

MAPPING THE LANDSCAPE OF THE RIGHT TO HOUSING IN THE ASIA-PACIFIC: A PIPE DREAM OR AN ATTAINABLE IDEAL?¹

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1. Introduction

Soon after the conclusion of the Second World War and partly influenced by the immeasurable destruction that resulted, the need for active discourse on the issue of affordable and quality housing was felt across the globe.³ As a consequence of successive landmark international agreements, such as the Universal Declaration of Human Rights⁴ in 1948 and the 1966 International Covenant on Economic, Social and Cultural Rights⁵, the ‘Right to Adequate Housing’ soon garnered steam and cemented itself as one of the fundamental principles of international human rights.

Article 25(1) of the UDHR firmly establishes that “*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...*” Similarly, Article 17(1) of the International Covenant on Civil and Political Rights⁶ protects against the unlawful interference in one’s home⁷. United Nations Committee on Economic, Social and Cultural Rights (“UNECOSOC”) has liberally interpreted the scope of this right in a bid to expand it to include a multitude of freedoms, some of them being:

- Right against forced evictions and illegal demolition of houses
- Right of privacy within one’s home and a guarantee of protection against unlawful interference in the enjoyment of property
- The freedom of movement and choice of residence⁸

There have been several other perspectives on what exactly the term “adequate housing” truly encompasses. The UN Special Rapporteur on adequate housing has sought to formulate it as “*the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.*”⁹

³ Bogumil Termiski, *The Right To Adequate Housing In International Human Rights Law: Polish Transformation Experience*, (2011) 22(2) *Revista Latinoamericana De Derechos Humanos* 219.

⁴ Hereinafter referred to as “UDHR”.

⁵ Hereinafter referred to as “ICESCR”.

⁶ Hereinafter referred to as “ICCPR”.

⁷ International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 UNTS 171

⁸ United Nations Committee on Economic, Social and Cultural Rights General Comment No. 4 (1991) and General Comment No. 7 (1997).

⁹ UN Special Rapporteur on Adequate Housing, *The Interlinkages between Violence against Women and Women's Right to Adequate Housing*, New Delhi, October 2003.

Further, The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, 1996 has sought to introduce new factors while considering the quality of adequate housing, including but not limited to an exposure to toxic substances, physical accessibility, adequate heat and light, waste management facilities and structural stability among others. Pertinently, it recognized that “*adequacy often varies from country to country, since it depends on specific cultural, social, environmental and economic factors*”¹⁰. This re-emphasizes the jurisdiction specific nature of this issue. There also exist certain other interpretations of ‘housing’ which would apply to certain disadvantaged groups such as refugees¹¹ and migrant workers¹² on an international platform – these do not fall within the purview of this article and hence, any reference to them would be limited.

Although positive steps have been taken on the multi-national front, the implementation of these treaties domestically by various nations is still left wanting, despite explicit guarantees of adequate housing by over 50 countries in their Constitutions¹³. Furthermore, the impact of climate change on developing infrastructure is devastating – most countries in the nascent stages of development in Asia require an estimate of nearly \$1.7 trillion annually until 2030 to counter the consequences of environmental damage¹⁴. According to the UN Habitat¹⁵, over two million people annually are forcibly evicted from their homes, while even more are frequently threatened with the same by State organizations. The increasing occurrences of forced evictions have been classified as gross human rights violations by several organizations¹⁶. Naturally, the right against forced evictions as a part of right to housing is not absolute – the UNECOSOC has carved out a caveat by permitting evictions in accordance with law and the International

¹⁰ The Habitat Agenda: goals and principles, commitments and Global Plan of Action, New York, UN, 12 April 1996.

¹¹ Art. 21 Convention relating to the Status of Refugees, 1951.

¹² Art 43.1 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

¹³ Report to the 58th Commission on Human Rights, E/CN.4/2002/59

¹⁴ Juswanto and Kelkar, *The Dynamics of Urbanization, Housing, and Land Provision in the Pacific Island Countries*, ADB Institute, Policy Brief No. 2019-1.

¹⁵ UN-Habitat, *Global Report on Human Settlements 2007: Enhancing Urban Safety and Security* (Nairobi, 2007).

¹⁶ Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 1991/12, Commission on Human Rights, Resolution 1993/77.

Covenant on Human Rights¹⁷. However, the misuse of this power by various States, coupled with the pre-existing infrastructure crunch and shortage of housing has led to the issue of adequate housing becoming one of the chief problems facing a modern globalized world.

This article seeks to map out the landscape of housing laws in various jurisdictions within the Asia Pacific, including India, Australia, China, Bangladesh and Singapore. The article will also highlight the existing problems that each country faces in the housing sphere, while lauding achievements and positive steps taken in this regard. Finally, the article will provide certain suggestions to model the way forward during the coming decades.

The jurisdictions have been chosen for analysis by virtue of their diverse socio-cultural, geographical and economic factors, with each country facing contrasting crises. In India, the judicial interpretation of Constitutionally guaranteed fundamental rights to include the right to housing has been discussed, along with two landmark legislations that deal with commercial housing and slum redevelopment. The crushing issues in India include widespread slums with poor sanitation, over-crowding in urban areas, bureaucratic inefficiency and corruption. Bangladesh too faces a slum crisis, mainly caused due to its highly dense population. Further, large-scale evictions and poor administrative implementation of established policies has compounded difficulties. The article thus outlines combative measures taken by the Government, including its express Constitutional recognition of the right to housing and the landmark National Housing Policy crafted for this purpose.

China, with its authoritarian governance, is yet to achieve uniformity with regards to the glaring disparity between its urban and rural infrastructure. A huge influx of labourers and workers from villages to the city centres in hope of finding accommodation led to urban homelessness. Further, Governmental land acquisition without consent and an over-emphasis on investment has increased the difficulties faced by the low-income groups. Therefore, this article delineates the various State Council policy discussions, the Land Administration Law and Property Law, the

¹⁷ United Nations Committee on Economic, Social and Cultural Rights General Comment No. 7 (1997), Para 4.

prevalent hukou system and the Constitutional mandate of housing in China. Australia too, has a long way ahead to combat the issue of housing shortage for the aboriginal tribes, as well as its over-dependence on the system of rents. Without any express Constitutional recognition of the Right to Housing, the federal structure of Australia has translated into different standards and legislations being maintained in different territories, which has been discussed below. Further, schemes such as the The National Rental Affordability Scheme, the National Housing and Homelessness Agreement and Aboriginal Rental Housing Program have also been examined among others. Lastly, Singapore has been chosen by the author as a case study in efficient planning and provision of housing – a country that may serve as a model for other Asia-Pacific nations, as will be elaborated further herein. The laudable contributions made by the Housing and Development Board and the restrictions placed on foreign ownership to prioritize domestic housing have been analyzed below.

2. The Right to Housing in The Asia-Pacific

2.1 India

2.1.1. Constitutional protection

Under the Constitution of India, the twin guiding lights of liberty and governance – the Fundamental Rights in Part III of the Constitution and the Directive Principles of State Policy in Part IV – both enshrine the inherent right to housing, whether directly or read into by judicial precedent.

Under the Fundamental Rights, Article 21 guarantees to each individual the right to life and personal liberty except by a procedure established by law. Through landmark judicial pronouncements, Article 21 has been read to possess the widest possible amplitude to include a multitude of rights, including housing. In *Francis Coralie v. The Union Territory of Delhi*¹⁸, the Supreme Court of India held that shelter was intrinsic to the right to life. While the Apex Court only used the term “shelter”, it laid the foundation for the right to housing to be further expounded in this regard. This was

¹⁸ (1981) 1 SCC 608, para 8.

evident in the subsequent decision of *Chameli Singh v. State of U.P.*¹⁹, where it was held that: “*The right to shelter, therefore, does not mean a mere right to a roof over one’s head but the right to all the infrastructure necessary to enable them to live and develop as a human being*”. A positive step towards enforcing and realizing this ideal was taken in the case of *People’s Union for Civil Liberties v. Union of India*²⁰, where the Supreme Court expressly directed various state governments²¹ to construct permanent shelters and file a report on homelessness before the Court. Life and dignity are inextricably intertwined, and without adequate housing, the ideal of a dignified life remains an unattained utopia.

The Directive Principles of State Policy under Part IV, while not legally enforceable, prescribe certain guidelines in order for the Government to formulate policies directly targeted at ensuring the welfare of its citizens. Article 39 of the Constitution postulates that the material ownership of resources of the country must be distributed equally in order to achieve a common good, while Article 38(2) seeks to eliminate income inequalities and opportunities for its citizens. While the Directive Principles of State Policy do not explicitly mention ‘housing’ as a State objective, the very nature²² of Part IV of the Constitution makes a dignified living a *sine non qua* in the path to complete the interlinked objectives of Part IV. Certain ideals provided for in the Directive Principles such as the protection of weaker sections from exploitation²³, an increase in the levels of public health and living²⁴ and social and economic justice²⁵ simply cannot be fulfilled without first establishing a quality residence of the individual²⁶.

