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Evictions and Housing Laws in India

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Issue Brief

TABLE OF CONTENTS

1. Introduction	03
2. International Policy Response to Adequate Housing	05
3. Housing Laws and Policy in India	06
4. Way Forward	07
5. Bibliography	09

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INTRODUCTION

In June 2021, twelve hundred houses in Khori Gaon, Faridabad were demolished and over 5,000 people were forcefully evicted in two days (Housing and Land Rights Network [HLRN] 2021). Seven months before that, in November 2020, 672 families were forcefully evicted from Haldibari Village at the Kaziranga National Park in Assam (HLRN 2021). In January 2020, 284 chawls in the Thane region of Mumbai were demolished and around 73,720 people were evicted (HLRN 2021). The chawls housed 15,360 families. These numbers are only a fraction of the total evictions that occur in the country every year. As per the Forced Evictions in India Report, nearly 2,57,700 people were evicted from their homes between March 2020 and July 2021 (ibid.).

The UN Habitat (2015) defines informal settlements as residential areas where “inhabitants have no security of tenure vis-à-vis the land or dwellings they inhabit, where modalities range from squatting to informal rental housing”. Here, the neighbourhoods “usually lack, or are cut off from, basic services and city infrastructure” (ibid.). Additionally, the housing “may not comply with current planning and building regulations, and is often situated in geographically and environmentally hazardous areas” (ibid.). Based on this definition, Khori Gaon, Haldibari, and the chawls of Thane can be identified as informal settlements.

Housing in informal settlements is further characterised by three elements. These are material inadequacies such as scanty structures, subpar quality of material, and unsafe construction poor infrastructure, second is unusable roads, poor or no drainage and sanitation systems, and finally insecure tenure, that is a lack of protection from forced evictions (Bhan et al., 2020). The existence and prevalence of informal settlements are often attributed to rapid urbanisation without commensurate growth in jobs and incomes (Davis 2006). As people migrate from rural to urban areas in search of work, rising prices and stagnant incomes force them to live in congested and informal settlements close to their place of work (Ray 1998). Such settlements can be found in almost every city across the world, whether they are the favelas of Brazil, bastis of Delhi, musseques of Luanda, or chawls of Mumbai. Life in settlements is evidently difficult, not just because of the inadequate physical environment, but also because of the uncertainty around eviction associated with it.

The United Nations, in its 73rd General Assembly, recognised inadequate housing as a gross human rights violation. The UNGA urged member countries to take steps to upgrade these settlements and provide the residents with basic dignity. Many countries across the world have adopted different strategies, mentioned hereafter, to regularise and upgrade informal establishments. The strategies do not aim to eliminate the settlements, but rather, work with the residents to provide them with legitimacy, protection, and support for carrying out housing upgradation (Bhan et al., 2020).

The prevalence of informal settlements is not unique to countries in the global south. However, these countries share similarities in development timelines and urbanisation trajectories, making the response to the question of providing adequate housing comparable. The next section briefly looks at laws and policies adopted by some countries in the global south to address the question of informal settlements.

International Policy Response to Adequate Housing

Countries in the Global South, such as South Africa, Brazil, Ethiopia, Philippines, and India, have the largest number of informal settlements in the world. The housing policies of these countries differ based on their geographical, cultural, and historical differences. For instance, Brazil guarantees every citizen a right to housing through the City Statute, the Estatuto da Cidade (2001). It is a federal law that assists in regularising the tenure of informal properties. It also encourages the community to participate in plans and budgets. This approach gives people more control over the land that they inhabit, while ensuring that they are provided with adequate housing. It has played a key role in reducing the prevalence of informal settlements in Brazil (Cities Alliance 2010).

Similarly, the Baan Mankong Collective Housing Programme in Thailand has involved the community in its decision-making process (Bhan et al., 2020). Baan Mankong literally means ‘secure housing’

in Thai. The initiative supports networks of poor communities to survey informal settlements across the city, and develop plans to upgrade them (Norford and Virsilas 2016). This was initially a community endeavour that was later institutionalised, reflecting the state support extended to the community in taking decisions pertaining to the housing question, in a local context. Among other provisions, the programme provided secure tenure for extended periods without necessarily giving a land title to the people. This project worked well and reduced the prevalence of informal settlements in the country (ibid.).

