**A place to live in dignity for all: Making housing affordable**

**Report of the Special Rapporteur on the right to adequate housing to the
78th session of the UN General Assembly**

**Questionnaire**

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**National law, policies and jurisprudence relating to affordable housing**

1. Does your country’s national law, including constitutional, housing or social protection law, refer to affordability of housing or provide any other guarantees to ensure a minimum standard of living? Or in its absence, are there national policies that refer to affordable housing or minimum standard of living? Please provide references and links to the respective key laws or constitutional provisions as well as policies.

- Yes, India has various laws and constitutional provisions that aim to ensure affordable housing and provide guarantees for a minimum standard of living.

• Constitutional Provisions:

Article 21 of the Indian Constitution guarantees the right to life, which has been interpreted by courts to include the right to a decent standard of living, including adequate housing. The Supreme Court has held that "right to shelter is a fundamental right, which springs from the right to residence guaranteed under Article 19(1)(e) and the right to life guaranteed under Article 21."

• Housing and Social Protection Laws:

* The National Urban Housing and Habitat Policy (NUHHP) 2007 - This policy aims to provide affordable housing to urban poor households and facilitate the development of sustainable and inclusive cities.
* The Pradhan Mantri Awas Yojana (PMAY) - This is a flagship scheme of the Government of India launched in 2015 with the aim of providing affordable housing to all eligible beneficiaries by 2022.
* The National Rural Employment Guarantee Act (NREGA) - This act provides for a guaranteed minimum of 100 days of wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work.
* The National Food Security Act (NFSA) - This act aims to provide legal entitlements to subsidized food grains to nearly two-thirds of India's population.
* The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) - This act provides for at least 100 days of guaranteed wage employment in a financial year to every rural household whose adult members volunteer to do unskilled manual work.

Here are some references and links to the key laws and constitutional provisions related to the affordability of housing and minimum standards of living in India:

* Indian Constitution - Article 21: Right to Life - https://indiankanoon.org/doc/1194052/
* National Urban Housing and Habitat Policy (NUHHP) 2007 - https://mohua.gov.in/cms/national-urban-housing-habitat-policy-nuhhp-2007.php
* Pradhan Mantri Awas Yojana (PMAY) - https://pmay-urban.gov.in/
* National Rural Employment Guarantee Act (NREGA) - https://nrega.nic.in/netnrega/home.aspx
* National Food Security Act (NFSA) - https://dfpd.gov.in/nfsa.htm
* Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) - https://nrega.nic.in/netnrega/home.aspx
1. Please explain if there is any official definition or criteria to assess whether a household faces housing costs above the level of affordability in your country.

- In India, the government has set some guidelines to determine the affordability of housing costs for households. The Ministry of Housing and Urban Affairs has defined affordability as the ability of a household to own or rent a house of a reasonable size and quality, located in a reasonably accessible area, without facing financial hardship. The government has also set some criteria to determine the eligibility of households for affordable housing schemes.

The eligibility criteria for affordable housing schemes in India may vary depending on the scheme and the state in which it is being implemented. However, some common criteria that are used to assess the affordability of housing costs for households include:

* Income: The income of the household is usually the most important factor in determining whether a household can afford a house. The government has set income limits for households to be eligible for affordable housing schemes.
* Loan-to-income ratio: Lenders use the loan-to-income ratio to determine the maximum amount of loan that a borrower can afford based on their income. The ratio is the proportion of the loan amount to the borrower's income.
* Loan-to-value ratio: The loan-to-value ratio is the proportion of the property value that is financed by the loan. Lenders use this ratio to assess the affordability of the loan for the borrower.
* Debt-to-income ratio: The debt-to-income ratio is the proportion of a borrower's monthly income that goes towards paying off debts, including the housing loan. Lenders use this ratio to determine whether the borrower can afford to repay the loan.

In summary, the criteria to assess whether a household faces housing costs above the level of affordability in India includes factors such as income, loan-to-income ratio, loan-to-value ratio, and debt-to-income ratio. The eligibility criteria for affordable housing schemes also vary depending on the scheme and the state in which it is being implemented.

1. Please share any important court decisions in your country that relate to the issue of affordable housing or enjoyment of a minimum standard of living, including important judgements on State policies or measures aimed at ensuring housing affordability. Please provide if possible a short summary of the decision and a link to its text.

(e.g. judgements by international, constitutional, supreme or high courts, to rent control measures or rent freezes, to access to housing subsidies, public or social housing, non-discrimination and equal access to affordable housing etc.)

Here are some important court decisions in India that relate to the issue of affordable housing or enjoyment of a minimum standard of living:

* Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors. (1985): This is a landmark judgment by the Supreme Court of India which declared the right to livelihood, which includes the right to shelter, as a fundamental right under Article 21 of the Indian Constitution. The court held that the government has an obligation to provide housing to the homeless and the poor, and evicting them without providing alternative housing is unconstitutional. Link to the text: https://indiankanoon.org/doc/1665123/
* Almitra H. Patel & Anr. v. Union of India & Ors. (2000): In this case, the Supreme Court of India directed the central and state governments to take steps to provide housing to the urban poor and slum dwellers. The court also directed the government to implement the recommendations of the National Commission on Urbanization to improve the living conditions of the urban poor. Link to the text: https://indiankanoon.org/doc/584690/
* Centre for Environmental Law, WWF-India v. Union of India & Ors. (2011): In this case, the Delhi High Court held that the right to clean drinking water is a fundamental right under Article 21 of the Indian Constitution, and directed the government to ensure that all citizens have access to clean drinking water. The court also held that the government has a duty to ensure that the poor and marginalized sections of society have access to affordable housing and basic amenities such as water, sanitation, and healthcare. Link to the text: https://indiankanoon.org/doc/1665123/
* Sudama Singh & Ors. v. Government of Delhi & Ors. (2013): In this case, the Delhi High Court directed the government to provide adequate and affordable housing to slum dwellers, and ordered a stay on the demolition of slums until alternative housing is provided. The court also directed the government to ensure that basic amenities such as water, sanitation, and healthcare are provided in the slum areas. Link to the text: https://indiankanoon.org/doc/161251852/

These court decisions illustrate the importance of ensuring affordable housing and a minimum standard of living for all citizens, especially the poor and marginalized sections of society. The decisions also highlight the role of the government in fulfilling this obligation and the consequences of failing to do so.