¹⁹ 1995 Supp (6) SCR 827.

²⁰ (2013) 14 SCC 368.

²¹ Schedule VII to the Constitution of India divides the distribution of the powers of governance between the Union and State into three lists, the Union, State and Concurrent Lists. While List 1 (Union List) falls within the domain of the Central Government, List 2 (State List) accords powers to the State governments. The items in the Concurrent List can be legislated upon by both governments, with State enactments giving way to contradictory Central enactments.

²² The Supreme Court has also held in *Chameli Singh v. State of U.P.* that the Directive Principles of State Policy fasten upon the State an obligation to provide shelter, subject to economic budgeting.

²³ Art. 46, Constitution of India.

²⁴ Art. 47, Constitution of India.

²⁵ Art. 38(1), Constitution of India.

²⁶ *Dipika Jagatram Sahani v. Union of India* [(2021) 2 SCC 740]; *Chameli Singh v. State of U.P.* (*supra*).

2.1.2 Statutory Protection

Apart from the Indian Constitution, the Government of India has enacted numerous legislations specifically aimed at regulating housing in India. This article will delve deeper into two such laws – the Real Estate (Regulation and Development) Act, 2016²⁷ and The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971²⁸. The choice of these two laws is interesting as they both rest on the opposite ends of two spectrums. RERA is a law enacted by the Central Government, while the Slum Act is enacted by the State of Maharashtra, thus portraying the policies taken at both the Union and State Level. The Slum Act is an Act to improve and clear slum areas and provide for their redevelopment²⁹, while RERA regulates the sale of an apartment or building (or redevelopment of the same) in a commercial real estate sector³⁰. Thus, while both Acts aim at securing the rights of the citizens of India and strengthening their legal options to enforce their housing rights, the objectives of the Act are entirely distinct with one being in essence a welfare legislation with the other being a commercially regulatory legislation.

The issue of Slums in India, particularly in the State of Maharashtra, is a crippling problem that strikes at the very root of the development potential of the city. Nearly 65 million people live in slums in India with nearly 12 million residing in Maharashtra alone³¹ in 2.5 million households. It is estimated that nearly one in every sixth urban Indian resides in a slum that is not fit for human dwelling³². Keeping this growing and unfortunate crisis, the Government of Maharashtra enacted the Slum Act.

The Slum Act envisages that a Slum Rehabilitation Authority³³ would be formed with the responsibility of working out the modalities to execute Slum Rehabilitation Schemes³⁴. These schemes aim at redeveloping slum areas to serve a dual purpose – to

²⁷ Hereinafter referred to as “RERA”

²⁸ Hereinafter referred to as “Slum Act”.

²⁹ Preamble, Slum Act.

³⁰ Preamble, RERA.

³¹ Slum Census 2011, < <https://www.census2011.co.in/slums.php> > accessed 25 July 2022.

³² DownToEarth, Slumming it out, <<https://www.downtoearth.org.in/dte-infographics/slums/index.html>> (accessed 25 July 2022).

³³ Hereinafter referred to as “SRA”.

³⁴ s. 3-B, Slum Act.

improve the quality of life by facilitating infrastructural progress and protecting slum-dwellers from forced evictions and to avoid vast areas of land to be impeded by sprawling slums³⁵. As per Section 15A of the Slum Act, once the slum-dwellers are rehabilitated, the rehabilitated land would vest with the SRA who would subsequently lease it to the slum-dwellers itself.³⁶ Thus, the purport of the SRA – probably the most unique factor of such a legislation – is to ultimately legitimize the illegal encroachments of slum-dwellers, which is one of the most visible, if not explicit, recognition of the human right to quality shelter. Further, the Slum Act accords the slum-dwellers with the power to choose a developer of their choice, thus transferring power into the hands of the slum-dwellers themselves. The Act also has another incidental benefit – the incentive for the developers appointed to execute a SRS is that they are permitted to build an additional structure, apart from the structure built to rehabilitate the slum-dwellers, to market and sell as they deem fit³⁷, thus greatly improving the general infrastructure within the city.

The Slum Act has certain drawbacks of its own. The first issue is that slum-dwellers who are in the minority and have not consented to the redevelopment of the slum end up being forcibly evicted to execute the decision of the majority. This ultimately has led to bitter conflicts and long-drawn litigation between the minority slum-dwellers and the developer in projects that are financially crucial and lucrative³⁸, where the builders are accused of conspiring with governmental authorities to deny the slum-dwellers of their land. Secondly, the redevelopment projects are unpredictable and easily susceptible to abandonment mid-way through construction due to unavailability of development finance. The main mode of financing being pre-sale financing leads to a sometimes-critical shortage of funds, as investors remain wary of providing capital in an otherwise risky sector owing to unforeseen administrative issues³⁹. *Thirdly* and

³⁵ Preamble, Slum Act.

³⁶ s. 5-A, Slum Act.

³⁷ Regulation 33(10), Development Control and Promotion Regulation for Greater Mumbai, 2034.

³⁸ Mukhija, V, *Squatters as developers: Slum Redevelopment in Mumbai*, Massachusetts Institute of Technology, June 2000.

³⁹ *id.*

perhaps the most fatal, inordinate bureaucratic lethargy and delays has resulted in reputed developers being cautious before entering into redevelopment agreements⁴⁰.

RERA was enacted in 2016, with the main aim being two-fold: (i) to regulate the commercial real estate sector in the country with a focused objective being the benefit of the consumers; and (ii) to establish a forum for the speedy resolution of disputes within the real estate sector.⁴¹ The Act establishes a Real Estate Regulatory Authority^{42,43}, which is entrusted with wide-ranging responsibilities such as granting, revoking or extending registration of real estate projects in the city or the settlement of disputes arising between an allottee of a flat or a developer, and a Real Estate Appellate Tribunal⁴⁴, which acts as an Appellate Authority. The unique feature of RERA is that it imposes obligations and responsibilities on both – the allottees or homeowners as well as the promoters or developers of any project⁴⁵. RERA further imposes penalties for offences under the act⁴⁶ and also bars the jurisdiction of the Civil Courts in the country over matters which the Authority has jurisdiction⁴⁷.

The transparency in real estate projects has significantly increased post the implementation of RERA, with RERA providing that 70% of the total funds required for a project necessarily have to be transferred to a separate account from which the capital will only be used towards the project and cannot be further diverted.⁴⁸ The compulsory registration of real estate projects⁴⁹ and the real-time display of information on the RERA website reinforces confidence in home-owners and helps ascertain the veracity of real estate projects⁵⁰, especially providing information on the attainment of

⁴⁰ Nikhil Inamdar, *Why is Maharashtra India's slum capital?* (Business Standard, December 26, 2013) available at < https://www.business-standard.com/article/current-affairs/why-is-maharashtra-india-s-slum-capital-113122600642_1.html > (accessed on 25 July 2022).

⁴¹ Preamble, RERA.

⁴² Hereinafter referred to as “the Authority”.

⁴³ s. 20, RERA.

⁴⁴ s. 43, RERA.

⁴⁵ s. 11 and s. 19, RERA.

⁴⁶ Chapter VIII, RERA.

⁴⁷ s. 79, RERA.

⁴⁸ s. 4(1)(D), RERA.

⁴⁹ s. 3, RERA.

⁵⁰ Yadav and Itoria, *Impact of Government Policies on Real Estate Consumer Buying Behaviour: (With special reference to RERA & Affordable Housing)* 2019 8(1) IJTC 176-191.

essential municipal permissions. However, on the flip side, it can also be argued that the deposit of 70% into an escrow account would increase disruptions in cash flow for builders and stagnate growth due to increasing builder hesitancy⁵¹.

A dedicated Tribunal for Real Estate disputes certainly improves the accessibility to judicial redressal for various homeowners. However, this duty is entrusted to each State Government to enforce. RERA, while being enacted by the Central Legislation, is a legislation wholly dependent on various State Governments to execute individually. Herein perhaps lies its biggest weakness, as the standards prescribed across India would not be uniform. There has been a failure of certain States to enforce RERA⁵². West Bengal, most prominently, enacted the West Bengal Housing & Industrial Regulation Act, 2017, which was subsequently struck down by Supreme Court as being repugnant and contrary to RERA⁵³.

