponsored schemes and programmes contain beneficial provisions for persons with disabilities and other marginalized groups. For example, the Pradhan Mantri Awas Yojana, a central government housing scheme, provides for preferential allotment of housing to manual scavengers, women, persons belonging to Scheduled Castes/Scheduled Tribes/Other Backward Classes, minorities, persons with disabilities and transgender persons. Similarly, under the Smart Cities Mission, a central government urban renewal and retrofitting scheme, the proposals for several cities aim to create inclusive and “barrier-free” cities for “universal access.” However, most of these schemes do not explicitly prohibit discrimination or provide remedy against the same.

In some states of India, such as Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Haryana, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttar Pradesh, Uttarakhand, and West Bengal, the rules formulated under the Real Estate (Regulation and Development) Act 2016—a law enacted to protect the interests of consumers/buyers in the real estate sector—require a declaration that the promoter shall not discriminate. For example, the Rajasthan Real Estate (Regulation and Development) Rules 2017, in Section 3(4) states that:

¹ For more information, see forthcoming publication [*High Court Cases on the Human Right to Adequate Housing: Compendium and Analysis of Important Judgments*] by Housing and Land Rights Network, to be available at: www.hlrn.org.in

The declaration under... shall include a declaration stating that the promoter shall not discriminate on the basis of caste, religion, language, region, sex or marital status against any allottee at the time of allotment of any apartment, plot or building, as the case may be.²

b.) Security of tenure (including prohibition of eviction without appropriate alternative housing) Yes/No

Article 21 of the Constitution of India upholds the ‘right to life’ and provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Indian courts, in multiple judgments, have held that the right to life includes the right to shelter/housing, clean water, electricity, sanitation, and livelihood among other elements.³ Any law, policy, or administrative order that deprives a person of their right to life, for example through the act of forced eviction without the provision of alternative accommodation, leading to homelessness, could be challenged in the relevant state High Courts and the Supreme Court of India, through writ petitions.

Several laws and policies lay down procedural safeguards such as the provision of adequate notice and public hearing, to protect security of tenure over housing and land, and to prevent arbitrary and forced evictions.⁴ The Delhi Slum and Rehabilitation and Relocation Policy, 2015 provides that certain eligible settlements in the National Capital Territory of Delhi, shall not be demolished without providing alternative accommodation.

In several cases which deal with access to essential services, such as *Pani Haq Samiti v. Brihan Mumbai Municipal Corporation*,⁵ *Abhimanyu Mazumdar v. Superintending Engineer*,⁶ *Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board*,⁷ *Fashion Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Co.*,⁸ *R. Krishnasamy Gounder v. The State of Tamil Nadu*,⁹ and, *Bibhuti Bhusan Chakraborty v. Deputy Registrar*,¹⁰ the courts have established that the rights to water, electricity, sanitation, and privacy, should be fulfilled regardless of the nature of tenure and legality of the settlement, and would even extend to “unauthorized or illegal occupants.”

² Rajasthan Real Estate (Regulation and Development) Rules, 2017. Available at:

http://rera.rajasthan.gov.in/Content/pdf/RERA_Rules_2017.pdf

³ See forthcoming publication [*High Court Cases on the Human Right to Adequate Housing: Compendium and Analysis of Important Judgments*] by Housing and Land Rights Network, to be available at: www.hlrn.org.in

⁴ These include, *inter alia*, the following:

- National Rehabilitation and Resettlement Policy 2007. Available at:

<http://dolr.gov.in/sites/default/files/national%20rehabilitation%20%26%20resettlement%20policy%2c%202007.pdf>

- The Public Premises (Eviction of Unauthorised Occupants) Act 1971. Available at:

<http://www.legislative.gov.in/Actsofparliamentfromtheyear/Public-Premises-Eviction-Unauthorised-Occupants-Act-1971>

⁵ MANU/MH/2705/2014.

⁶ AIR 2011 Cal 64.

⁷ W.P. (MD) No. 4772 of 2016.

⁸ AIR 2009 Cal 87.

⁹ W.P.No.7517 of 1998.

¹⁰ AIR 1997 Cal 374.

In *Sudama Singh v. Government of Delhi*,¹¹ an important case related to the forced eviction of residents of a low-income settlement (*jhuggi*), the High Court of Delhi ordered the government to provide alternative accommodation to evicted persons and held that:

What very often is overlooked is that when a family living in a Jhuggi is forcibly evicted, each member loses a “bundle” of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity.