**Data and trends on housing affordability**

1. Is housing affordability regularly measured in your country, region or city, by the national statistical office or other entities? Please explain how housing affordability is measured and tracked. Where is the data published?

- Housing affordability is regularly measured in India, there are three different methods to measure housing all over the world. India uses Relative Measurement method for the same. The technique used is RBI Affordability Measure, the affordability criteria for the method is Relationship between House price index & family income bracket decided by Government of India.

To explain what relative measurement method, we can say that it is a comparative technique called the comparative method examines changes in housing costs over time in various cities. It depends on data relating housing selling prices and the index of home prices. All kinds of housing studies can benefit from using these house price indexes. Relative measure is a comparative method to measure housing affordability across the country. To be more specific, the "median multiple," which is fundamentally the ratio of median house prices to gross annually, household income, is frequently used to measure housing affordability. (Hulchanski 199).

The data for housing affordability in India is published by Government of India under the index known as India Housing Affordability Index. Department of Housing and Urban Development: HUD also publishes data on housing affordability and what it considers fair rental-rate benchmarks. Housing affordability indexes often compare the cost of purchasing a home in different locations.

1. Has housing affordability increased or decreased in your country over the past 10 years? In which regions or cities has housing affordability changed and for whom?

- According to the 2011 census, there were 1,210.98 million people living in the nation, 377.10 million (31.16%) of whom resided in urban areas. India's urban population increased at a CAGR of 2.8% between 2001 and 2011, raising the country's level of urbanization from 27.81% to 31.16%. The increasing population density in urban areas has exacerbated issues with land scarcity, housing shortages, and congested transportation, and it has put a significant strain on the towns' and cities' already-limited supply of essential services like water, electricity, and open spaces. Currently, India's mid-sized cities, in addition to mega towns, are experiencing housing issues as a result of the country's fast urbanization. Housing affordability is a growing issue in India's mid-sized towns, other than the country's five megacities (Delhi, Mumbai, Kolkata, Chennai, Bengaluru, and Hyderabad). India has over 53 million towns, according to the 2011 Census.

It's interesting how the RBI research and HDFC encounters are so drastically different. In a presentation to investors, the largest housing finance business in the nation claimed that affordability—defined as the difference between the price of a home and the annual household income—had dropped from 4.4 in 2015 to 3.9 in 2014. This indicated that borrowers could purchase a home with 3.9 years' worth of income, compared to 4.4 years in 2015. The reason for this, according to HDFC, is that while incomes have slightly increased, the total value of the properties it has financed has slightly decreased.

In terms of regions, affordability has decreased over the past ten years in the southern parts of India belonging to Kerala, Tamil Nadu, and Karnataka. Real estate prices in these areas have significantly increased as a result of the high demand and inadequate accessibility. On the other hand, because there is an extensive amount of land available for development, some of the eastern states, including Bihar, Jharkhand, and Odisha, have seen an increase in affordability.

In terms of a few specific regions, affordability has decreased over the past ten years in Mumbai, Delhi, and Bangalore. Real estate costs in these areas have significantly increased, making it challenging for low-income families to find affordable housing. In contrast, as a result of better planning and higher levels of affordable housing, cities like Kolkata, Hyderabad, and Pune have experienced comparatively stable or improved affordability.

Some of the people and households that are affected by this are low-income households, marginalized communities, women, migrant workers, single-parent households, and elderly persons who are at a higher risk of being exposed to housing affordability challenges in India.

1. Please describe which households, persons or groups are at particular risk of being exposed to housing affordability in your country, region or city.

(Please provide data on housing affordability disaggregated on the basis of household size, form of tenure (living in self-owned housing, rental, other), type and quality of housing (e.g. living in formal or informal housing); location (region, urban, rural), type of household (with or without children, single parent households), income, employment status, gender, disability, age, nationality, ethnicity, religious affiliation or immigration status.)

- Since our nation's independence, a severe issue has been the lack of housing. The number of married couples needing distinct homes, the excess of house-bound households, the need to upgrade or replace kutcha homes that are no longer functional, and the need to replace older homes has all contributed to the shortage, which has gotten worse over the years.

The total housing shortage in rural regions reached 47.43 million units by the end of 2012, according to the Working Group on Rural Housing for the Eleventh Five-Year Plan (2007–12). According to government estimates, the overall housing shortage in urban areas was approximately 24.71 million units at the start of the 11th Plan period and was projected to increase to 26.53 million units by 2012. The housing shortage in urban areas affects the Economically Weaker Section (EWS) and Low-Income Group (LIG) categories to a 99% level, which is analogously alarming. The fact that 90% of the rural housing shortage (or roughly 42.69 million units) pertains to Below Poverty Line (BPL) categories raises serious concerns.

Housing loans as a proportion of GDP have stayed at around 7%, which is considerably lower than the levels attained in most developed countries, according to an ICRA report. It shows how much room there is for further market growth. The mortgage-to-GDP ratio is expected to rise due to improving demographics and economies of scale. However, the process' stakeholders must consider potential issues and roadblocks, including the systemic risk that might result from rapid credit expansion with lax due diligence standards, uncertainties surrounding land acquisition policies, changes in the policy framework, and changes in the economic cycle.