2.2 Australia

With Australia being a developed country, the housing infrastructure as compared to many other countries in the Asia-Pacific is certainly superior. However, there do exist certain critical threats that have led to forums predicting that Australia's public real estate sector is 'facing collapse'⁵⁴. Firstly, nearly a quarter of a million Australians pay 30% of their income in rent⁵⁵, while 88,000 households pay up to 50% of their earnings simply for accommodation, making unaffordable housing one of the issues that require immediate attention.⁵⁶ Secondly, Australia has a large population of migrant workers, refugees, asylum seekers, and indigenous persons that require regular government support in order to access quality shelter and a dignified lifestyle. However, due to a

⁵¹ Tupsakhare and Khadilkar, *Problems And Prospects For Real Estate Industry In India Post RERA* 2020 11(2) VIIRJ 195.

⁵² Govt to set up panel on RERA non-compliance (Kailash Babar, Economic Times, May 10, 2022) < <https://economictimes.indiatimes.com/news/economy/infrastructure/govt-to-set-up-panel-on-rera-non-compliance/articleshow/91452046.cms?from=mdr> > (accessed on 26 July 2022).

⁵³ *Forum For Peoples Collective Efforts v. The State Of West Bengal* [2021 SCC OnLine SC 361].

⁵⁴ Communique Of The National Summit On Affordable Housing, 22 October 2002; Dan Nicholson, *The Human Right To Housing In Australia* (Centre On Housing Rights And Evictions, 2004) < http://www.urbancenter.utoronto.ca/pdfs/elibrary/COHRE_Housing-Rights-Austra.pdf > (accessed on 25 July 2022).

⁵⁵ *id.*

⁵⁶ Otto and Lynch, '*UN Special Rapporteur on Adequate Housing: Questionnaire on Women on Adequate Housing, an Australian submission, Public Interest Law Clearing House, Homeless Persons*' (2004) 10(1) Australian Journal of Human Rights 1.

lack of income and inadequate access to social security, many such groups stare down the barrel of homelessness.⁵⁷ Thirdly, experts have opined that Australia has in fact been reeling from a hidden crisis as the home-ownership model has brushed aside those with low purchasing power⁵⁸ and has diluted the rental market, making homes harder to lock down.⁵⁹

2.2.1. Extant Housing Legislations

Australia has in the past made certain policy decisions as well as introduced laws in a bid to prevent a crisis in the real estate market and facilitate access to homes for all. While each State or Territory within Australia has its own laws⁶⁰, this Article will explore a few major provisions contained within different states in the country.

Before outlining more modern legislations, it is prudent to note that for the three decades following the Second World War, Australia relied mostly on the Commonwealth State Housing Agreement⁶¹ to provide affordable housing.⁶² The CSHA, more than a housing legislation, was more a funding policy that aimed to allot the budget in such a way that States have ample resources to focus on housing infrastructure⁶³. Post the 1980s, however, there marked a change in the approach of the Government as the Australian Labour Party slowly recognized that due to increasing inflation, the erstwhile laissez-faire attitude of the Government without dedicated real

⁵⁷ Savriti Taylor, 'Do On-Shore Asylum Seekers have Economic, Social and Cultural Rights? Dealing with the Moral Contradictions of Liberal Democracy' [2000] 1 MJIL 70.

⁵⁸ Nicholson, 'The Human Right To Housing In Australia', VCOSS Shelter Victoria, Centre on Housing Rights and Evictions and Women's Housing Ltd, 2004.

⁵⁹ UN News, Australia suffering from hidden housing crisis – UN expert, 23 August 2006 available at < <https://news.un.org/en/story/2006/08/189792-australia-suffering-hidden-housing-crisis-un-expert> > (accessed on 26 July 2022).

⁶⁰ Chapter 1 of the Commonwealth of Australia Constitution delineates the scope of powers of the Federal Parliament, which is broadly limited to a few sensitive areas such as foreign affairs, defence, immigration, Inter state trade, etc. However, the States are permitted to legislate on other areas of law, as long as they are not contradictory to the federal Laws in concurrent areas of power.

⁶¹ Hereinafter referred to as "CSHA".

⁶² Beer, 'A Dream Won, a Crisis Born?' *Home Ownership and the Housing Market*, (1993 Paris (ed), Housing Australia, Melbourne, Macmillan).

⁶³ Clause 4, CSHA.

estate legislation was not enough to enable the poor receive quality shelter⁶⁴. Thus, a slew of legislations slowly percolated into Australian law in the following decades.

The Human Rights Act of 2004, formulated along the lines of ICCPR and operative within the Australian Capital Territory, seeks to accord its citizens the same protection as internationally recognized principles guarantee⁶⁵. Notably, Section 40C(2)(b) of the Act assures residents that in every legal proceeding, the human rights associated with the dispute must be taken into account⁶⁶. Therefore, residents can make use of their provisions to contest eviction proceedings that take place under the ACT Civil and Administrative Tribunal⁶⁷, thus ensuring that the Tribunal must examine angles of individual rights to prevent excessive use of state force. This ideal was also reaffirmed by the Tribunal in *Canberra Fathers and Children Services Inc v. Michael Watson*⁶⁸

Within New South Wales – a dedicated legislation being the Residential Tenancies Act, 2010, was introduced to provide certain safeguards to tenants at risk of their tenancies being terminated at any time by their landlords⁶⁹. The Act mandates a notice period of 30 days to be given to tenants⁷⁰ – however, the same need not have reasons attached to it and cannot be rejected by the Consumer, Trader and Tenancy Tribunal created under the Act. This is unlike the Residential Tenancies Act 1995, which operates in South Australia and permits the concerned Tribunal established to refuse to execute the termination of a tenancy in case the Tribunal feels that such a rejection is fair and equitable.⁷¹ However, the Act imposes certain obligations on the landlord such as constantly checking smoke alarms, maintaining structural stability and ensuring

⁶⁴ Alan Morris, *The Lack Of A Right To Housing And Its Implications In Australia*, 2020 65 Journal Of Australian Political Economy 28.

⁶⁵ Human Rights Act, 2004 < <https://www.legislation.act.gov.au/a/2004-5#:~:text=Under%20the%20Human%20Rights%20Act,dict%2C%20def%20international%20law>> (accessed on 26 July 2022).

⁶⁶ s. 40C(2)(b) Human Rights Act, 2004.

⁶⁷ Established under the aegis of the ACT Civil and Administrative Tribunal Act 2008, this Tribunal carries out a Review of every eviction that is order under the Housing Assistance Act, 2007 within the Asutralian Capital Territory.

⁶⁸ [2010] ACAT 74.

⁶⁹ Residential Tenancies Act, 2010 < <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2010-042>> (accessed on 1 August 2022).

⁷⁰ Part 5, Division 2, Residential Tenancies Act, 2010.

⁷¹ s. 80(5), Residential Tenancies Act 1995 (SA).

adequate ventilation and plumbing⁷². In a recent case of *Jin v. Jupiter St James Pty Ltd*⁷³, the Tribunal under the Act also brought the clearance of mould and fungus caused by water leaks within the scope of the landlord's obligation. Victoria as well, along similar lines, has enacted the Residential Tenancies Act, 1997 which also enables the landlords to evict a tenant with a 14 days' notice in case of misconduct or illegalities carried out by the tenant.⁷⁴ Further, an Inquiry into homelessness in Victoria conducted by the Victorian Parliament has gone to the extent of suggesting that the right to housing be included in *Charter of Human Rights and Responsibilities Act 2006* that operates within Victoria⁷⁵.

2.2.2. Housing Policy Initiatives

The Government of Australia has implemented numerous policy initiatives in this regard as well. The National Rental Affordability Scheme (“NRAS”) was brought into force from July 2008, which aims at incentivizing purchase of houses by investors who would consequently put the houses on rent at a subsidized price as compared to the prevailing market value.⁷⁶ Australia has repeatedly featured as one of the most expensive countries to purchase a residence in.⁷⁷ This policy aims to kill two birds with one stone – provide up to 50,000 new affordable renting houses while also facilitating investing and maintaining a healthy cash flow in the real estate sector⁷⁸. However, with the prevailing market rate being naturally so exorbitant, certain quarters have expressed concerns that even the subsidized rates would be unaffordable for a vast section of the

⁷² Part 3, Division 3, Residential Tenancies Act, 2010.

⁷³ [2019] NSWCATAP 210.

⁷⁴ s. 250, Residential Tenancies Act, 1997.

⁷⁵ Parliament Of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into homelessness in Victoria Final Report*, available at <https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf> (accessed on 27 July 2022). It is important to note that many legislations along the same lines have also been enacted in Tasmania, Western Australia, Queensland and the Northern Territory, with largely the same objectives and provisions with minor deviations, such as the length of the required notice.

⁷⁶ Australian Government, Department of Social Services, National Rent Affordability Scheme, available at <https://www.dss.gov.au/our-responsibilities/housing-support/programmes-services/national-rental-affordability-scheme> (accessed 2 August 2022).

