



RESEARCH PAPER

An Analytical Study of the Laws Relating to Housing Industry in Pakistan

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ABSTRACT

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The current article is an attempt to explore whether the present legal framework of Pakistan is capable enough to achieve the goal of housing for all or it needs to be strengthened and if needs to be strengthened how it should be amended. A large number of citizens in Pakistan are deprived from this basic necessity of life i.e. housing. To suggest suitable amendments in the legal framework by making critical analysis by which the weaker segment of the society can be provided the basic necessity of housing and how the goal of housing for all can be achieved in Pakistan. The current study adopts qualitative research technique with special reference to critical analysis of the regulatory regime of housing industry in Pakistan. Different Acts, Treaties, International Conventions, Governing rules and regulations, case laws, legal authorities have been explored as primary sources. Furthermore, a comparison is made between Pakistan domestic laws and the laws of international jurisdictions to suggest the improvements in the domestic legal framework while following the international best practices.

Introduction

Housing is regarded as one of the basic necessities of life along with food and water. Once a person is able to get a proper shelter to cover his head, and then acquiring food and water is not a problem for him with little effort he can get these (Conway, 1999). The triangle of necessities for spending a life includes food, clothing and shelter (Bratt, 2006).

It is very important to have proper dwelling because housing is associated with other fields of a man's life. If a person has got a home, he can have a family, enjoy security and privacy within his house, and can undertake further endeavors

for better employment. Housing in the shape of private dwellings tends to increase a person's socialization. Due to housing a man comes into contact with his neighbors and also avails the amenities provided by the Government in that locality for the household (McLennan, 1995).

Housing is essential as the acceptance of a proper living place as a right is the foundation stone for a number of other social activities enjoyed by a man and housing brings with itself sound health for men. As a result of good housing and being healthy individuals, persons are enabled to acquire education, better employment opportunities and make new relationships, it also increases their productivity and it in turn leads to a better and manageable society. Shelter is one of the important things for the social development of human beings and it has a close correlation in achieving other necessities of life which are pivotal for the social development of human beings (Dickens, 1985).

If any citizen owns a house in Singapore the Government of Singapore considers it as a step towards political stability as owning a house gives the citizen a stake in Singapore (Ching, 1991). The importance of proper housing can be assessed from the fact that nations have been egged on by the United Nations Organization to provide proper housing facilities to their citizens. Right to housing has been included in the UDHR which emphasizes the states members of the UNO to work for the provision of adequate housing facilities to their citizens (Universal Declaration of Human Rights, Article 25).

The Goal of Housing for All as Envisaged by UN HABITAT Agenda

Pakistan is associated with UN Habitat agenda. Pakistan is also striving hard to take steps to achieve the goal of housing for all. Under the legal framework of Pakistan the Government of Pakistan shall take steps to supply the essentials of life which includes housing, food and clothing irrespective of caste, creed and sex or any other discrimination to all the citizens of Pakistan (The Constitution of Islamic Republic of Pakistan 1973, Article 38).

Another piece of enactment which recognizes the right of housing to the low income groups of Pakistan. Twenty percent plots of the housing scheme shall be reserved in each housing society for low income group the size of the plots shall be up to 5 Marla's (Punjab Private Housing Societies and Land Sub Division Rules 2010).

The procedure for the allotment of plots reserved for the low-income group will be on the basis of first come first serve basis. The payment of plots shall be made in twelve equal installments in a time span of one year. A person who has got a plot from the category of plots reserved for low income class cannot sell the plot before the expiry of five years.

The status of Current Legal Framework of Pakistan to Achieve the Goal of Housing for All

The current legal framework of Pakistan includes article 38 and that is part of the principles of policy under the Constitution of Pakistan 1973; according to this provision the Governments shall take maximum efforts to provide housing facilities to the citizens of Pakistan. Principle of policy are not binding on the Government and nobody can file a writ petition in the Constitutional Courts for the enforcement of these principles as in the case of Fundamental Rights where a writ petition can be filed under Article 199 in the High Courts and a representation under Article 184(3) of the Constitutional of Pakistan 1973. Furthermore, discussion of housing under the heading of principles of policy is merely an acknowledgement of this interest (housing), but the Governments are not bound to provide. As per Article 23 of the fundamental law of Pakistan every citizen of Pakistan can purchase property and can sale out the property in any part of Pakistan as a fundamental right.