However, in some other cases, Indian courts have held that the provision of alternative accommodation is not a prerequisite for evictions. For example, in *Peoples’ Union for Civil Liberties v. State of Gujarat*,¹² despite certain positive mandates, the High Court of Gujarat suggested that providing alternative accommodation may in fact encourage “encroachers” and hence, it would not be mandatory for the government to provide the same.¹³

c.) Adequacy standards (habitability, access to water, sanitation, services, health and safety etc.) Yes/No

As part of the right to life enshrined in Article 21 of the Constitution of India, Indian courts, in several judgments, have held that housing is not limited to shelter, but includes access to all essential services, including the means of livelihood.

In *Millennium Educational Trust v. State of Karnataka*,¹⁴ the High Court of Karnataka stated that:

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being.

In *Pani Haq Samiti v. Brihan Mumbai Municipal Corporation*,¹⁵ the Bombay High Court upheld the fundamental right to clean drinking water and ordered the supply of drinking water to occupants of urban settlements, irrespective of their tenure status.¹⁶

d.) Non-retrogression (review of effect on right to housing of program cuts, removal of legal protections or austerity measures) Yes/No

The continued practice and legal sanction of forced evictions and demolitions by the Indian state, constitutes an act of retrogression, in violation of all existing state and central government housing schemes as well as India’s constitutional and international legal obligations.

¹¹ W.P. (C) Nos.8904/2009.

¹² (2001) 1 GLR 547.

¹³ For more information, see forthcoming publication [*High Court Cases on the Human Right to Adequate Housing: Compendium and Analysis of Important Judgments*] by Housing and Land Rights Network, to be available at: www.hlrn.org.in

¹⁴ ILR 2013 KARNATAKA 1452.

¹⁵ MANU/MH/2705/2014.

¹⁶ For more information, see forthcoming publication of Housing and Land Rights Network on the judicial treatment of the human right to adequate housing in India, to be available at: <http://www.hlrn.org.in>

e.) Progressive Realization – (obligation to take reasonable measures, establish and meet goals and timelines, prioritize the most disadvantaged, allocate maximum available resources, etc.) Yes/No

In the case of *Shivaji Krishna Zunjare v. State of Maharashtra*,¹⁷ the Bombay High Court outlined the positive obligations of the state and referred to Article 26 of the South African Bill of Rights, which provides that the right to adequate housing exists for all persons; that the state must take reasonable legislative and other measures within its available resources; and that no one may be evicted without an order of the court considering all circumstances.¹⁸

Similarly, in *Millennium Educational Trust v. State of Karnataka*,¹⁹ the Karnataka High Court adopted a human rights approach to enumerate the duties of the state with respect to the right to adequate housing, which include protection from arbitrary and forced evictions and illegal acquisitions, but also extend to the responsibility of the state to provide adequate housing to people belonging to economically weaker sections.²⁰

In policy and practice, however, there is little evidence of the state's commitment towards the progressive realization of the human right to adequate housing for all. In fact, in 2017, court orders and their interpretation by state authorities were responsible for 17 per cent of the total evictions documented in India by Housing and Land Rights Network.²¹ For example, the Bombay High Court order in PIL No. 140/2006 directed the Municipal Corporation of Greater Mumbai to clear 'illegal hutments' within 10 metres of both sides of the Tansa pipeline, resulting in the eviction of over 6,000 families. Similarly, in W.P. (C) No. 328/2002, the Supreme Court of India, while deciding the compensation and rehabilitation of families affected by the Sardar Sarovar Project on the Narmada River, set a deadline for their forcible eviction. In an order dated 8 February 2017, the Court stated that, "All the occupants including all the 'project affected families' shall vacate the submergence area under reference, on or before 31.07.2017, and in case there are individuals in the submergence area, after the aforesaid deposit has been made into the account of the Grievance Redressal Authority, after 31.07.2017, it shall be open to the State Government to remove all such individuals forcibly."

2. What measures have been taken or are planned to improve access to justice for the right to housing? Please include, where applicable, measures relating to: i) education of lawyers, advocates and potential rights claimants; ii) barriers facing women and other groups; iii) access to legal representation; iv) making hearings and other procedures more accessible and less intimidating or costly; v) more effectively addressing systemic issues; and vi) ensuring implementation of remedial orders.

¹⁷ 2004 (6) BOMCR 133.

¹⁸ For more information, see forthcoming publication [*High Court Cases on the Human Right to Adequate Housing: Compendium and Analysis of Important Judgments*] by Housing and Land Rights Network, to be available at: www.hlrn.org.in

¹⁹ ILR 2013 KARNATAKA 1452.