⁷⁷ Bruegmann, *8th Annual Demographia International Housing Affordability Survey: 2012*. (available online <http://www.demographia.com/dhi.pdf> (accessed 1 August 2022).

⁷⁸ Xin Janet Ge, Connie Susilawati, Success or Failure: The NRAS, available at <https://opus.lib.uts.edu.au/bitstream/10453/27674/1/2012002455OK.pdf> (accessed 2 August 2022).

population, especially pensioners.⁷⁹ However, the Scheme gained popularity due to certain accompanying tax benefits such as a refundable tax offset to the tune of approximately 8000AUD per household and some direct support as well⁸⁰.

Further, the National Housing and Homelessness Agreement (“**NHHA**”), which comprised a series of coordinated actions between the Federal Government and State Governments in 2019, aimed to improve the “*housing outcomes, including outcomes for Australians who are homeless or at risk of homelessness*” and to facilitate inter-governmental cooperation⁸¹. The NHHA brings within its fold certain weaker sections that urgently require Governmental assistance such as families affected by domestic violence, indigenous Australians, the elderly and people who are leaving care institutions.⁸² The amount of funding provided by the Federal Government amounts to nearly 5 billion AUD, with the various State Governments expected to match the level⁸³. The benefit of the NHHA is not limited to increased funding but also relates to more transparency and accountability at the Centre and State Level, with a clear division of responsibilities enforced through a forum for joint action.⁸⁴

2.2.3. Aboriginal Housing in Australia

In 2000, the Committee on Economic, Social and Cultural Rights (“**CESCR**”) reviewed Australia’s housing condition and noted with dissatisfaction that: “*despite the efforts and achievements of the State Party, the indigenous populations of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural*

⁷⁹ COTA - Australian Council on the Ageing (2008), Response to NRAS Technical Paper. Canberra: COTA, available at http://www.cotaover50s.org.au/e107_files/COTA_documents/news/response.pdf. (accessed 28 July 2022).

⁸⁰ McLaren, Leo et al, *Australia is Facing a Housing Affordability Crisis: Is the Solution to this Problem the Singapore Model of Housing?* 2016 10(4) Australasian Accounting, Business and Finance Journal 38.

⁸¹ Australian Government, Department of Social Services, Productivity Commission Review of the National Housing and Homelessness Agreement, March 2022 available at <https://www.pc.gov.au/data/assets/pdf_file/0019/338041/sub083-housing-homelessness.pdf> (accessed 2 August 2022).

⁸² Australian Government Department of Social Services, ‘Housing Support’ available at <<https://www.dss.gov.au/housing-support/programmes-services/homelessness>> (accessed 1 August 2022).

⁸³ Ronil Sifris, *Older Persons and the Right to Adequate Housing*, Monash University Castan Centre for Human Rights Law, April 2022.

⁸⁴ id.

rights, particularly in the field of employment, **housing, health** and education.”⁸⁵ Further, the 1999 Australian Housing Survey also recorded that the indigenous community was “almost three times more likely than non-indigenous households to report their homes to be in high need of repair”.⁸⁶

In 1979, the Australian Commonwealth decided to enact the Aboriginal Rental Housing Program (“ARHP”) with the objective of providing additional housing facilities specific to the indigenous people, which would supplement the general public incentives already in place.⁸⁷ The scheme involved a funding of nearly 91 million AUD to various States and Territories that were not obliged to provide the same level of funding, with an additional 29 Million AUD provided in 2001. Further, the National Plan for Human Rights expressly adverts to aboriginal housing by providing that: “Aboriginal housing, particularly in rural and remote areas is grossly inadequate. Federal Government funds are provided to both State and Territory Governments and ATSIC for the provision of housing and infrastructure. Low interest housing loans are also provided for Aboriginal and Torres Strait Islander peoples.”⁸⁸

No matter the policies that the Government enacts to improve the condition of the indigenous people, a drastic reformation of thought and outlook of the Australian citizens is essential to integrate the Aboriginal People into mainstream society⁸⁹. Research has shown that in parts of Australia, indigenous tenants are viewed with suspicion and mistrust and are considered as “high-risk” tenancies, with landlords automatically associating such tenants with damage to property, lack of sanitation and overcrowding⁹⁰. Until such discrimination ceases to remain embedded within society, it will be an uphill task to ensure parity for the Aboriginals.

2.3 **Bangladesh**

⁸⁵ UN Habitat, *Compilation of Selected Adjudications on Housing Rights* (2006, 3rd Ed. Report No. 4).

⁸⁶ UN Habitat, *Indigenous peoples’ right to adequate housing: A global overview* (2005, Report No. 7).

⁸⁷ *id.*

⁸⁸ National Action Plan Australia, p. 37 available at <<https://humanrights.gov.au/sites/default/files/document/page/nap94.pdf>> (accessed on 2 August 2022).

⁸⁹ Linking Indigenous Communities with Regional Development in Australia (OECD 2021) <<https://www.oecd.org/regional/Indigenous-Communities-Australia-PH.pdf>> (accessed on 1 August 2022).

⁹⁰ UN Habitat Report No. 7 (supra).

Urban poverty is one of the most crippling challenges that Bangladesh is faced with⁹¹. Lack of employment opportunities and poor infrastructure has translated into illegal settlements littered across the capital city of Dhaka⁹². The concentration of land within the city is also skewed – 30% of the population owns 80% of the land with the balance 70% left with a meager 20%⁹³. A vast majority of the poor live in straw/bamboo hutments⁹⁴. The two main factors leading to an acute shortage of houses are a dearth of space and exorbitant construction costs in Bangladesh, rendering the resultant buildings a distant dream for even those households that are just above the average income⁹⁵.

2.3.1. Constitutional Protection

Article 15(a) of the Constitution of Bangladesh provides that: “*It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens – (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care*”.⁹⁶ However, it is pertinent to note that Article 15(a) is under Part II, which contains the Fundamental Principles of State Policy, while Part III deals with the Fundamental Rights. Therefore, the Bangladesh Constitution does not confer an explicit right on its citizen, but rather formulates a provision akin to India’s Directive Principles of State Policy which acts as a guiding principle for governance. This is reflected by Article 8(2) of the Constitution of Bangladesh, which provides that the Fundamental Principles “*shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable*”.

⁹¹ Panday, Urbanization and Urban Poverty in Bangladesh (Palgrave Macmillan, Singapore) < https://doi.org/10.1007/978-981-15-3332-7_3 > (accessed 2 August 2022).

⁹² Bangladesh: Poverty Reduction Strategy Paper, IMF (March 2013, Country Report No. 13/63); Rashid, *Strategies to reduce exclusion among populations living in urban slum settlements in Bangladesh*, (2009 27 Journal of Health Population and Nutrition 574-586).

⁹³ Centre for Urban Studies, *Dhaka Slums of Urban Bangladesh: Mapping and Census*, 2006

⁹⁴ Shams, Sohel et al, *Housing Problems for Middle and Low Income People in Bangladesh: Challenges of Dhaka Megacity* (2014 5(1) Environment and Urbanization Asia 175).

⁹⁵ *id.*

⁹⁶ Art. 15(a), Constitution of the People’s Republic of Bangladesh.

2.3.2. Policy Decisions

The illegal settlements mushrooming all over Dhaka are commonly referred to as *bastee* settlements⁹⁷. Forced evictions from these bastees have led to nearly 100,000 people becoming homeless⁹⁸. Interestingly, it has been opined that the fear of eviction among slum-dwellers is the greatest source of trauma and harm in itself, making the threat of eviction a human right violation as well⁹⁹. Along with using evictions to clear bastees, the Bangladeshi Government has also endeavored to employ resettlement schemes for the slum-dwellers. One of the most prominent schemes was the Bhasantek Rehabilitation Project (“BRP”) located in Mirpur, Bangladesh. The Project involved two types of rooms being made – one roomed and two roomed – in order to cater to each income group with an average cost being between 4000-6000 BDT (40-60 USD). However, the project met with a tragic fate after the Company involved in the rehabilitation sold flats at a higher rate, which were subsequently usurped by government bureaucrats. Ultimately, the ‘to be rehabilitated’ slum-dwellers resided in a slum just behind the Bhasantek site, in worse conditions than they were in before¹⁰⁰. Experts have argued that in Bhasantek and other re-settlement projects carried out by the Bangladeshi government, the fatal flaw in all was poor planning, along with a lack of accountability and transparency caused by a corrupt governing body¹⁰¹.

Following the 1992 Rio Conference on Environment and Development and the Declaration by the UN Commission on Human Rights on the Realization of the right to adequate housing¹⁰², Bangladesh formulated its landmark National Housing Policy (“NHP”) of 1993. The Policy – for the first time in Bangladesh – sought to ensure housing for the disadvantaged rather than simply suggest it as a guiding principle for

⁹⁷ Mohammed Mahbubur Rahman, *Bastee eviction and housing rights*, 2001 25(1) Habitat International 49.