A liberty has been provided under this provision of the supreme law of the land that every person can acquire a piece of land after following the lawful process as prescribed by the law of the land. As per Article 24 of the fundamental law of Pakistan state can only get property after making compensation to the citizen whose property is being acquired by the state.

The above-mentioned provisions of the Constitution of Pakistan 1973 provide property rights in the nature of negative rights. Negative rights mean as a general rule if somebody is having a property or house, he cannot be deprived of it. The right holder has a negative right that he should not be disturbed in the enjoyment of his rights and there is a negative duty on the part of others that they should not disturb him to enjoy that property or right in a lawful manner.

Another piece of enactment which recognizes the right of housing to the low-income groups of Pakistan is Punjab Private Housing Societies and Land Sub Division Rules 2010 which prescribes to reserve twenty percent plots of the housing scheme shall be reserved in each housing society for low income group and the size of the plots shall be of to 5 Marla's (Punjab Private Housing Societies and Land Sub Division Rules 2010, Section 10).

This provision of Punjab Private Housing Societies and Land Sub Division Rules 2010 is a first practical step towards the goal of housing for all as envisaged by the UN Habitat agenda that twenty percent plots of the housing societies should be reserved for the low income group. The procedure for the allotment of plots reserved for the low-income group will be on the basis of first come first serve basis. The payment of plots shall be made in twelve equal installments in a time span of one year. A person who has got a plot from the category of plots reserved for low income class cannot sale the plot before the expiry of five years. This provision is a practical step towards provision of housing units to the citizens of Pakistan. Government of Pakistan has shifted its burden to the private housing developers to provide housing units to all the citizens of Pakistan (to elite class, middle class and low-income class).

Here a question arises whether this mechanism and provision is sufficient to achieve the goal of housing for all? and another relevant question arises how and why the private developers of the housing industry would provide housing units to poor and low income class people when they are purchasing the land for the housing scheme from their own resources without any incentive from the Government of Pakistan?

The Responsibility of the State to Provide the Right of Housing for All

While examining the practices of various states in providing housing units to its citizens, the United States would be at the low end of the continuum, Singapore at the top of the list in providing housing facility, Britain at the low end and Israel at the high end in providing housing units (Dimensions of Social Housing Policy). Under the Constitution of Pakistan 1973, right to have a property or a house is a fundamental right of every citizen of Pakistan, every citizen of Pakistan can acquire a property or house in any part of Pakistan. Constitution of Pakistan is a social contract between state and people of the state. One opinion is that the present form of Constitution the situation of provision of rights is in accordance with the demands of the modern age so there is no need for amendment in it.

Another opinion and criticism over the current position of rights provided under the fundamental law of Pakistan is that it is not in accordance with the needs of the current age and it needs to be revised and there is a need to have a new social contract between state and people of the state.

If in the modern age an analysis of the rights provided under the Constitution of Islamic Republic of Pakistan 1973 is made, the current social contract needs to be changed because a state which is unable to provide food, shelter and clothing in the present age does not deserve to be called a state. In the current age if a state enters into a social contract with the people of the state that it shall protect the life, property and other proprietary rights only but is unable to provide food, clothing and housing to its citizens who cannot afford to have these basic facilities, such kind of social contract is outdated and it does not meets the requirements of the current age.

Food is right of all human beings, right of those who can afford to have food and right of those as well who cannot afford to have food. Should the state let them die those citizens who cannot afford? Of course, the answer would be in no. Similarly, those who cannot afford to have their own house, is there any duty or responsibility on the part of the state to provide housing units to such people, whether those citizens who are born without house should die without house?

What is the responsibility of the state? And whether such a state can claim to be a welfare state? The answer to this question cannot be found unless it is diagnosed where the problem lies, whether there is a problem in the distributive justice or in the corrective justice? Distributive justice relates to the distribution of resources as a result of legislative action and corrective justice relates to corrective

action taken by the courts to rectify the distribution of resources done as a result of legislative action. Justice requires the distribution of resources as per needs.