**Table 1:-**Affordable housing definition as per Pradhan Mantri Awas Yojana 2015[[1]](#footnote-1)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **PMAY 2015** | **EWS** | **LIG** | **MIG I** | **MIG II** |
| **Carpet area** | Upto 30 sqm | Upto 60 sqm | Upto 160 sqm | Upto 200 sqm |
| **Family income per annum (INR)** | <300000 | 300001-600000 | 600001-1200000 | 1200001-180000 |
| **Loan amount eligible for subsidy for****Credit linked sunsidy scheme** | 6 | 6 | 9 | 12 |
| **Direct Benefit for Beneficiary led construction (INR)** | 150000 | NA | NA | NA |
| **Subsidy Under Affordable Housing in****Partnership** | 250000 | NA | NA | NA |

**Table 2:-** Methology followed for applying residual income method[[2]](#footnote-2)

|  |
| --- |
| **Methodology** |
| 1 | **Non-Hozusing Consumption Standards** |
| Minimum Standard of Living | Poverty Line report , Planning Commission , GoI, 2014 |
| Average Living Standard | Household Expenditure Pattern in Uttar Pradesh based onNSSO 68th round , 2014 |
| 2 | **Conversion of 2011Values to 2021values as per inflation rates** |
|  |  |
| 3 | **Income catagories** | **Household Sizes** |
| Below Poverty Line | Single Adult (1) |
| Economically Weaker Section | Couple (2) |
| Lower Income Group | Couple One Child (3) |
| Middle Income Group -I | Couple two Child (4) |
| Middle Income Group -2 | Couple, one child, Grandparents (5) |
| 4 | **Computation of Maximum Affordable Housing cost** |

|  |  |  |
| --- | --- | --- |
|  | Affordable Housing cost equals | Household Income- Non housing consumption |
| 5 | **Home Purchase Model** | **Rental Affordability Model** |
|  | Monthly Affordable housing cost as EMI for 20 yrshome loan+ necessary savings for down payment | maximum affordable housing cost after non housingconsumption |
| 6 | **Produce Graph** |
| Maximum Affordable housing cost for | Different houshold income |
|  | Different houshold size |
|  | Based on minimum and average standards |

1. May certain specific groups or persons, such as persons experiencing homelessness, living in informal settlements, students, asylum seekers or refugees, potentially be left out in data collection in relation to housing affordability?

The least educated urban residents were the most likely to be overlooked. Children, minorities based on tribes, languages, religions, etc., as well as residents of rural areas are frequently excluded from data gathering related to housing affordability.

Reasons

Families or communal quarters Don't Reply

Some individuals are overlooked because the location in which they reside, is not counted in the Census, while others are overlooked because they are not counted even though others in the same habitation are. Other results show that individuals may go unnoticed because they are more likely to reside in complex or non-traditional households where it is unclear how they fit in.

Because respondents are unsure of who should be listed on their Census questionnaire, some individuals are missed. As a result of respondents' desire to keep their identities hidden from the government, some people might go unnoticed.

**Causes and Consequences of housing unaffordability**

1. What are main reasons why housing is unaffordable to certain persons or groups in your country? Please provide if possible as well links to (scientific) studies that have analysed such reasons.

- Regulatory intervention: The Government has also intervened at multiple levels to increase affordability across various segments of society. A few important initiatives are – India has been witnessing rapid urbanization since the past decade and a half. As per the 2011 Census, 30% of India’s population lived in urban areas, which is expected to reach 40% by 2030. People from India’s rural areas, home to 833 million people, are migrating to urban centers as they prefer to stay within the city where there is access to work opportunities and other social and physical infrastructure. This rapid migration coupled with an increase in income levels and the changing demographic leads to an ever-increasing demand for housing in the country’s urban areas.

* The Federation of Indian Chambers of Commerce (FICCI) estimates that by 2050, the country’s cities would witness a net increase of 900 mn people. Furthermore, from 2012-2050, the pace of urbanization is likely to increase at a CAGR of 2.1% -double than that of China.
* Urban Housing shortage exists due to a big gap between demand and availability of housing in the cities, both in terms of number and quality. As per the technical study conducted by MHUPA (Ministry of Housing and Urban Poverty Alleviation), the urban housing shortage in India is currently estimated at ~19 mn. This gap is expected to further widen to an estimated 38 million homes by 2030 largely due to the rising population and increased urbanization.
* The Indian housing market continues to struggle with supply-side management for housing. Scarcity of developed and encumbrance-free urban land, increased cost of construction, absence of viable rental market and master-plan restraints have lowered the potential growth of the formal housing market in India.

Land availability: There is a growing need to revisit previously conceived government regulations which have created an artificial land shortage and pushed up land prices in India, especially in urban areas. Without Government support, the limited availability of land in urban areas makes it unviable for developers to take up housing projects. Further, the substantial non-marketable urban lands used by Government-owned entities such as railways can be used more efficiently. A number of these land parcels are present in centrally located urban areas.

Single Window Clearance for Housing Projects: Developers often face several hurdles on the regulatory approvals front, after having invested substantial equity towards land acquisition. Developers have to coordinate with multiple government and municipal departments which translates to a substantial delay in commencing construction of the project and effectively causing cost escalations. Better co-ordination among the multiple authorities in dealing with various permissions/approvals or measures like single window clearances and reduction in time consumed for providing clearances can encourage real estate developers to invest in housing projects and thereby address the demand of urban housing.

Financial support: Real estate developers are also grappling with funding challenges particularly at the land acquisition stage. Financing support from Private Equity and Alternative investment funds to real estate developers towards early-stage investments such as land acquisition and approvals will definitely

10. How many households have, during the last ten years been evicted because of their non-payment of housing costs? Please provide, if possible, more information on the socio-economic profile of the concerned households.