⁹⁸ COHRE, *We Didn't Stand a Chance – Forced Eviction in Bangladesh*, Mission Report, 2001.

⁹⁹ B.K. Paul, *Fear of Eviction: Case of Slums and Squatter Dwellers in Dhaka, Bangladesh* 2006 27(6) Urban Geography 567.

¹⁰⁰ Hussain, Saha et al, *State and the Low Cost Housing for the Poor: Fall of Bhasantek Rehabilitation Project (BRP) in Dhaka City: Bangladesh*, 2015 6(13) Journal of Education and Practice 1.

¹⁰¹ Choguill, *New Communities for Urban Squatters: Lessons from the Plan That Failed in Dhaka, Bangladesh* (Urban Innovation Abroad, 1987).

¹⁰² UCHR, *Realization of the right to adequate housing*, Geneva, 7 March 1988 available at <<https://www.refworld.org/docid/3b00f0b944.html>> (accessed on 2 August 2022).

governance. The 1993 NHP has subsequently been updated and revised on numerous occasions. The 2013 updated NHP also recognizes that “*it is the constitutional obligation of a state to provide decent housing for all to ensure improvement of living standard and enrichment of cultural milieu*”¹⁰³. The Policy targets numerous ways of reforming land, town-planning and financing, including but not limited to:

- The creation of “Urban Land Banks” to utilize excess governmental land to facilitate housing
- Promotion of a Public Private Partnership (“PPP”) system to gain investments
- To promote the co-operative housing movement
- Conserving rainwater and using renewable energy¹⁰⁴

Recently, even large micro-financing companies in Bangladesh have started becoming more actively involved in the large-scale real estate projects that are specifically focused on low-income groups. Companies such as the Grameen Bank provide loan without collateral, conditional on furnishing of documents of title and there are generally very limited modes of recovery of these loans by the micro-financial institution¹⁰⁵. Generally, repayment is done in installments commencing from just over a month post the construction of the house has begun. The maximum period for repayment is a decade.¹⁰⁶

Further even in 1999, the Bangladesh Government also began the ‘Ghore Phera’ (*Bengali: Returning Home*) plan of action through its Bangladesh Krishi Bank. An ingenious scheme, it involved providing incentives to various slum dwellers to travel back to their villages with promises of loans, basic accommodation and even ponds for fishing¹⁰⁷. The intended benefits of this scheme were threefold: (i) to alleviate poverty in the major cities; (ii) encourage a reverse-migration from cities to rural districts; and (iii) improve hygiene and the general surroundings of the slum areas¹⁰⁸.

¹⁰³ Clause 1.1 National Housing Policy, 2013.

¹⁰⁴ Clause 4, National Housing Policy 2013.

¹⁰⁵ Khandaker Khalidur Rahman, *Development of housing finance and its impact on socio-economic uplift in the emerging economy in Bangladesh*, Basel, 26 August 2008, IFC Conference.

¹⁰⁶ Grameen Bank’s Basic Housing Loan, the most popular in Bangladesh, imposes these conditions.

¹⁰⁷ Rashid (supra).

¹⁰⁸ M.A. Mohit, *An Assessment of Policy Approaches Adopted to Deal with Baste Settlements of Dhaka City in Bangladesh*, 2012 3(9) Asian Journal Of Environment-Behaviour Studies 1.

2.3.3. *Housing Litigation*

The Bangladesh Supreme Court has, on numerous occasions, sought to widen the scope of the right to housing and grant protection against slum evictions. The most prominent case is that of *Ain o Salish Kendra v. Government of Bangladesh*¹⁰⁹, in which the Petitioner – an organization for the enforcement of human rights – challenged the forcible eviction of a major slum named Titipara in Bangladesh that was mandated by the Government and led to numerous slum dwellers suffering injuries along with one death. The Attorney General, representing the Government, argued that no citizen had the inherent right to occupy lands belonging to public authorities. The State believed that these bastees were the source of many criminal activities and cause annoyance and disruption to surrounding tranquil areas¹¹⁰. The Supreme Court ultimately aimed to balance social justice with the infrastructural policy of the State¹¹¹. The Court employed the “violations” approach by holding that the State had a minimum obligation to ensure the right to life which includes the right to housing of its citizens and by forcibly evicting the slum-dwellers, the State had violated this minimum obligation¹¹². Social welfare should be the end goal of the State and hence there should be a clear rehabilitation program with slum dwellers being given the option to either return to rural settlements or continue in urban areas to seek rehabilitation with the help of some financial assistance from the State. Interestingly, the Court also recognized the contribution of the slum dwellers to the national economy¹¹³.

The argument that the Fundamental Principles are not legally enforceable¹¹⁴ was cleverly navigated by Justice Ahmed in *Ahsanullah and Others v Bangladesh*¹¹⁵. Justice Ahmed opined that the bar for legal recourse under Art. 8 of the Constitution only applies to legal action seeking an active enforcement or positive steps from the Government. However, in case the State completely neglects its obligations under the

¹⁰⁹ (1999) 19 BLD (HCD) 448 (The case is commonly known as the Slum Dwellers’ Case).

¹¹⁰ *id.*

¹¹¹ AHM Kabir, *Litigating the Right to Adequate Housing*, 2002 1 Asia-Pacific Journal on Human Rights and Law 97.

¹¹² *Ain o Salish Kendra* (supra)

¹¹³ *id.*

¹¹⁴ Art. 8, Constitution of the People’s Republic of Bangladesh.

¹¹⁵ (1992) 44 DLR (HCD).

Fundamental Principles and on the contrary negatively suppresses any provision thereunder, the Courts can certainly intervene and uphold the rights of its citizens¹¹⁶.

Post the judgment in *Ain o Salish Kendra* (supra), the Supreme Court followed the same and reiterated the inherent obligation of the State to ensure the livelihood and shelter of slum dwellers in *BLAST v Bangladesh and Others* (The Bhashantek Bast Eviction Case)¹¹⁷ and *Modhumala v Housing and Building Research Institute and Others*¹¹⁸. In both the aforesaid cases, the Court held that forcible evictions violated the fundamental principles of the Constitution and infringes on national and international obligations by obstructing the access to housing.

2.4 China

Similar to Australia, China also faces the major issue of housing affordability¹¹⁹, with one of the major factors being an over-reliance on the economic effects of investment in the housing sector rather than actively catering the needs of the low-income citizens¹²⁰. Prices have skyrocketed in the recent years and threaten to undermine the otherwise large steps taken towards providing housing for all.

Prior to the Revolution achieving its objective in 1949, most major cities operated on a private rental model in which housing was leased out by Landlords. Soon after, however, the process of nationalizing began which garnered steam in the 1980s.¹²¹ In the 1990s, the reforms gradually altered course to make way for commercial developers replacing the erstwhile public system, with the size of public housing land in the hand of private developers reaching nearly 2.5 million sq.ft by the late 1990s¹²². As the 20th century came to a close, the Chinese national policy switched to a GDP-centric

¹¹⁶ id.

¹¹⁷ (2008) 13 BLC (HCD).

¹¹⁸ (2001) 53 DLR (HCD) 540.

¹¹⁹ Yang and Chen et al, *The New Chinese Model of Public Housing: a step forward or backward?* 2014 29(4) Housing Studies 534.

¹²⁰ Chen et al, *Assessing Housing Affordability in Post-reform China: A Case Study of Shanghai*, 2010 25(6) Housing Studies 877.

¹²¹ Zenou, *Housing Policies in China: Issues and Options* (2011 Stockholm University).

¹²² Chen et al (supra).

approach – with the ultimate desire being only to witness a dramatic increase in GDP growth, the attention to public housing gradually waned¹²³.

2.4.1. Migrant Housing in China

Rural migrants face a severe crisis in China due to the prevailing *hukou* (registration) system, which requires those who have traversed from villages to cities to acquire an urban registration status. This *hukou* system aims at creating a figurative separation between village and city households. Many a times, rural villagers who are either formally recruited to the city or gain access to universities or the army are naturally absorbed through the *hukou* process¹²⁴. However, those who voluntarily move to cities in order to access employment opportunities do not fall within the ambit of receiving a *hukou*. In the absence of such a status, the migrants are unable to access some essential amenities in the cities.¹²⁵ These basic amenities include medical care, retirement benefits, public housing and unemployment schemes¹²⁶. This system puts the migrants in an uncomfortable position for two reasons: (i) the shift to privatization and commercial profit-oriented real estate raised prices beyond the budget of these migrants; and (ii) affordable housing through any subsidized program remains inaccessible to migrants in the absence of receiving a *hukou*¹²⁷. Thus, most migrant clusters are found at the outskirts of cities in undeveloped tenements provided by urban farmers on rent¹²⁸.