Under the present scheme of Constitution of Pakistan 1973, housing and property rights have been protected to this an extent that those who are already in possession of housing units or property are protected under the Constitution of Pakistan that nobody including Government of Pakistan can deprive that person from the enjoyment of that property or housing unit except in one case when property or housing unit is required by the Government for some public purpose after payment of compensation.

As regards to those citizens of Pakistan who are not having housing units this right has been acknowledged under the principles of policy which are not binding on the Government. No citizen of Pakistan can claim a housing unit by filing a writ petition under Article 199 or Article 184(3) of the Constitution of Pakistan 1973.

By mentioning housing under the principles of policy it has been acknowledged as one of the areas of consideration to enable all the future Governments to formulate unidirectional policies for the provision of housing units. Government of Pakistan has declared in very clear meaning that it cannot providing housing units to all the homeless persons because it has no financial resources, if the whole budget of public sector development programme is spent to achieve the goal of housing of all by leaving no budget for any other sector even then the Government of Pakistan cannot achieve the goal of housing for all.

The role of the Government would be of a facilitator and massive investment would be invited from the private sector. The present practice of the housing developers is that they purchase all the land or major land (ninety percent) for the housing scheme from their own resources on very high prices and then get it approved it from the relevant authorities of the Government after payment of prescribe fees.

The Government of Pakistan has shifted its responsibility to private housing developers that they should earmark twenty per area of the housing scheme having a plot size of five Marla's for low income group. (Rawl, 2005) states that social and economic inequalities should be managed in such a way that the least advantaged class of people is the major beneficiaries of these economic and social rights (Political Liberalism, New York).

All the housing developers develop housing schemes for elite or rich class, as no person from the poor class can afford to purchase a plot for house in these housing schemes. Whether the provision of allocating twenty percent plots in the housing schemes by the developers of the housing schemes can enable the Government to achieve the goal of housing for all? The answer is no. The reason that that the elite class has no problem they can afford to have plot in all the housing schemes to build their houses, this provision of reserving twenty percent plots of the size of five Marla's cannot be helpful due to these reasons.

Firstly, the procedure of allotment of plots is vague and the authority to allocate the plots to the low income has been given to the housing societies which are a clear case of conflict of interest, this power should be exercised by the Government department. Secondly, it is a childlike thinking to imagine that the developers of the housing societies after purchasing land for the housing schemes would provide plots to the low-income groups when they are not getting any subsidy or relief from the Government side. Thirdly, even if the five Marla's plots are given to the low-income group people it cannot prove effective because the horizontal model of housing is not suitable for Pakistan the principle of optimum utilization of resources demands the vertical housing for the low-income group should be promoted. Fourthly, there arises a question whether Government can impose such kind of condition?

Whether such kind of restriction is against the proprietary rights of the property owners or not? This point was clarified by the apex court of Malaysia when it was prescribed for the developers of the housing industry in Malaysia to reserve 30 percent of the plots for the low-income groups. It was held by the apex court of Malaysia that Government could not impose such kind of restriction on developers of the housing industry.

So, the present formula of the Government of Pakistan to leave the housing industry at the mercy of the private sector developers is not a wise move. If the Government does not want to be developer of the housing industry it should place a sound system of check and balance and a strong legal framework. The best solution of the problem is to have such kind of legal framework which contains a convergence of interest of all stakeholders.

This method should not be considered in complete substitution of the present legal framework but in addition to it. The present legal framework may be continued after some suitable amendments and in addition to it a new model of housing may be followed. This model of housing is based on the Quranic concept of flow of resources as per need. Major portion of the capital of the developers of the housing industry is spent in purchasing land at very high prices. If the Government of Pakistan is able to provide free land to the private housing developers and as a consideration of providing free land it may take forty percent or thirty percent land of the housing scheme in the shape of ten to eight story housing flats for the poor and low income group, the problem of housing for all can be solved to a satisfactory extent in next few years.

This area of developed flats should not be given to the developers of the housing societies as is the case for distribution of five Marla's plots reserved for low income group people but it should be distributed by the Government itself on merit to poor class citizens.