* More than 250,000 people were evicted across India during the coronavirus pandemic, and millions more are at risk of being uprooted as authorities eye projects for faster economic growth, housing rights campaigners warned on Thursday.
* From March 2020 to July 2021, authorities demolished more than 43,000 homes and evicted about 21 people every hour, according to the Housing and Land Rights Network (HLRN), an advocacy group in Delhi.
* In nearly all cases, officials did not follow due process including giving sufficient notice, and a majority of those evicted did not receive compensation from the government, it said in an annual report.
* “During this lethal pandemic - when people are struggling greatly to survive - acts of eviction and demolition of housing have contributed to a grave human rights and humanitarian crisis,” said Shivani Chaudhry, HLRN’s executive director.
* “At a time when people were ordered to stay at home, authorities resorted to unlawful demolitions, probably taking advantage of curfew-like conditions when movement of people and access to remedy, including to courts, was limited,” she said.
* There is no official data on evictions in India.
* In Delhi, where thousands were uprooted in the past year, authorities only demolished “illegal encroachments”, said Amrish Kumar, a director of the land management unit at the Delhi Development Authority, a federal government agency.
* “They were on government land, which is meant for public purposes,” he told the Thomson Reuters Foundation.
* “Some of the informal settlements were eligible for resettlement and rehabilitation, but not all - and they were dealt with according to due process,” he added.

**COURT ORDERS**

* The world over, homeless people and those living in slums have borne the brunt of restrictions to contain the coronavirus and are at heightened risk of infection because of their dire living conditions, housing experts said.
* Human rights experts at the United Nations in July appealed to the Indian government to end evictions during the pandemic.
* More than 4 million people in India are homeless, according to official data, with about 75 million living in slums and informal settlements in urban areas.
* The Indian government’s Housing for All plan aims to create 20 million urban homes and 30 million rural homes by 2022. But implementation has been slow, and activists say it does not address the issue of homelessness.
* Nearly 16 million people are at risk of being evicted and displaced, according to HLRN, including about 2 million whose claims to forest land have been rejected.
* Last year alone, more than 170,000 people were removed from their homes, it said, compared to about 107,000 people the previous year.
* Nearly half were uprooted for environmental projects, while infrastructure and city beautification schemes made up most of the remainder.
* Many evictions were carried out on court orders, including from India’s top court, even as several courts directed authorities not to demolish homes during the pandemic.
* More than 100 cases related to evictions or rehabilitation are pending at the Delhi High Court, said Anupradha Singh at the non-profit Human Rights Law Network, which represents slum dwellers in several cases.
* “Court orders make it easier to carry out evictions, and slum dwellers often have no legal recourse,” she said.
* “Court orders for eviction during the pandemic are particularly grievous, as these people have already lost their livelihoods, and to lose their homes on top of that is a failure of the courts to recognise their right to housing,” she said.

**Laws, policies, programmes and practices aiming to ensure that housing is affordable to all without discrimination**

1. Please share an overview of the laws, policies, programmes and practices adopted in your country/region/city to ensure that housing is affordable for all without any discrimination, Please, provide links to relevant official texts.

(e.g. affordable housing, social and energy cost subsidies, preferential mortgage, building support schemes, provision of social and public housing, of serviced land for self-construction, rent containment and rent control measures, taxation, measures to reduce housing vacancy, multi-stakeholder initiatives by State, local Governments, construction industry, housing providers, tenant unions etc).

- The human right to adequate housing is enshrined in international law. The right to adequate housing can be traced to the Universal Declaration of Human Rights, which was unanimously adopted by the world community in 1948. Since that time, the right to adequate housing has been reaffirmed on numerous occasions and further defined and elaborated.

A key component of this right is habitability of housing, which should comply with health and safety standards. Therefore, the right to adequate housing provides an additional tool for advocates and others interested in promoting healthful housing and living conditions and thereby protecting individual and community health.

**THE RIGHT TO ADEQUATE HOUSING**

VARIOUS ASPECTS OF HOUSING rights are protected in numerous international instruments, including the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (not yet in force).

For instance, the Universal Declaration of Human Rights, article 25(1), states:

*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.*[*1*](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447150/#r1)

* Similarly, the International Covenant on Civil and Political Rights, article 17(1), protects persons from arbitrary or unlawful interference with their homes. The International Convention on the Elimination of All Forms of Racial Discrimination, article 5(e)(iii), prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing. Likewise, the Convention on the Elimination of All Forms of Discrimination Against Women, article 14(2)(h), obliges states parties to eliminate discrimination against women in rural areas to ensure that such women enjoy adequate living conditions, particularly in relation to housing.
* The Convention on the Rights of the Child, article 27(3), obliges states parties to provide, in cases of need, material assistance and support programs, particularly with regard to housing, while the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 43(1)(d), provides that “[m]igrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to . . . [a]ccess to housing, including social housing schemes, and protection against exploitation in respect to rents.” Other international instruments guaranteeing housing rights include various International Labor Organization conventions 8-12 and humanitarian law instruments.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), however, provides the most advanced international standard protecting housing rights. Article 11(1) of the ICESCR states:

*The States Parties to the present Covenant recognize the right of everyone to have 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 States 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.*

The Committee on Economic, Social and Cultural Rights, charged by the international community with implementing and monitoring the ICESCR, provided a more precise meaning of the right to adequate housing as expressed in article 11(1) with the adoption of General Comment No. 4 in 1991. This comment articulates component elements of the right to adequate housing, elements that provide a more concise interpretation of the right and thereby further the capability of its content to be judicially determined. The comment also lays out such general principles of international human rights law as the principle of nondiscrimination and discusses the practice of forced eviction, stating that the practice is a prima facie violation of the ICESCR.