While the prevalent *hukou* system has caused certain disadvantages for migrants, the other contributive factor remains the uncertainty of the Chinese labour market. Due to the constantly fluctuating labour demand, the only avenue available to migrants is renting in a low-quality market¹²⁹. In 2014, the Chinese Government attempted an

¹²³ Rosen and Ross, *Increasing Home Ownership in Urban China: Notes on the Problem of Affordability* 2000 15(1) Housing Studies 77.

¹²⁴ Smith et al, *International Encyclopedia of Housing and Home*, (2012 Oxford Vol. 3).

¹²⁵ Chan, Zhang, *The hukou system and rural-urban migration in China: Processes and changes 1999* 160 *China Quarterly* 818.

¹²⁶ id.

¹²⁷ Zenou (supra).

¹²⁸ Smith (supra).

¹²⁹ id.

overhaul of the *hukou* system in order to loosen the requirements for the attainment of a *hukou* by transferring the power to each city or village-level unit to decide the criteria¹³⁰. Nevertheless, huge inequalities remain evident between the migrant labour population and the extant urban population¹³¹.

2.4.2. Chinese Constitutional and Policy Protection

Article 13 of the Constitution of the People's Republic of China (“PRC”) expressly provides that: “*Citizens' lawful private property is inviolable. The State, in accordance with law, protects the rights of citizens to private property and to its inheritance. The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.*”¹³² This provision can be traced back to its rudimentary form introduced by the 1988 Amendment of the Chinese Constitution, which introduced an Article 10 into the Constitution that read as: “*the right to use land may be transferred according to law.*”¹³³ Thus, the concept of assigning the right to use land paved the way for private property being recognized in China – a departure from the earlier State dominated sector. Prior to this Amendment, the idea of land as a commodity that can be distributed on a lease-hold basis was not explored – the system of granting land to entities for their free-use usually prevailed.

In China, while all land is owned by the State¹³⁴, property ownership is of three types: (i) state-owned property; (ii) collectively owned property; and (iii) privately-owned property. It has been argued that the Constitutional acknowledgement of various property rights endeavours to grant equal protection to all the aforementioned kinds of ownership¹³⁵. Therefore, the Chinese Constitution espouses a dichotomy between landownership and the right to build on land.

¹³⁰ Hung, *Hukou System Influencing the Structural, Institutional Inequalities in China: The Multifaceted Disadvantages Rural Hukou Holders Face* 2022 11 Soc. Sci. 194.

¹³¹ Zhang and Trieman, *Social Origins, Hukou Conversion, and the Wellbeing of Urban Residents in Contemporary China*, 2013 42 Social Science Research 71.

¹³² Art. 13, Constitution of PRC.

¹³³ Art. 10, XIANFA 1988.

¹³⁴ Art. 10, Constitution of PRC.

¹³⁵ Mostert and Lei, *The Dynamics Of Constitutional Property Clauses In The Developing World: China And South Africa* 2010 17(4) MJ 377.

Land-use is largely governed by the Land Administration Law, 1987 (“LAL”) which was formulated with the aim to “*strengthen land administration, maintain the socialist public ownership of land, protect and develop land resources, make proper use of land, effectively protect cultivated land and meet the needs of socialist modernization*”¹³⁶. In a country like China, even land-use legislations have a great bearing on the availability of housing and the regulation of private investors as the State seeks to have an omnipresent control over all transactions¹³⁷. Interestingly, LAL has strict provisions to prevent illegal settlements or slums from mushrooming. LAL provides that: “*Rural residents who unlawfully encroach upon land to build residences without approval or with fraudulently obtained approval shall be ordered to return such land and demolish, within a definite period of time, the houses newly built on such land, or such newly built houses shall be confiscated.*”¹³⁸ This provision thus gives illegal encroaches no option to demolish unlawful houses, in the event of omission of which the State directly steps in to confiscate property. Further, the LAL delegates the responsibility of scrutinizing land-use to the various local administrative authorities¹³⁹, imposing on them the obligation to carry out surveys and prepare reports to ensure efficient supervision¹⁴⁰.

In 1994, the Chinese Government, through the *Decision on the Deepening of Urban Housing System Reform*, introduced the concept of Economic and Comfortable Housing (“ECH”) or Jingji Shiyong Fang for all middle and low-income households at the standard price along with an additional 3% profit margin¹⁴¹. Each local administrative unit had to identify the families which would be eligible for the Scheme and also had to reserve the necessary land for such housing¹⁴². However, the ECH was largely considered unsuccessful and was soon wiped off the official Chinese records¹⁴³.

¹³⁶ Art. 1 Land Administration Law 1987.

¹³⁷ Yuan, Land Use Rights in China 2004 3 Cornell Real Estate Review 73.

¹³⁸ Art. 45 Land Administration Law 1987.

¹³⁹ Art. 23, 39 Land Administration Law 1987.

¹⁴⁰ Art. 14 Land Administration Law 1987.

¹⁴¹ Naoyuki Yoshino and Matthias Helble, *The Housing Challenge In Emerging Asia Options And Solutions* (2016 Asian Development Bank Institute).

¹⁴² *id.*

¹⁴³ *id.*

In 2007, the Property Law – termed as “*landmark private property measure*” – was enacted in order to consolidate the various extant laws relating to property.¹⁴⁴ The Law defines ownership with a revolutionizing broad amplitude to include land for the purposes of holding, using, disposing of or earning profits, thus treating private commercial transactions at par with state sponsored acts. The Law also grants protection against acquisition of homes by the State, providing that compensation and the same residential conditions will certainly be provided to the affected parties¹⁴⁵. Similarly, it also assures compensation to the holder of any agricultural land in the event that any agricultural collective readjusts the same¹⁴⁶.

The State Council has also played an active role in re-directing the national policy towards housing for all. In 2007, the State Council released *The Position Document for Solving Housing Difficulties of Urban Low Income Families*, which involved tightening of land-lease provisions to reduce urban demolition of property and re-emphasized that any demolition must first be tested on the anvil of process of law and property rights¹⁴⁷. Similarly, the State Council also penned *The Position Document for Adjusting the Structure of Housing Supply and Stabilizing Housing Prices*, popularly termed as the 90/70 policy as it involved constructing 70% of the floor plan of affordable houses under 90m².¹⁴⁸

Further, in major cities such as Beijing, there exist minimum requirements that each constructed residence must abide by. Regulations mandate that all rooms must be positioned in such a manner so as to receive access to sunlight for at least one hour even on the shortest day of the year. It is also regulated that each person living in urban cities must have access to at least seven square meters of space. The law also seeks to protect landlords from squatters who refuse to pay, as if any tenant fails to pay rent, the requisite amount is automatically deducted from that worker’s pay¹⁴⁹.

¹⁴⁴ Wang, Whatever-ism with Chinese Characteristics: China's Nascent Recognition of Private Property Rights and Its Political Ramifications (2011 6 U-Penn East Asia Law Review 44).

¹⁴⁵ Art. 42, Property Law 2007.

¹⁴⁶ Art. 130-132, Property Law 2007.

¹⁴⁷ Smith (supra).

¹⁴⁸ id.

¹⁴⁹ Broudehoux, Neighborhood Regeneration in Beijing: An Overview Of Projects Implemented in the Inner City Since 1990 (July 1994, McGill University) Chapter 2.

2.5 Singapore

Singapore is a country that stands out among the other struggling nations of the Asia-Pacific, with tremendous success in the housing sphere despite having an extremely high population density¹⁵⁰. Undergoing a complete transformation over the course of two-and-a-half decades, nearly 90% of Singapore's population lives in flats provided by the Housing and Development Board (“HDB”), with over 80% of these residents being owners of their flats, the rest being renters.¹⁵¹

Singapore once faced a grave housing crisis, with a study revealing that shortly after the Second World War, over 80% of households in Singapore lived in one room or even lesser¹⁵². This problem was coupled with unemployment, economic flux and political uncertainty¹⁵³. The residential landscape in Singapore was summarized as follows: “*Living conditions were characterized by makeshift shelters, overcrowding, appalling environmental conditions, poor maintenance and a general lack of essential service*”¹⁵⁴. Further, the Singapore government had to deal with an overwhelming influx of immigrants demanding accommodation, while suffering a handicap in the form of a shortage of private resources in a nascent self-governed country.¹⁵⁵

Gradually, the Singapore Improvement Trust began constructing public housing to meet the growing demand and ultimately, the Government adopted a successful two-pronged approach to address Singapore's acute residential concerns: (i) the Government established a Housing and Development Board and housing finance was encouraged and (ii) the Land Acquisition Act, 1966 came into force¹⁵⁶.

¹⁵⁰ Population Trends 2020 (Department of Statistics, Ministry of Trade, Singapore) < <https://www.singstat.gov.sg/-/media/files/publications/population/population2020.pdf>> (accessed on 1 August 2022).