If housing is made part of fundamental rights in the fundamental law of Pakistan then each and every citizen who is not having housing unit may file a writ petition against the Government under Articles 199 and 184(3) of the fundamental

law of the land. This is not a practicable situation due to two reasons, firstly, if each and every citizen who is not having a housing unit would file writ petition then it would not be practicable for the Government to run the affairs of the Government.

Secondly, no Government possess so much resources that it can provide housing unit to each and every citizen from its own resources. What Government can do is to formulate such policies that it can make it very easier for the poor class to have their own housing unit with the help of private sector.

Principles of policy have close nexus with fundamental rights as these two are complementary and supplementary to each other. Fundamental rights establish political democracy; the principles of policy establish economic and social democracy. These principles of policies cannot be neglected by any government formed in Pakistan while formulating plans and policies for the development of the country.

As every government formed in the country is ultimately answerable to the general public of Pakistan for its policies including housing policies, so, no government can neglect these principles. There is no legal sanction behind the principles of policy but the ultimate sanction lies with the people of Pakistan.

No government can acquire power again if it fails to adhere to these principles of policy which includes housing in it. Thus, the fundamental law of Pakistan, aims at bringing about a synthesis between principles of policy and fundamental rights. Above two together form the core of the fundamental law of Pakistan. The fundamental law does not preclude the enforcement of the socio economic and cultural rights which includes housing. Principles of policy given under the fundamental law of the country need not remain mere or pious declarations but it is duty of the Government to give expression to any of them. This should be done through appropriate legislation whenever the occasion arises and subject to availability of resources.

This wider concept of civil and political rights is the basis of *Shehla Zia vs. WAPDA*. In this case the apex court of Pakistan elaborated at great length the meaning of right to life which includes all essential of life including healthy environment which is necessary for good housing etc. 1995. It has been proved that there is a close link between adequate housing and healthy living. After this landmark judgment when we talk about the Constitutional guarantee of right to life, all other things including adequate housing, which will assure the realization of this right ought and should be protected and guaranteed. In this regard it is very relevant to give reference of Section 26 of the Constitution of South Africa. The right to housing has a liberal meaning, everyone has the right to have access to adequate housing and state must take all reasonable legislative and other measures for the provision of right to housing. State should take all measures within its financial resources for the provision of housing units to all homeless people in the state and those who are already enjoying this basic need of the life should not be deprived of it save in accordance with law. Housing as a right has been recognized since 1990. As

per French law responsibility to provide housing constitutes a duty of solidarity for the entire nation.

Struggle for the housing right started in India with a campaign the main aim of the struggle was to introduce a People's Bill of Housing Rights. There were two main purposes for the introduction of proposed Bill, firstly, to encourage and persuade the Government of India to recognize housing as a fundamental right in the Constitution of India. Very similar to Pakistan there is no explicit provision available in the Constitution of India which recognizes housing as a fundamental right. Another similarity between the legal framework of two countries is that right to housing has been recognized as a right in the judgments of higher courts of both countries. In the case of Pakistan, it has been recognized in the case of Shehla Zia case that life includes right to housing as well. In the case of India the case law of Bombay Pavement Case is relevant in this regard; it was held by the Supreme Court of India that right to life includes right to livelihood and housing. In another case it was held by the apex court of India that right to life includes adequate nutrition, clothing and housing. The second purpose of the struggle for housing was to introduce a bill of housing in the Parliament of India for rural as well as for urban population. An International Conference on legal aspects of the Urban Shelter problem was held at New Delhi in 1988, this conference concluded with these points the adequate housing includes, housing that is secure, accessible, affordable, nonprofit and no speculation and community controlled.

Conclusion

The present legal framework relating to housing industry in Pakistan needs to be strengthened keeping in view the above mentioned suggestions. In addition to efforts made for the provision of housing units to the homeless people there is a need to implement Article 24 of The Constitution of Islamic Republic of Pakistan 1973 which deals with the protection of property rights so that no person is evicted or displaced without an order of the court and after following the due process of law. The present legal framework relating to housing industry should be strengthened by incorporating the above mentioned suggestions in this way the goal of housing for all as envisaged by UN Habitat agenda can be achieved in Pakistan.