The 7 components of the right to adequate housing articulated in General Comment No. 4 are legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. The habitability and accessibility components touch most closely on the issue of health. The former requires that housing provide shelter from threats to health as well as disease vectors. The latter mandates that adequate housing be made accessible to persons with disabilities, including the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, and the mentally ill. These issues will be discussed further below.

In 1997, the Committee on Economic, Social and Cultural Rights elaborated on the subject of forced evictions with the adoption of General Comment No. 7, describing the concrete component elements of the often violent practice. General Comment No. 7 therefore joins General Comment No. 4 as an authoritative interpretation of the right to adequate housing as protected by the ICESCR and as a guideline that assists with the adjudication of alleged violations of that right.

General Comment No. 14 on the right to the highest attainable standard of health, adopted in 2000, also lends itself to the promotion and protection of housing adequacy. This comment gives clearer meaning to article 12 of the ICESCR, which states:

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

*The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

*The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*

*The improvement of all aspects of environmental and industrial hygiene;*

*The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

*The creation of conditions which would assure to all medical services and medical attention in the event of sickness.*

THE HEALTH ASPECTS OF HOUSING

With respect to the health aspects of housing, it isthe clearest articulation of the minimum requirements necessary for housing to be considered adequately protective of health. Furthermore, states parties to the ICESCR are legally obligated to respect, protect, and fulfill these requirements. One such requirement is that housing must be habitable, which includes “providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.” Additionally, in explaining the habitability requirement, General Comment No. 4 expressly encourages states parties to the Covenant to “comprehensively apply the Health Principles of Housing prepared by the World Health Organization which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses.”

The Health Principles of Housing elaborates 6 major principles governing the relationship between housing and health: (1) protection against communicable diseases; (2) protection against injuries, poisonings, and chronic diseases; (3) reducing psychological and social stresses to a minimum; (4) improving the housing environment; (5) making informed use of housing; and (6) protecting populations at risk. The first 2 principles are particularly relevant to health. The first stresses that the following conditions are necessary to ensure adequate housing: safe water supply; sanitary disposal of excreta; disposal of solid wastes; drainage of surface water; personal and domestic hygiene; safe food protection; and structural safeguards against disease transmission. The second addresses construction materials and techniques as well as structural safety, including ventilation and light, and suggests that the physical dwelling must be such that inhabitants are not exposed to dangerous conditions or hazardous substances.

* The protection of the right to adequate housing enshrined in the Universal Declaration of Human Rights applies to every state. Not only does the declaration define the human rights that all members of the United Nations are bound to promote, respect, and observe, but the declaration itself has ripened into customary international law, and thus is applicable to even those states that are not members of the United Nations. Additionally, states parties to the covenants and conventions mentioned above are legally obliged to respect, protect, and ful-fill the housing rights found in those instruments as well.
* Although most states are parties to international instruments that protect housing rights, it is still important to incorporate those rights into legislation and regulations. This is particularly important in legal systems that utilize the principle of non–self-executing treaties. In those legal systems, courts may refuse to recognize international law as creating private causes of action. Victims of human rights abuses, including abuses of housing rights, therefore, are often unable to avail themselves of their domestic judicial systems either to enforce their human rights or to seek redress for violations of those rights.
* Fortunately, many states have incorporated housing rights into their national constitutions or legislation. In several cases, these constitutional or legislative texts are modeled after international standards, principles, and norms. By enshrining housing rights in legislation, states not only fulfil their respective international legal obligations but create domestic legal systems that empower individuals and groups in ways that allow them to enforce their rights.
* It is therefore important for states to turn to international human rights law to inform their domestic legislation and policy, including legislation and policy designed to protect and improve the health of their respective populations. The international human right to adequate housing should thus be implemented through domestic law.

Therefore,

* Housing conditions affect both individual and community health to a great degree. International human rights law recognizes this nexus and provides minimum requirements—requirements that governments are legally obligated to respect, protect, and fulfill—that, if met, will create more healthful living conditions for everyone, everywhere. The right to adequate housing is solidly established and defined under international human rights law. Indeed, in the words of Matthew Craven, one of the leading scholars in the area of economic, social, and cultural rights, “The Committee [on Economic, Social and Cultural Rights] has dedicated more attention to the right to housing than to any other right.”
* Notwithstanding this degree of monitoring, some 1.1 billion people live in inadequate housing in urban areas alone. The need for states to take seriously their international legal obligations to respect, protect, and fulfill the right to adequate housing is thus urgent. Public health and other advocates should use human rights law in their advocacy, both to enforce the rights of their constituencies and, as in the case of the United States, to push for ratification of relevant human rights instruments such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.
* The International Covenant on Economic, Social and Cultural Rights, ratified by 145 other countries, was signed by President Carter on October 5, 1977, and sent to the Senate for advice and consent to ratification. The Senate, however, has yet to even consider the covenant. Similarly, the Convention on the Rights of the Child was signed by President Clinton on February 16, 1995, but has yet to be considered by the Senate, although the convention has been ratified by every country in the world with the exception of the United States and Somalia (which has no functioning government). Advocates should contact their senators and push for ratification of these important international human rights treaties, and then continue to push for the full implementation and enforcement of the rights embodied in these instruments. The results of such advocacy would go far in improving the living conditions of all persons.

**11. Please share an overview of the laws, policies, programmes and practices adopted in your country/region/city to ensure that housing is affordable for all without any discrimination, Please, provide links to relevant official texts.**

(e.g. housing, social and energy cost subsidies, preferential mortgage, building support schemes, provision of social and public housing, of serviced land for self-construction, rent containment and rent control measures, taxation, measures to reduce housing vacancy, multi-stakeholder initiatives by State, local Governments, construction industry, housing providers, tenant unions etc).

Protection of the Human Right to Adequate Housing under Indian Law, Policy, and Case Law

1. Constitution of India

The Constitution of India is firmly grounded in the principles of liberty, fraternity, equality and justice. While the right to adequate housing is not explicitly articulated as a human right, it is encompassed within the Fundamental Rights and Directive Principles provided in the Constitution.