¹⁵¹ Housing and Development Board, Facts On Public Housing In Singapore (1995).

¹⁵² Riaz Hassan, Families in Flats: A Study of Low Income Families in Public Housing (1977 Singapore University Press).

¹⁵³ Aya Gruber, *Recent Development, Public Housing in Singapore: The Use of Ends-Based Reasoning in the Quest for a Workable System*, 1997 38 Harvard International Law Journal 236.

¹⁵⁴ id.

¹⁵⁵ S.Y. Phang, Singapore's Housing Policies: Responding to the Challenges of Economic Transitions, (2016 World Scientific).

¹⁵⁶ Phang and Helble, *Housing Policies in Singapore* (2016 ADBI Working Paper 559).

2.5.1. Housing and Development Board contributions

The Housing and Development Board has slowly built Singapore's residential infrastructure in phases. Initially, the HDB focused on establishing 'emergency' houses in a desperate bid to create at least some cheap accommodation, which was subsequently improved to standardized apartments.

The Government introduced a law, which permitted the prospective homeowners to utilize the balances in their Central Provident Fund in order to enable the HDB to implement its Home Ownership Scheme¹⁵⁷. This paved the way for the State being able to achieve higher home ownership without a significant debt in their national budget and without committing too many funds¹⁵⁸.

Soon after during the 1980s, as the global population boom slowly led to more demand, the HDB began rapidly employing available land and expanding the capacities of their flats¹⁵⁹. In the present modern era, the HDB targets utilizing private organizations on a macro scale to facilitate precinct planning, which includes catering as far as possible to various income brackets¹⁶⁰. The HDB has also introduced a finance-centric policy in the form of the Lease Buyback Scheme, which permits a shorter lease at the end of which the lease will be re-purchased by HDB in the form of monthly payments and Government grants, thus not only providing housing for a fixed three-decade duration but also leaving the citizens with some funds¹⁶¹. The role of the HDB also ensures that prices remain in check and are affordable¹⁶² – in most jurisdictions, real estate prices zoom due to the private market failure but in Singapore, as most of the housing is controlled by the statutory board, the State endeavors to keep prices stable to curry

¹⁵⁷ UN Habitat, *Housing a Nation – The HDB Story*, available at <https://mirror.unhabitat.org/downloads/docs/9118_91744_HousingAndDevelopmentBoard_Singapore.pdf> (accessed on 1 August 2022).

¹⁵⁸ Vasoo and Lee, *Singapore: social development, housing and the Central Provident Fund* 2001 10 Int J Soc Welfare 276.

¹⁵⁹ Tamura and Fang, *Quality of Public Housing in Singapore: Spatial Properties of Dwellings and Domestic Lives* 2022 2 Architecture 18-30.

¹⁶⁰ id.

¹⁶¹ *Housing a Nation* (supra).

¹⁶² Vasoo and Lee (supra).

political favour as well¹⁶³. It is pertinent to note that HDB is a statutory board and therefore receives mandatory governmental funding, subsidies and grants.

In 1995, the Government also introduced the Executive Condominium (“EC”) Scheme, which introduced a hybrid model by merging private and public resources. The EC Scheme enabled the HDB to exit the market targeted at the upper and upper-middle class households, thus leaving the HDB to focus on the needs of the lower classes.

2.5.2. The Land Acquisition Act, 1966 (“LAA”)

Section 5 of the LAA accords the Government with broad and far-reaching powers to acquire land, by providing that:

“(1) *Whenever any particular land is needed —*

(a) for any public purpose;

(b) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest; or

(c) for any residential, commercial or industrial purposes, the President may, by notification in the Gazette, declare the land to be required for the purpose specified in the notification.”¹⁶⁴

The broad and sweeping nature of this provision appears to be purely intentional, as during the consideration of the draft LAA by the Select Committee, certain stakeholders suggested adding the words “*of public benefit*” to 5(1)(c) in order to reduce the scope of misuse – this suggestion was discarded¹⁶⁵. Interestingly, Section 5(3) provides a unique stipulation by stating that any declaration as per Section 5(1) would be conclusive proof that the land is indeed required for the criteria enlisted thereunder¹⁶⁶. The LAA also creates an Appeal Board¹⁶⁷ enabling citizens to appeal the order of the

¹⁶³ *id.*

¹⁶⁴ s. 5 Land Acquisition Act, 1966.

¹⁶⁵ Report of the Select Committee on the Land Acquisition Bill, No. 9 of 1966.

¹⁶⁶ s. 5 Land Acquisition Act, 1966.

¹⁶⁷ s. 19 Land Acquisition Act, 1966.

Collector vis-à-vis compensation¹⁶⁸ and provides that any award by the Appeal Board would be final unless the Appeal Board actively raises a question to be referred to the Court of Appeal¹⁶⁹. Therefore, LAA creates a parallel judicial redressal system that reduces long-drawn litigation, facilitates speedy justice to deserving citizens and also accelerates the process of building infrastructure.

Thus, the LAA is an extremely strict legislation intended at minimizing opposition to the fiat of the Government and streamlining the process of serving the larger societal purpose of land.

2.5.3. Restrictions on Foreign Ownership

In 1976, Singapore enacted the Residential Property Act, 1976 (“**RPA**”) to regulate the purchase of land and property by foreigners. The RPA defines a foreigner as any person who is not either a (i) citizen of Singapore; (ii) Singaporean company; (iii) Singaporean LLP; or a (iv) Singaporean registered society¹⁷⁰. Any such foreigner wishing to buy or transfer residential property in Singapore must necessarily first attain permission from the Minister of Law¹⁷¹. Even if such permission is granted, such foreigners can only use the purchased residential property for their own occupation (with family) or the occupation of their employees based in Singapore. The RPA seeks to thus prevent residential property from being transferred to entities out of the country and safeguards against houses simply remaining vacant. According to the Minister of Law, the policy of Singapore is that: “*the Government takes a strict approach towards ownership of landed residential property in Singapore by foreigners, including Permanent Residents, to ensure that they remain the primary preserve of Singapore Citizens.*”¹⁷² The RPA also bans the creation of any trust for sale of residential property in the name of

¹⁶⁸ s. 10, 11 Land Acquisition Act, 1966.

¹⁶⁹ s. 31 Land Acquisition Act, 1966.

¹⁷⁰ s. 2(1) Residential Property Act, 1976.

¹⁷¹ s. 3, 25 Residential Property Act, 1976.

¹⁷² Ministry of Law, Written Answer by Minister for Law, Mr K Shanmugam, to Parliamentary Question on Number of Cases Where Foreigners Purchased Restricted Residential Properties Through Singaporeans (11 January 2022) available at <<https://www.mlaw.gov.sg/news/parliamentary-speeches/2022-01-11-written-answer-by-minister-for-law-k-shanmugam-to-pq-on-number-of-cases-where-foreigners-purchased-restricted-residential-properties>> (accessed on 2 August 2022).

foreigners and imposes a \$100,000 fine and imprisonment up to three years for violators¹⁷³.

3 The Way Forward for the Asia Pacific

Due to Asia's developing countries witnessing a high population density, nascent and struggling economies and deep-rooted corruption, the prospective of housing for all may seem like an unattainable utopia. However, according to the author, with certain remedial measures and welfare schemes implemented with the right spirit and supervision, the access to housing can become a reality for a vast section of the population in the foreseeable future. These suggestions are enumerated hereunder.

Due to the web of complex intricacies within the social and economic structure of Asian developing nations, it must be recognized that no single approach would be able to deal with the crisis¹⁷⁴. *Firstly*, the developing countries in Asia can espouse and follow the suggestion of 'incremental social housing'¹⁷⁵ as promoted by the World Bank¹⁷⁶. Incremental housing has been described as "*a strategy based on a progressive system, where construction is incomplete but in conditions of habitability... the process by which people transform their habitable space through time.*"¹⁷⁷ This policy is considered as a remedial measure against unaffordability as poor households are able to generate funds for construction over extended periods of time¹⁷⁸. It also leads to increased efficiency vis-à-vis urban management due to delegation of authority to the residents themselves, with transparency and governance receiving a boost during the process¹⁷⁹. Many developing countries outside the Asia Pacific have already begun implementing this policy, such as Mexico, Peru and Nigeria since the 1960s¹⁸⁰. In Peru,

¹⁷³ id.

¹⁷⁴ Mathéy, *Beyond Self-Help Housing*, (1992 Mansell, London).

¹⁷⁵ Wakely, *Urban public housing strategies in developing countries: whence and whither paradigms, policies, programmes and projects* (University College London DPU60 Working Paper Series: Reflections No. 163/60).

¹⁷⁶ Wakely and Riley, *The Case for Incremental Housing* (2011 Cities Alliance Policy Research and Working Papers Series No. 1).