South Africa, on the other hand, made the right to adequate housing a constitutional necessity through Section 7(2) of its Constitution in 1996. The law prohibits evictions and demolitions unless ordered by a court of law. It also makes it impossible for any legislation that permits arbitrary evictions to exist (South African Human Rights Commission [SAHRC] 2018). According to the general household survey by the SAHRC (2014), the number of households that received government housing subsidies increased from 5.5% in 2002 to 15.3% in 2014. Moreover, 43 lakh houses and housing opportunities have been delivered from 1994 to 2016. A common feature in these three strategies is the active role of the community in making housing-related decisions. However, the response chosen by India has differed slightly from what is observed globally. The next section takes a look at Indian housing laws and policies.

Housing Laws and Policy in India

The role of the state in deciding what is formal and what is informal is critical in addressing the question of adequate housing. The UN Habitat (2009) primer document on adequate housing considers a housing unit adequate when it is embedded in a good infrastructural position and the inhabitants have reasonable security in tenure. This essentially means that the roads leading to the house or the sanitation system must be in a working condition. A reasonable security in tenure refers to a reasonable expectation by inhabitants from forced evictions. With the power to define informality, the state apparatus also decides what informalities may exist and ones that are expendable. For instance, the Delhi government has allowed informal housing structures at Sainik Farms to exist for decades. This is despite the government recognising the acquisition of land and the construction on it as illegal (Minister of Home Affairs 2018). However, no decisive action has been taken, possibly because the resident population is wealthy and affluent. On the other hand, the government and the judiciary carry out forced evictions on poorer groups, a majority of which are severe human rights violations (HLRN 2019).

The role of the state, however, does not end at differentiating between the formal and informal. The Indian Constitution does not explicitly recognise the right to adequate housing. However, the Supreme Court has interpreted this right via Article 21, emphasising on the 'right to shelter' (Olga Tellis & Ors v. Bombay Municipal Corporation 1985). It also implies the same through Article 19 (1) of the Indian Constitution which guarantees the "right of every citizen to move freely throughout the territory of India" and the "right of every citizen to reside and settle in any part of the territory of India" respectively. One of the earliest legislations, which worked to build a housing stock, was the National Housing Policy (1994). It recognised the importance of both rural and urban housing in the overall development process and sought to increase the supply of land serviced by basic minimum services (Ministry of Finance 1998). This was followed by the National Urban Housing & Habitat Policy of 1998 and 2007. The latter was an updated version of the former. These policies laid emphasis

on creating adequate and cost-effective housing stock for the vulnerable population on a rental and an ownership basis. It reiterated the role of the government in social housing and aimed to provide affordable houses to people from the Economically Weaker Section [EWS] and Low-Income Groups [LIG] (Ministry of Finance 2000).

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation Act (2013) is a central law that currently governs issues of housing and evictions. It approaches the problem of housing not by constructing more houses, but by protecting the land rights of those who own it. It protects the poor and vulnerable population from arbitrary evictions by delineating a process through which the government and private parties can acquire land (ibid.). The overall aim of the law is to bring transparency in the process of land acquisition and minimise the loss of land and livelihood. Within this, the government makes it compulsory for developers to resettle and rehabilitate those who have been evicted or have lost their livelihoods. It mandates a Social Impact Assessment¹ whenever the government acquires land for a public purpose. The conditions and consent of all stakeholders are taken into account within this law. For instance, for any acquisition project, private companies or public-private partnerships have to get the consent of at least 80% of the people that will be displaced. However, the law does not apply to acquisitions under 16 existing legislations, such as the Special Economic Zones Act, 2005, the Atomic Energy Act, 1961, and the Railways Act, 1989. These exceptions significantly curtail the ambit of the law.

Despite the legal provisions, homelessness and evictions continue to be prevalent in India. According to HLRN (2020), over 40 lakh people in India are homeless and at least 7.5 crore people live in informal settlements.