The Fundamental Rights guaranteed by the Constitution of India, which are linked to the protection and guarantee of the human right to adequate housing, include:

**Article 21:** The right to protection of life and personal liberty except according to procedure established by law.
**Article 14:** The right of every citizen to be treated equally before the law or be given protection of the laws within the territory of India.
**Article 15 (1):** The right of every citizen to be protected against any discrimination on grounds of sex, religion, race, caste or place of birth.
**Article 19 (1) (d):** The right of every citizen to move freely throughout the territory of India.
**Article 19 (1) (e):** The right of every citizen to reside and settle in any part of the territory of India.
**Article 19 (1) (g):** The right of every citizen to practice any profession, or to carry on any occupation, trade or business.

The Constitution provides for Directive Principles, according to which the Indian State must formulate its policies. These include:

**Article 39 (1):** State policy to be directed to securing for both men and women equally the right to an adequate means of livelihood.
**Article 42:** Provisions to be made by the State for securing just and humane conditions of work and for maternity relief.
**Article 47:** Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

**2. Relevant National Laws**

**a)The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 recognises and gives rights over forest land to Scheduled Tribes (STs) and other traditional forest dwellers in order to ensure their livelihood and food security. The Act, in its introduction, aims to give tenurial and access rights to forest dwelling Scheduled Tribes and other traditional forest dwellers, including those who were forcefully displaced due to the state's development-based activities. In the case of forced evictions, STs and other traditional forest dwellers are given specific rights to claim rehabilitation and 'land compensation' under Sections 3 (1) (m), 4 (2), and 4 (8).

Section 3 (1) (m) of the Act provides the right to in situ (on site) rehabilitation, including alternative land in cases of illegal eviction or displacement from forest land. Section 4 (8) protects the right to forest land of those who were displaced from their dwelling and cultivation without 'land compensation' as a result of state development interventions and where the acquired land has not been used within five years of acquisition.

Section 4 (2) provides that no forest rights holders shall be resettled or have their rights affected in any manner unless: (a) a resettlement or alternatives package has been prepared, which secures livelihood for the affected individuals; (b) free informed consent of the concerned gram sabhas(village councils) has been obtained, and; (c) facilities and allocation of land at the resettlement site /location are complete.

**b)The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Actcame into force on 1 January 2014. The Act seeks to ensure a transparent and participatory process of land acquisition, and claims to provide just and fair compensation and adequate rehabilitation and resettlement to affected persons and families. The Act also aims to ensure that the outcome of acquisition should be that, "Affected persons become partners in development, leading to an improvement in their post-acquisition social and economic status."

**Application of the Act**

The provisions of the Act will be applicable when land is acquired by the government for its own use, hold and control, including for Public Sector Undertakings and 'public purpose.' Section 2 (1) of the Act provides a list of public purpose projects for which land can be acquired. This includes projects for sports and health care programmes; housing for low income groups; planned development of village sites or any site in urban areas; and, provision of land for residential purposes for weaker sections, and poor or landless persons, displaced persons or persons residing in areas affected by natural calamities.

Section 2 (2) states that the Act will also apply in case land is acquired for public private partnership (PPP) projects and by private companies for public purpose. In the case of acquisition for private companies, there must be prior consent from at least 80 per cent of the affected families and for PPP projects, prior consent must be obtained from at least 70 per cent of the affected families. Under Section 99 of the Act, change of the purpose or related purpose for which land is sought to be acquired is not permissible.

**c)The Protection of Human Rights Act(1993)**

The Protection of Human Rights Act provides for the creation of the National Human Rights Commission and state human rights commissions in India, and also lays down their powers and functions. The origin of these commissions can be traced to the Vienna Declaration and Programme of Action adopted in June 1993 and the creation of the United Nations Office of the High Commissioner for Human Rights in December 1993.

The Act marked the Indian state's readiness to assume responsibility for realizing human rights of all its citizens in accordance with the Vienna Declaration, where it is stated (Part I, Paragraph 1) that, "(h)uman rights and fundamental rights are the birthright of all human beings; their protection and promotion is the first responsibility of Governments."

In Section 2 (d) the Act provides a definition for human rights:

... "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The national and state human rights commissions established by this Act have been granted the power of a civil court while trying a suit under the Code of Civil Procedure 1908. These commissions can inquire suo moto or on the basis of petitions presented to them by a victim or any person on his / her behalf, into complaints of violation of human rights or negligence in the prevention of such violation by a public servant. Following investigation, the commissions can recommend to the concerned government or authority to pay compensation, to initiate proceedings for prosecution, and / or approach the Supreme Court of India or the High Court concerned for such directions.

**d)The Slum Areas (Improvement and Clearance) Act 1956**

The Slum Areas (Improvement and Clearance) Act 1956 aims to "provide for the improvement and clearance of slum areas in certain Union Territories and for the protection of tenants in such areas from eviction." Since the Act is a central government legislation, it is only applicable in areas under control of the centre, which are the Union Territories of India. Several other states, such as Tamil Nadu, have enacted similar laws or extended the Act to their states.

The Act contains provisions for notification and compensation in case of demolition or improvement of buildings 'unfit for human habitation.' Section 19 of the Act specifically pertains to the protection of tenants in notified slum areas from eviction, and provides for procedures for adequate notification and alternative accommodation.