²⁰ For more information, see forthcoming publication [*High Court Cases on the Human Right to Adequate Housing: Compendium and Analysis of Important Judgments*] by Housing and Land Rights Network, to be available at: www.hlrn.org.in

²¹ *Forced Evictions in India in 2017: An Alarming National Crisis*, Housing and Land Rights Network, New Delhi, 2018. Available at: http://www.hlrn.org.in/documents/Forced_Evictions_2017.pdf

The Advocates Act 1961 provides that the Bar Council of India and the State Bar Councils shall conduct seminars and organize talks on legal topics by eminent jurists, publish journals and papers of legal interest, and provide legal aid to the poor.²²

The Legal Services Authorities Act 1987 provides for the establishment of a National Legal Services Authority.²³ The authority is responsible for spreading legal literacy and legal awareness amongst the people to educate “weaker sections of the society” about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures; organizing legal aid camps, especially in rural areas, settlements or labour colonies with the purpose of educating marginalized communities about their rights as well as encouraging the settlement of disputes through ‘*Lok Adalats*’ (people’s courts); and, taking necessary steps by way of social justice litigation with regard to consumer protection, environmental protection, or any other matter of special concern to the weaker sections of the society. The Act establishes similar authorities at the state, district, and *taluk* (a group of villages) level to provide legal services and conduct *Lok Adalats*.

3. Please identify where responsibility lies for education and training of judges and administrative decision-makers regarding their international human rights obligations. What measures have been taken to ensure that domestic law is interpreted as far as possible to provide for effective remedies for the right to housing?

The National Judicial Academy, Bhopal, sponsored by the Ministry of Law and Justice, was established in 1993 to provide comprehensive training to judicial personnel in order to enhance the quality of justice and improve the skills of adjudication. Judicial academies also exist at the state level in order to provide training to members of the judiciary and sensitize them about core constitutional values and other legal provisions.

Despite the absence of a specific legislation on the human right to adequate housing in India, the courts have interpreted Article 21 in the Constitution of India to include the right to housing as an integral part of the right to life. Through a liberal interpretation of the ‘right to life,’ the courts have recognized various components of the right to housing as recognized in international law, including the elements of adequacy and concomitant rights, and also provided relief.

4. Are you aware of examples in your country of community-based initiatives to provide hearings and remedies for the right to housing outside of formal court or tribunal processes? How have they been supported and how effective have they been? Do these operate at the national or sub national level, and do decisions create precedents that can be relied upon by others?

India has a long history of organizing public hearings as well as people’s tribunals on urgent issues related to the human right to adequate housing. These have covered issues of displacement from infrastructure projects, including dams, mining projects, highway expansion, and ports; forced evictions; and inadequate resettlement, among other violations of housing and land rights. A few of these public hearings are described below.

²² Advocates Act 1961. Available at:

<http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf>

²³ Legal Services Authorities Act 1987. Available at: <https://nalsa.gov.in/acts>

In December 2017, various civil society organizations and social movements collectively organized a public hearing in Chennai on ‘Forced Evictions and Inadequate Resettlement’ to seek redress against the decision of the Government of Tamil Nadu to forcibly evict 50,096 families. The jury, which comprised retired bureaucrats and sectoral experts, held that the government had violated multiple human rights of affected persons, including the right to adequate housing, by ignoring due process, not ensuring that communities were consulted or had information about the relocation site, and by failing to construct quality housing for the poor.

In August 2013, *Shahri Adhikar Manch: Begharon Ke Saath* (Urban Rights Forum: With the Homeless), of which Housing and Land Rights Network is a co-founder and the Secretariat, organized a public hearing on ‘Violence against Homeless Women in Delhi’ to highlight the critical issues of rampant abuse and violence faced by homeless women and girls in Delhi.²⁴ The jury, which was chaired by late Justice Leila Seth (former Chief Justice of the High Court of Himachal Pradesh), recommended that the government should develop and implement a housing and shelter plan that caters to the varied needs of the homeless population and ensure that there are separate permanent, year-round, 24-hour shelters for homeless women, including shelters for working women and families, with adequate day-care facilities.