Table 1: Evictions through the years

Year	Total Evictions	Environment Conservation	Beautification Projects	Infrastructure Projects	Disaster Management	Other/Unknown Reasons
2017	2,58,196	38270	122314	77635	13464	6513
2018	2,02,233	40608	94130	52226	15269	-
2019	1,07,625	17539	46162	25795	9859	8270
2020	1,73,333	85033	33358	42320	3437	9185

Source: HLRN reports, compiled by the author

Table 1 indicates a decreasing trend in total evictions, except for a jump in 2020. This increase is peculiar, since it was during the national lockdown when people were required to remain inside their homes. However, between 2017 and 2019, evictions had fallen by 58.31%, before increasing again in 2020. The Land Acquisition Act was implemented for two purposes. It attempts to avoid evictions wherever possible, and, in the event that they cannot be avoided, it makes rehabilitation and/or compensation mandatory. But, only 13 out of the 148 cases of evictions in 2020 were followed up with compensation or rehabilitation (HLRN 2020). This indicates that appropriate safeguards which ensure proper implementation of the law are not in place. In this context, the role of the judiciary in catalysing evictions is also noteworthy.

¹ Social impact assessment (SIA) is the process of identifying and managing the social impacts of industrial projects.

The number of evictions that are mandated by the judiciary is on the rise (Bhan 2009). The three instances of evictions discussed in the beginning share the common feature of being mandated by the courts. In none of these cases, were the people provided with compensation or rehabilitation (HLRN 2020). In fact, in the case of Haldibari before the Gauhati High Court, the court only made passing remarks with respect to compensation. It did not make it mandatory for the Kaziranga Park authorities to provide compensation, which made it almost impossible for the people to demand reparations. The provision of rehabilitation, even if it does translate into reality, is riddled with problems.

In the case of Khori Gaon, when the affected residents appealed to the Supreme Court for rehabilitation, they were given the option to relocate to a locality called Dabua, which is 15km away from Khori Gaon (Rathore, Reddy, and Nene 2021). To claim a flat in this locality, the residents had to pay an amount of Rs. 3,77,000 over a period of 20 years (The Bastion 2021). It is highly unusual to ask residents to pay for their own rehabilitation provision, especially when their houses were demolished following a Supreme Court order.

The government has tried to address the housing question through the Pradhan Mantri Awas Yojana [PMAY]. The PMAY allows real estate developers to develop public land where informal settlements exist. A part of the land has to be used for constructing low-cost housing for the poor, while the other part must be used for city development. In this way, it aims to build 2 crore affordable and pukka houses for the urban poor by 2022 (Ministry of Housing and Urban Affairs 2015). This policy is often understood as a win-win situation because it provides the poor with housing at next-to-no cost and also allows real estate developers to realise the value of the land.

However, the way that this policy provides housing poses a few challenges. The scheme places complete focus on the number of houses that are constructed, without paying attention to the adequacy of these houses (Chaudhry 2019). Since the same number of people have to be housed in a fraction of the total land, they are shifted to high-rise buildings. While this ensures a bare minimum shelter, the housing that they receive, is not in consonance with their needs (Patel 2016). For instance, agricultural workers and traditional fishermen in Uran have been relocated from sprawling settlements to high rise buildings. This relocation has been particularly hard on them because they own cattle, which cannot be accommodated in an apartment building (Tukaram Koli, personal communication, 5 June 2021). Moreover, residents of informal settlements previously used to enjoy quick and easy access to social, familial, and economic networks in open spaces in their settlements. Shifting to high rise buildings cuts them out from these networks, and deprives them of activities carried out in public spaces (Sheth 2013; Bharucha 2013). Additionally, the requirement of paying maintenance charges in these buildings is proving to be an unsustainable added expense (Sheth 2013). So while the people are provided with affordable built houses, they fall short on adequacy.