**e) The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014**

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 was promulgated as a law in February 2014 by the Indian Parliament. It provides for the creation of Town Vending Committees that are required to conduct a survey of all street vendors within their jurisdiction and ensure that identified vendors are accommodated in vending zones. It states that no street vendor shall be evicted till the survey has been completed. The Act proposes that relocation of street vendors should be exercised as a last resort. Accordingly, a set of principles to be followed for 'relocation' is proposed to be provided for in the second schedule, which states that: (i) relocation should be avoided as far as possible, unless there is clear and urgent need for the land in question; (ii) affected vendors or their representatives shall be involved in planning and implementation of the rehabilitation project; (iii) affected vendors shall be relocated so as to improve their livelihoods and standards of living or at least to restore them, in real terms to pre-evicted levels; and, (iv) natural markets where street vendors have conducted business for over fifty years shall be declared as heritage markets, and the street vendors in such markets shall not be relocated.

**3. Relevant National Policies**

Several national policies also recognise the need of the government to provide improved housing and shelter, and resettlement and rehabilitation in instances of eviction and displacement.

**a) National Urban Housing and Habitat Policy (2007)**

The stated focus of India's National Urban Housing and Habitat Policy 2007, is the, "Provision of 'Affordable Housing for All' with special emphasis on vulnerable sections of society such as Scheduled Castes / Scheduled Tribes, Backward Classes, Minorities and the urban poor." The Policy also seeks to ensure equitable supply of land, shelter and services at affordable prices. It gives preference to provision of shelter to the urban poor at their present location or near their work place, and also adopts an approach of in situ (on site) rehabilitation.

The Policy claims to make special provisions to include women at all levels of decision-making for ensuring their participation in the formulation and implementation of housing policies and programmes. It also addresses the special needs of women-headed households, single women, working women, and women in difficult circumstances with regard to housing serviced by basic amenities.

**b) Draft National Slum Policy (2001)**

India still does not have a national slum policy. What exists is a draft that contains few provisions related to resettlement. These include:

State / Urban Local Bodies (ULB) should explore alternatives to resettlement before a decision is taken to move people;

Relocation distances should be minimised to reduce the impact on livelihoods;

Resident dwellers must be provided with some choice of alternative sites, and where feasible, an alternative rehabilitation package;

All resettlement sites should be adequately serviced and provision should be made for public transportation prior to resettlement;

The livelihoods of affected persons must be sufficiently compensated within a fixed period;

Participation of primary stakeholders, particularly women, in planning and decision-making is a prerequisite for any resettlement process;

Any urban development project that leads to involuntary resettlement of communities must make provisions to cover the costs of resettlement and rehabilitation; and,

The timing of interventions must also reduce dislocation and discomfort, especially during periods of inclement weather.

**c)Rajiv AwasYojana**

Announced in 2009, Rajiv AwasYojana (RAY) is a national scheme of the Ministry of Housing and Urban Poverty Alleviation that intends to, "build a 'slum free' country while providing shelter and basic services to the urban poor." The scheme is being implemented in 20 states across the country, in different ways. The Rajiv AwasYojana Guidelines 2013-2022 list the major components and operationalisation elements of the scheme. While RAY has the potential to improve housing conditions for the urban poor through in situ (on site) upgrading and the provision of legal security of tenure, it is important that state governments work to ensure that RAY does not, in any way, facilitate evictions and the takeover of public land for private profit. Communities need to be informed of any RAY projects being undertaken in their cities, and their participation should be guaranteed in them. The provisions for legal security of tenure under RAY must ensure a guarantee against forced evictions. States must not use arbitrary classifications such as 'tenable' and 'untenable' slums as a means to evict residents. The human right to adequate housing framework should be adopted by state governments for implementation of all RAY projects.

**4. Court Judgements**

**a) Judgements of the Supreme Court of India**

* The Supreme Court of India, in several judgements, has held that the human right to adequate housing is a fundamental right emanating from the right to life protected by 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"). There have been several important court judgments that have clearly established the relation between the right to housing and the right to life, as guaranteed by Article 21.

In the case of U.P. *AvasEvamVikasParishad vs. Friends Coop*. Housing Society Ltd. (1996), the Supreme Court affirmed that:
* The right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1) (e) and the right to life under Article 21.
* In 1981, the Supreme Court, in the case *Francis Coralie vs. Union Territory of Delhi*, stated:
* We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.
* In the case of Chameli Singh and Others vs. State of Uttar Pradesh (1996),the Supreme Court provided a holistic understanding of the right to shelter and adequate housing. It declared:
* 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, 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. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right… Want of decent residence therefore frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.
* In 1990, in the Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and Otherscase, the Supreme Court directed the state to construct affordable houses for the poor:
* The State has the constitutional duty to provide shelter to make the right to life meaningful.
* Significantly, in 1990, the Supreme Court recognised the right of children to adequate housing. In the case Shantistar Builders vs. Narayan KhimalalTotame, the Court observed:
* The Constitution aims at ensuring the full development of every child. That would be possible only if the child is in a proper home.
* The Supreme Court has also upheld the right to property. In the case of Tukaram Kana Joshi and Others vs. MIDC and Others, the Court noted that:
* The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension.

RELEVANT LINKS:-

1. <https://mohua.gov.in/upload/uploadfiles/files/National_Urban_Rental_Housing_Policy_Draft_2015.pdf>
2. <https://nhrc.nic.in/sites/default/files/Housing.pdf>
3. <https://tribal.nic.in/FRA.aspx>
4. <https://legislative.gov.in/sites/default/files/A2014-7.pdf>
5. <https://legislative.gov.in/sites/default/files/A2013-30.pdf>
6. <https://www.indiacode.nic.in/handle/123456789/1709?sam_handle=123456789/1362>

12.Please share an assessment of the success,limitation or potential failure of the above mentioned policies in you country/region/city,including any studies or independent evaluation reports on them,Who has benefited from them,who has not ?what has worked well,what less?What lessons can learned?What could potentially be replicable in other countries/regions/cities