Similarly, in June 2011, a group of organizations, including Housing and Land Rights Network, Human Rights Law Network, and the National Campaign on Dalit Human Rights, organized a public hearing on the large-scale illegal demolition in Baljeet Nagar, New Delhi, which affected over 4,000 people.²⁵ The jury, chaired by Justice A. P. Shah (former Chief Justice of the High Court of Delhi), held that the demolition had resulted in the violation of the human right to adequate housing and negatively impacted a range of other human rights, including the rights to health, education, and work/livelihood. The jury recognized the increasing discrimination by the Government of Delhi against the urban poor in policies and plans, reflected in the acute housing shortage for the poor in Delhi and the lack of provision of low-cost housing.

In order to highlight the violations of the human right to adequate housing in post-tsunami reconstruction, a collective of local organizations organized a People’s Tribunal in Chennai in December 2006.²⁶ The jury, chaired by then Special Rapporteur on adequate housing, Mr Miloon Kothari, condemned the Government of Tamil Nadu for its abrogation of its legal commitments and responsibility to safeguard, promote and fulfil the human rights of tsunami survivors and for its role in abetting human rights violations through acts of commission and omission.

While reports and recommendations of all public hearings and people’s tribunals are submitted to the concerned governments, the record of implementation of those recommendations is inconsistent.

²⁴ *Public Hearing on Violence against Homeless Women in Delhi: Report with Statement of the Jury*, Shahri Adhikar Manch: Begharon Ke Saath, New Delhi, 2014. Available at:

http://hlrn.org.in/documents/Public_Hearing_on_Violence_against_Homeless_Women_in_Delhi_Report.pdf

²⁵ *The Cruel Side of Delhi’s Beautification: Illegal Demolition in Baljeet Nagar*, Human Rights Law Network, New Delhi, 2011. Available at: http://hlrn.org.in/documents/Baljeet_Nagar_Public_Hearing.pdf

²⁶ *Voiceless No More: Report of a People’s Tribunal on Housing Rights*, Books for Change, Bangalore, 2007. Available at: http://hlrn.org.in/documents/Voiceless_No_More.pdf

5. What role does your National Human Rights Institution play in ensuring access to justice for the right to housing? Are there other human rights bodies that play a role in this respect, such as an ombudsperson?

The Protection of Human Rights Act 1993 provides for the constitution of the National Human Rights Commission and State Human Rights Commissions, which are empowered to inquire and intervene in any allegation regarding the violation of a human right; review the safeguards provided in the Constitution for the protection of human rights; encourage the effort of non-government organizations and institutions working in the field of human rights; and, undertake any function which it considers necessary for the protection of human rights.²⁷ The Paris Principles, which provide the benchmarks for National Human Rights Institutions, require such institutions to have a broad mandate and competence, be independent and autonomous from the government, and have adequate powers and resources for investigation.²⁸ Consequently, the Human Rights Commissions in India are deemed as a civil court and have broad powers to summon witnesses, requisition records, evaluate evidence, and produce information. They can be approached by a victim or anyone on behalf of the victim, but can also take suo moto cognizance of a human rights violation.

There are seven core national rights institutions in India: the National Human Rights Commission; the National Commission for Women; the National Commission for Protection of Child Rights; the National Commission for Minorities; the National Commission for Backward Classes; the National Commission for Scheduled Castes; and, the National Commission for Scheduled Tribes.

Housing and Land Rights Network has continued to bring to the notice of various National Human Rights Institutions in India, including the National Human Rights Commission (NHRC), issues related to violations of the human right to adequate housing. This has involved seeking NHRC's intervention in order to protect the human rights of affected people, including families who have been forcefully evicted as well as of internally displaced persons, homeless persons, women, children, and persons with disabilities whose right to adequate housing has been violated.

All complaints sent to NHRC have been received and responded to by the Commission, which then forwards them along with letters to responsible duty-holders, seeking their response. In most cases, the communication exchange continues with states denying allegations and complainants reiterating the violations. With NHRC not ordering independent investigations or providing recommendations, affected communities generally receive limited or no relief or redress.

For instance, in July 2015, HLRN had written to NHRC seeking immediate intervention in the case of forced eviction of over 5,000 families in the Mandala area of Mumbai.²⁹ In addition, HLRN also requested for a permanent halt on the rampant eviction drives and a zero eviction policy unless an adequate rehabilitation package was offered, as per the recommendations of the Special Rapporteur on adequate housing. The response to the complaint was limited as NHRC accepted the local government's claim of rightly and legally evicting the families as they were

²⁷ The Protection of Human Rights Act 1993. Available at: http://nhrc.nic.in/sites/default/files/PHRA_Bilingual_2018.pdf

²⁸ Principles Relating to the Status of National Institutions, 1993. Available at:

<https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

²⁹ Case number: 1658/13/16/2015.