Housing has been acknowledged as a right in the principles of policy under Article 38 of the Constitution of Islamic Republic of Pakistan 1973. Government of Pakistan would try its level best to provide housing units to its citizens to the best of its available resources. Principles of policy under the Constitution of Islamic Republic of Pakistan 1973 are guiding poles for the future Governments and not binding on the Governments i.e. not enforceable by the courts of law. Housing as a right has not been acknowledged as a fundamental right but it has been acknowledged in the principles of policy and implicitly under these judgments of the higher courts. Government of Pakistan is appearing to be fully committed to give a boost to housing industry of Pakistan. The present regime in power in Pakistan is giving priority to housing industry to achieve the goal of housing for all by

mobilizing the investment in the housing industry. Hopefully soon the goal of housing for all can be achieved by eliminating all the malpractices and by effective application of the legal framework.

Recommendations and Suggestions

Following recommendations are suggested to be incorporated in the legal framework to strengthen the mechanism relating to housing industry in Pakistan.

Consolidated Legislation to Regulate the Housing Industry

Shifting of responsibility by the three layers of Governments i.e. Federal Government, Provincial Governments and Local Governments can be avoided when unidirectional legal framework in accordance with the fourth schedule (housing a pure provincial legislative subject) is done. Local and provincial Governments should play a vital role and Federal Government should facilitate these two Governments. Relevant portion of law on housing industry should be consolidation into a single/effective enactment. It is better to have a separate Legal Framework for each province to deal with the housing industry of each province.

Encouragement of Joint Venture and Private Sector

The Government is unable to provide housing necessity itself even if the whole budget of public sector development program (PSDP) is spent on housing by leaving no budget for any other field even than the Government alone cannot achieve the goal of housing for all without the help of private sector. Under this situation the importance of private sector has increased. The legal framework relating to housing should cater for joint venture of private to private, public to private or foreign investors to private developers. Also, the legal framework should facilitate mergers of the schemes by inserting a mandatory provision for the banks to use the land as equity against their finance/advances.

Encouragement of Foreign Direct Investment (FDI)

The legal framework should be changed and modified in such a manner that ease of doing business is possible. The barriers of doing housing activity should be removed by providing lands under Land Acquisition Act 1894 and sometimes free of cost land with a share of the Government in the housing schemes launched by the foreign companies. A friendly tax regime should be introduced which can encourage the private sector to do housing activity in Pakistan. The legal framework should explicitly encourage the foreign investors/companies to invest in private Housing Schemes in all the provinces as is the case of preamble of Land Acquisition Act 1894 which explicitly recognizes the land needed for public purposes and land needed for companies.

Acquisition of Land for Housing Societies on Market Value

The major obstacle in the housing activity is to purchase land for the housing society. Defence Housing Authority (DHA) has followed a unique process of land acquisition but the cooperative housing societies and private housing companies do not follow the process for the acquisition of land as per scheme of Land Acquisition Act 1894 to acquire land for the housing societies in which major chunk of land is purchased in advance and remaining small chunk of land (from 20% as per PSSR 2005 and to 10% PPHS and LSR 2010) after getting approval from the relevant authorities, the prices of this small chunk of land is dictated by the owners of the land in connivance of officials of the revenue department. Provincial Governments should have a close vigilance to monitor the process of land acquisition by the housing societies and transfers by the revenue department. Provincial Governments should initiate strict administrative and punitive measures against revenue officials involved in corrupt practices. Especially those who change the nature of the land from agriculture to commercial to charge high prices of the small chunk of land when the developers proceed to purchase this small portion of land.

Identification of Lands for the Establishment of Housing Societies

Provincial Governments should give a task to the District Governments to carryout detailed survey of the urban areas and identify potential areas for developing housing schemes. Assign experts to study the ecological, environmental and civic factors and develop master plans in a futuristic considering the population growth and urban migration. Master plans should lead to zoning of areas and establishing of associated trunk infrastructure for development of housing schemes in a planned manner. Green lands should not be used for housing societies but brown lands should be used for establishing housing societies. District and Tehsil level demonstrations to develop a database for information on the land falling within their jurisdiction by applying modern scientific concepts and technology. Demonstrate political will and leadership to protect investments and legitimate interests of the stakeholders involved in development of cooperative and private housing societies. Involve the district administration (Nazims/Chairmans & DCOs) in the monitoring and accountability.

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