Way Forward

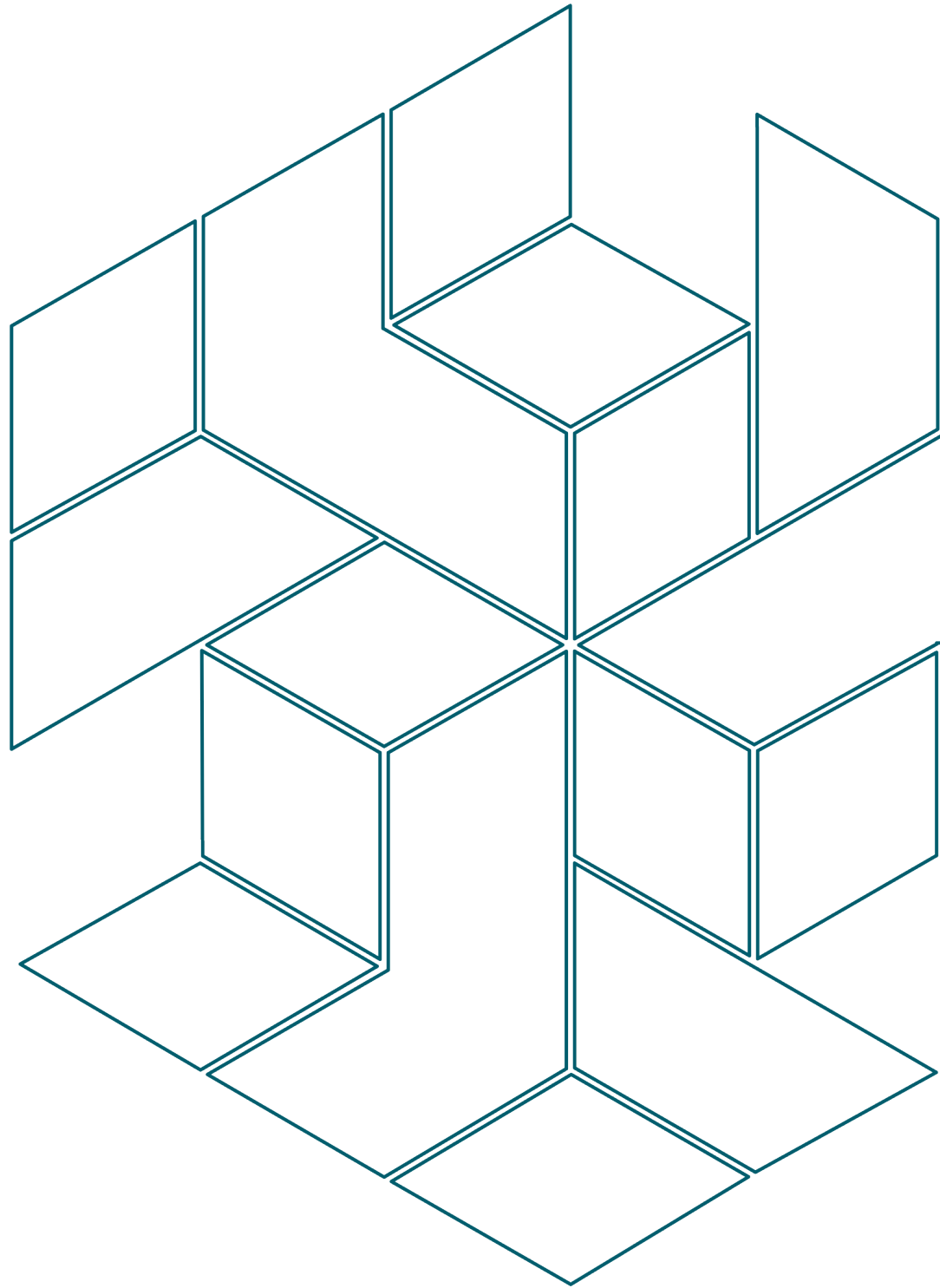
Informal settlements in India are built incrementally over many decades by the people (Bhan et al., 2020). Therefore, housing policy should consider providing housing, not necessarily in a physical form, but through more control and security over the land that people inhabit. The Punjab Slum Dwellers (Proprietary Rights) Act (2020) and the Odisha Land Rights to Slum Dwellers Act (2019) serve as good examples of dealing with the question of housing and evictions. Both of these laws enable household title for communities that have built housing incrementally on government or pri-

vate land. It protects them from evictions, allows them access to formal housing finance, provides the right to buy and sell the land after a period of restriction, and qualifies the people for subsidies under national housing programmes. Such tenure options would help address India's housing shortage by placing solutions in people's hands, preventing arbitrary evictions, and shifting away from the market-driven model of homeownership, which has failed to meet the housing needs of the most marginalised (Chaudhry 2019). People should be given technical assistance to build their homes and access to housing finance. This approach would reduce arbitrary evictions as it legitimises the housing of the poor, and ensures that they build adequate and affordable housing.

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