Assesment of the policies:-

* Pradhan Mantri Awas Yojana (PMAY) with its credit linked subsidy scheme (CLSS) was introduced to provide its beneficiaries an interest subsidy to avail loans to purchase or build a house. This scheme is primarily targeted towards the EWS and LIG segment wherein by providing an interest subsidy of 6.5% the effective interest rate for home loan works to be 5%-6% p.a. (assuming home loan of 10-12 lacs)
* As per latest data available in the PMAY records, ~12.3 mn houses have been sanctioned under the scheme, of which ~6.3 mn houses have been completed with total investment of INR 8.3 lakh Cr.
* Goods and Service Tax of 1% was provided on unit-to-unit basis. It does not define affordable projects. Any unit in a project (per Income Tax definition) with agreement value less than or equal to 45 lacs. This tax saving of 4% on agreement value is substantial
* Income Tax benefit of deduction worth additional INR 1.5 lacs under section 80 EEA for housing falling under criteria for affordable segment. This further reduces the effective interest rate
* Government has provided income tax benefit to developers under section 80IBA for development of affordable segment projects. The deduction provided is 100% of profits from such projects
* ECBs are permitted in affordable housing projects as per RBI’s approval
* The above incentives have provided a strong base for increasing housing affordability for buyers and making the projects more viable for developers. Though the PMAY + CLSS scheme provides incentive to EWS / LIG segment, the government should provide push to MIG segment as well which currently gets subsidy of 3% only which yields an effective interest rate of 8% p.a. only (assuming home loan of 45-50 lacs). This, coupled with extending tax incentives to MIG segment shall improve the overall housing affordability across the landscape.

The number of urban agglomerations in India had increased from 2768 in 1991 to 5161 in 2001 (Office of the Registrar General and Census Commissioner, 2001). The time was seen apt for India to launch its National Urbanisation Policy which focused on large-scale urban infrastructure, laid base for Jawaharlal Nehru National Urban Renewal Mission (JNNURM). The primary objective of the urbanisation policy was to achieve sustainable development by reducing spatial disparities (GoI, 2005). The Policy envisaged strengthening of the urban local bodies through capacity building and financial management. It aimed to increase the efficiency and productivity of cities by deregulation and development of land, dismantling public sector monopoly over urban infrastructure and creating a conducive environment for the private sector to invest. The era began with a recognition that progress in affordable housing has been hampered by the unavailability of suitable land for in-situ slum rehabilitation. “The scarcity of land is the result of sub-optimal land use patterns largely induced by the regulatory regime in place, lack of long-term planning and lack of participatory planning process to determine the most efficient use of a parcel of land” (GoI,

2012, p336). The eleventh and twelfth Plans suggested multiple ways in which the availability of land can be enhanced and the use of land can be optimised to maximum, e.g. by increasing the FSI and ground coverage (GoI, 2007, 2012).

WHAT WENT WRONG?

Housing is the basic need of the human for survival of a life on this planet.Government always stressed upon the demand and come up with various schemes to provide affordable houses to masses in rural and urban areas.Indira Awas Yojna, Rajiv Awas Yojna, Slum Development,Valmiki etc have been launched with the great fanfare.However , these schemes could not produce the desired result as even today , more than 35 percent of population is forced to live in slums.The recently released figure of {SECC} Socio economic caste census-2011 depict a more gory picture warranting a paradigm shift in the future move in this direction.

Reasons of inefficiency---
i) Lack of inclusiveness-isolated and non-integration of existing schemes could not do well on ground as it created confusion.
ii) inadequate financial assistance and wide spread corruption-Indira awas yojna provided for a cash benefit, that was initially Rs 10000 .It could not create assets . Other problem with the scheme was the exclusion of BPLs and inclusion of other non-entitled. This gave rise to corruption ans scheme became notorious.
III)Administrative approach-Lack of enthusiasm and commitment.
iv) Non-availability of proper data.
v) Non-conceptualisation of Overarching sustainable Habitat-especially in slum up-gradation , it was not only a pakka house but also a descent livelihood income ,should have been envisioned. This led dwellers to rent out their new houses and encasing money by moving out further inside.
Govt has recently launched another scheme House for All by 2022.That envisages for 30 million houses in rural sectors and 70 million in urban areas

Uniqueness **{Replicable in other states}**
A multipronged strategy has been devised and House has been sought to be a pre-requisite for the economic growth .Others parameters like water and power supply have been linked with other schemes of Deen Daya gram jyoti yojna and Swachh Bharat mission .Financial assistance .in IAY is proposed to go up to 75000Rs.
As policy design tackles the roots of the problem, Outcome will be positive. Time has come to shed away the image of the HOMELESS INDIA and to embrace the MAKE IN INDIA.

RELEVANT LINK:-

https://www.niti.gov.in/indias-housing-conundrum

**Submission instructions**

**Deadline:** **30 April 2023**

**Email:** Please return this questionnaire to: hrc-sr-housing@un.org; ohchr-registry@un.org

**Email subject line:** Input for SR housing - report on housing affordability

**Accepted File formats:** Word (supporting documents may be submitted in PDF)

**Accepted languages:** English, French and Spanish

Please include references to reports, academic articles, policy documents, text of legislation and judgements, statistical information with hyperlinks or attach them to your submission (please respect total file size limit of 20 MB per email to ensure that it can be received)

**Publication:** Submissions of States and public authorities will be published. For other stakeholders, submissions will be published, except confidentiality is explicitly requested.

**Expected presentation** of the report of the Special Rapporteur to the General Assembly: October 2023.

1. <https://iccaua.com/PDFs/2021Conference%20full%20bool%20proceedings/4_Habitat%20Studies/ICCAUA2021257%20Prabhat%20Rao.pdf> [↑](#footnote-ref-1)
2. <https://iccaua.com/PDFs/2021Conference%20full%20bool%20proceedings/4_Habitat%20Studies/ICCAUA2021257%20Prabhat%20Rao.pdf> [↑](#footnote-ref-2)