“*illegal constructions/encroachments on open government land.*”³⁰ Only 131 families of the 5,000 evicted, were considered eligible for alternative accommodation. Consequently, a large number of affected families were not given any form or relief or alternative accommodation. The Maharashtra government’s decision to discriminate on the basis of ‘cut-off’ date, to prove eligibility goes against the people’s constitutional rights. The case is still active with NHRC though no action has been taken to hold the state government accountable or to provide rehabilitation for evicted persons.

In August 2017, HLRN appealed to NHRC for intervention in the case of post-flood evictions and resettlement in Chennai, Tamil Nadu.³¹ The complaint was forwarded to the State Human Rights Commission (SHRC), which dismissed it and closed the case stating that the subject matter was outside its purview. Housing and Land Rights Network filed another complaint with NHRC in November 2017, appealing for immediate intervention to prevent forced evictions in the guise of ‘city beautification’ for the FIFA-Under 17 World Cup Football tournament in Kolkata, West Bengal.³² The complaint that was forwarded to the West Bengal Human Rights Commission was dismissed on the grounds that it was “a policy matter of the government” and that as the mega sporting event had concluded, redress could only be obtained in a lower court.

Housing and Land Rights Network also filed a complaint with NHRC in July 2014, seeking action on the violation of human rights as a result of forced eviction and inadequate resettlement, in the resettlement sites of Savda Ghevra (Delhi), Vashi Naka (Mumbai), and Kannagi Nagar (Chennai).³³ The Commission, in response to the complaint, gave eight weeks’ time to the chief secretaries of the Government of National Capital Territory (NCT) of Delhi, Maharashtra, and Tamil Nadu to submit an ‘action taken report.’ The response from Tamil Nadu Slum Clearance Board (TNSCB) stated that the evicted families were living in ‘sub optimal conditions’ and hence were resettled in ‘self-contained tenements with improved services.’ The choice of the resettlement site was based on availability of vacant government land. However, a positive response to the complaint was that TNSCB accepted the proposal of restricting the size of resettlement townships to not more than 5,000 tenements per site. The Government of NCT of Delhi, in its response to NHRC, denied most of the issues raised in HLRN’s complaint regarding inadequate resettlement in the Savda Ghevra resettlement site in Delhi. The Government of Maharashtra, despite regular reminders and sufficient time has not submitted any report to NHRC.

On 11 February 2011, HLRN had written to NHRC on the issue of violation of human rights, especially the human right to adequate housing, as a result of forced evictions during the 2010 Commonwealth Games (CWG) in Delhi along with a detailed fact-finding report, documenting the forced evictions carried out by the Government of Delhi for the Games and the resulting violations of human rights of affected persons and communities.³⁴ The Commission did not take any action and closed the case in September 2014 stating that a Writ Petition (C) No. 524/2010 had been filed by Peoples’ Union for Democratic Rights before the High Court of Delhi and the Court had set up a Monitoring Committee on this issue for consideration of the issue. Despite

³⁰ According to the Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act 1971, *‘the slum dwellers residing in slum dwellings in existence, which are erected prior to 1/1/2000, are only protected in this state.’*

³¹ Case number: 1913/22/13/2017.

³² Case number: 295/5/18-19/OC.

³³ Case number: 5550/30/0/2014.

³⁴ Case number: 1161/30/0/2011.

producing evidence-based data and a chronological history of events in all complaints made to NHRC in India, most complaints have received limited or no action so far.

In a positive case, a complaint filed in NHRC in June 2014³⁵ by a retired Secretary to the Government of India, resulted in alternative housing being allocated to evicted residents. The complainant alleged that residents of the R.P. Peta settlement living on land owned by the Railways in Visakhapatnam, Andhra Pradesh had been evicted and rendered homeless. After a series of exchange between NHRC and the state and central governments, NHRC ordered that by “virtue of their human rights it was the obligation of the state to provide them the succor as per the mandate of Art. 21 of the Constitution,” and “left it to the good conscience and wisdom of the Chairman, Railway Board and the Chief Secretary, Government of Andhra Pradesh to ensure that justice was provided to the affected persons” and closed the case. As a result, the homeless persons received housing at an alternative location, albeit on the city outskirts (in Madinabad) without adequate services and far from their sources of livelihood.³⁶

³⁵ Case number: 1036/1/21/2014.

³⁶ Information from Association for Urban and Tribal Development, Visakhapatnam.