¹⁷⁷ Noorloos et al, *Incremental housing as a node for intersecting flows of city-making: rethinking the housing shortage in the global South* 2019 32(1) IIED 37.

¹⁷⁸ id.

¹⁷⁹ Wakely and Riley (supra).

¹⁸⁰ id.

such social housing is based on a purely quantitative basis, thus providing predictable results that enables authorities to limit the project to as many times as is necessary to occupy land and mainly uses low rising, high-density housing with a cluster of row houses¹⁸¹. Further, even in countries like Nigeria, more citizens actively choose to relinquish their rental property and avail of inexpensive land at the urban periphery and develop the same incrementally¹⁸². Therefore, its implementation in Asia Pacific is long overdue. Incremental housing would, however, require legislation to regulate its application as improvement of housing over the course of time and transferring responsibility in the hands of the citizens would not be free from disputes and litigation by disgruntled homeowners.

Secondly, housing micro-finance (“**HMF**”) is considered as an efficient way of providing funds to the low-income households for the purpose of acquiring residences¹⁸³. HMF is tied hand-in-hand with the concept of incremental housing by providing loans of small amounts, with little or no collateral and a short repayment period¹⁸⁴. Micro-finance is an alternative more suited to the low-income category of homeowners than the traditional mortgage funding¹⁸⁵. Mortgages mandate regular payments for long time frames and for low-income households, most of which constitute a working class, sudden unemployment, sickness or injury can result in rapid financial crises rendering them unable to pay off their mortgages¹⁸⁶. Many times, low earners do not meet the eligibility criteria for a mortgage due to a lack of title to land, informal income or a pre-existing residence that does not meet the prescribed standards.¹⁸⁷ Asia-Pacific Governments and the chief domestic economic regulatory

¹⁸¹ Roberto Chávez, Incremental Housing: The Past and Future Dwelling Solution for the Poor available at http://web.mit.edu/incrementalhousing/articlesPhotographs/pdfs/CHAVEZ-Formal_Incremental_Housing.pdf > (accessed on 10 September 2022).

¹⁸² Famutimi, John Taiwo and Oni, Oluwasola Feyisara, Exploring Incremental Housing Strategy as a Panacea for Meeting Housing Shortages among Low and Moderate Income Group in Alimosho, Lagos State, Nigeria (2022 4(8) International Journal of Advances in Engineering and Management 617).

¹⁸³ Merrill and Mesarina, Expanding Microfinance for Housing (2006, HOUSING FINANCE INTERNATIONAL) available at <https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-expanding-microfinance-for-housing-dec-2006.pdf> > (accessed on 2 August 2022).

¹⁸⁴ Bruce Ferguson, *Micro-finance of housing: a key to housing the lower moderate-income majority?*, 1999 11(1) Environment and Urbanization 185.

¹⁸⁵ id.

¹⁸⁶ id.

¹⁸⁷ Merrill and Mesarina (supra).

bodies may enact a comprehensive set of regulations or guidelines in this sector. This would indirectly also promote HMF as a possible avenue for investment for a larger section of the population. However, despite the existence of certain HMF schemes, the UN has noted in a study that HMF programs in countries like India are still “*unable to satisfy the escalating demand for housing and have rarely been successful*”¹⁸⁸. The lack of clear land titles raises the risk for HMF companies and the lack of collateral leads to HMF companies increasing interest-rates beyond the capacities of the poor.

Thirdly, legislations focused at removing unfair pricing in the housing sector along with eliminating pre-existing housing restrictions could contribute to the growth of the sector. Systems like the *hukou* system – aimed at initially dis-incentivizing rural to urban migration – in China that eliminate any sort of hope for legitimacy ought to be done away with as they simply lead to illegal settlements mushrooming in urban areas. On the contrary, removing such restrictive systems would bolster demand, entice private parties to undertake projects and also result in more development on the outskirts of urban centers¹⁸⁹. Restrictions such as those enacted by Singapore to minimize foreign ownership of property must however be encouraged – limited to the extent that it does not severely dampen foreign investment or interest in domestic markets which is a big factor in the growth of developing Asian GDPs. This would ensure an efficient balance between the needs of the domestic population and the importance of foreign funds.

Fourthly, with land being the most precious commodity for improving the housing infrastructure, Governments can adapt innovative methods to source land and suit them according to their capacities and economies. While formal acquisition of land has always been an option, it often leads to prolonged litigation and disputes that hold up construction of any infrastructure for years¹⁹⁰. One such efficient method is land pooling, in which owners of land are made parties to the urban development process and are provided benefits or incentives in return. This scheme has a two-fold benefit

¹⁸⁸ Habitat for Humanity India, *A Report on Low Income Housing in India: Challenges and Opportunities for Microfinance* (IFMR June 2007).

¹⁸⁹ Zenou (supra).

¹⁹⁰ JM Lindsay, *Compulsory Acquisition of Land and Compensation in Infrastructure Projects* (2012 World Bank).

for the State and the landowner: (i) more land becomes available to the Government to build houses and (ii) the land-owner gets the benefit of a developed, planned land equipped with new infrastructure which would fetch higher prices¹⁹¹. Ultimately, the Government also saves on acquisition costs and while the Government does take over the ownership of the land during development, the landowner has the satisfaction of a guarantee that the land ownership will be transferred back to him while avoiding prolonged litigation¹⁹².

Fifthly, the focus must also be partly directed towards not only improving the quality of urban shelter, but also at increase the quantity of rural shelter. Training and promotion of local builders in smaller towns to transfer some responsibility to them is essential. It is imperative that housing plans in rural areas comprise of simple and not elaborate housing designs – this will ensure a higher success rate in projects undertaken by local inexperienced builders¹⁹³. Taxes involved that are collected by local authorities in rural areas pertaining to housing transactions can be reduced in rural areas as can be notified by the concerned authorities, thus facilitating cheaper prices. Further, these taxes can be collected by a national authority instead of a regional authority to simplify the complex procedures for the benefit of rural inhabitants¹⁹⁴. However, this would be effective in regard to smaller countries in area with a smaller rural population. In countries like Indian and China that have a huge population and remote rural areas, local collection would ideally be a smoother process. Further, tax-related reforms may also include providing relief on mortgage payments and also reducing stamp duty on registering agreements, which would have a direct consequent reduction in the overall property prices¹⁹⁵.

Sixthly and lastly, the rental scenario in Asia-Pacific countries may be overhauled. It is often noted that rental housing that are affordable are generally rented out to those who

¹⁹¹ J.K. Gupta, *Decoding Affordable Housing... The Way Forward* (Indian Institute of Architects 2020) available at <<https://indianinstituteofarchitects.com/pdf/Affordable-Housing-Protected.pdf>> (accessed on 3 August 2022).

¹⁹² Ballaney et al, *Land Pooling in South Asia* (2022 ADB South Asia Working Paper No. 88).

¹⁹³ UN Habitat, *Improving Rural Shelter in Developing Countries* (1995 Nairobi).

¹⁹⁴ Cruz, *Transaction Costs and Housing Affordability in Asia* 2008 11(1) *International Real Estate Review* 128.

¹⁹⁵ Nenova, *Expanding Housing Finance to the Undeserved in South Asia* (2010 IBRD/World Bank).

can afford even more luxurious accommodation or can even afford home ownership. The law may impose a regulation mandating that the concerned authorities or even private landowners elaborately screen prospective applicants for rent and ensure that the affordable tenancy is being leased to someone in dire need¹⁹⁶. Further, instead of trying to limit prices in the rental market using price control, Governments may employ subsidies in the form of vouchers or tax-breaks instead. Price controls generally discourage landowners from leasing a house on rent, while subsidies may in fact incentivize them¹⁹⁷.

4 Conclusion

The Asia-Pacific is a land of paradox – it comprises nations with the strongest economies, largest workforces, maximum production capacities of goods and the most progress but is yet crippled with complex issues of slums, unaffordability, evictions and lack of sanitation. As demonstrated above, numerous countries have time and again enacted various legislations and adopted different approaches to combat this crisis with varying degrees of success. However, it must be recognized that most countries in Asia-Pacific are relatively nascent nations with economies in their infancy. These countries are coupled with problems of overpopulation and high population densities that inevitably lead to widespread poverty. However, with more governmental intervention, less corruption and a firmer stance against private exploitation, the Asia-Pacific nations can certainly slowly inch forward in its mission to provide housing for all. While this does seem over-ambitious and utopic, it is only with a positive outlook and a governmental determination to attain results can such a pipe dream be slowly converted into a reality.

¹⁹⁶ World Bank and Australia Aid, Access to Affordable and Low-Income Housing in East Asia and the Pacific (2014 IBRD/World Bank).

¹⁹⁷ id.