

**RIGHT TO ADEQUATE HOUSING FOR LOW INCOME PAKISTANIS : A FOUR
STEP LEGAL ROAD MAP IN LIGHT OF INTERNATIONAL HUMAN RIGHTS
LAW**

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Abstract

Right to Adequate Housing is one of the most pressing problems for the low – income Pakistanis. As a result, a vast majority of Pakistanis live in housing conditions which result in disease, instability in their lives and inaccessibility to many other fundamental rights. For this purpose, a legal road map is required which addresses both short-term problems and long-term issues. Therefore, sufficient understanding of social and economic issues in terms of adequate housing is required in the process of law- making in Pakistan which make Pakistani Statutory Laws pro – poor in approach and thus Pakistani laws comply with legal obligations of International Human Rights Law.

Keywords: Fundamental Rights, Right to Adequate Housing, Constitution of Pakistan 1973, International Covenant of Economic, Social and Cultural Rights, Punjab Katchi Abadis Act 1992, National Housing Policy 2001, Central Government Lands and Buildings (Recovery of Possession) Ordinance 1965, Land Acquisition Act 1894, Naya Pakistan Housing Development Authority Act 2020

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Introduction:

The right to adequate housing is a core right actualizing other rights like right to life, right to privacy, right to health, and right to education.¹ Unfortunately, the housing shortage in Pakistan has resulted in the emergence of various irregular human dwellings. These are manifested in the form of illegal subdivisions; illegal *Katchi Abadis* built on government land; slums in the form of regularized *Katchi Abadis*, and villages present in the middle of urban stretch.² These localities lack access to proper facilities necessary to sustain lives with dignity. The presence of these areas gives a clear message that the Government of Pakistan has not performed to the best of its abilities in its responsibility to adhere to the International Human Rights Law and the Pakistani Constitution in regard to providing adequate right to housing to the low – income Pakistanis.

Situational Assessment of International Human Rights Law:

The right to adequate housing is widely recognized in the International Human Rights Law. Pakistan is signatory to various legal instruments which endows the right to adequate housing. These instruments include the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and Universal Declaration of Human Rights (“UDHR”). Article 25(1) of the UDHR considers the right to housing as a human right which is equal to other human rights like food, clothing, and medical care.³ ICESCR which Pakistan has ratified further imposes a duty upon the signatories to recognize right to adequate housing and act accordingly to further their commitment.⁴ Article 11 of the ICESCR includes housing as essential to an adequate standard of living and obliges party states to take appropriate steps to ensure realization of this right.⁵ The ‘adequacy’ standard in right to housing includes the presence of suitable location, habitability, affordability, accessibility, availability of materials, services, infrastructure and facilities, cultural adequacy and legal security.⁶ The General Comment No. 4 of UN Committee on Economic, Social and Cultural Rights elucidated that right to housing does not only include a roof over head but a place to live with dignity, privacy, basic infrastructure, and a location providing access to all essential facilities.⁷ It also requires the state to subsidize housing for low-income groups to ensure its accessibility with all amenities to all types of communities.⁸

¹ Atia Naznin, 'Researching the right to housing' (NYU Law Global, November/December 2018)

² Arif Hassan and Mohib Hassan, 'Urban Slum Reports: The case of Karachi, Pakistan (Case Study)

³ Universal Declaration of Human Rights 1948, Article 25(1)

⁴ Staff, 'UN rights treaty: Pakistan's forgotten promise' *The Express Tribune* (Lahore, 31st October 2015)

⁵ International Covenant on Economic, Social and Cultural Rights, 1966, Article 11

⁶ Ibid (n.1)

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23

⁸ Ibid.

It is important to note that states have a specific as well as a general obligation in relation to the right to adequate housing. This is reflected in Article 2 of ICESCR which stipulates that states must ‘undertake steps, by all appropriate means’ to ensure adequate right to housing.⁹

Thus, states have to fulfill a ‘tripartite’ obligation to respect, protect, and fulfill this right.¹⁰ It is a state’s duty to avoid depriving; to protect from depriving, and to assist the deprived for the effective realization of the right to housing.¹¹ In this endeavor, states must take judicial, administrative, and educational steps. The second component of Article 2 of ICESCR is ‘to use the maximum of its available resources’. In many instances, states use their deteriorating economic conditions as a shield to not fulfill these rights, but the states must not shy away from fulfilling these rights solely on the pretext of poor economy. The third component of Article 2 of ICESCR is ‘to achieve progressively’. It means that the states cannot delay the realization of this right indefinitely.

ICESCR forbids forced eviction of any form without reasonable legal alternatives provided to ‘occupants’ to ensure that states respect human dwellings in accordance with the general economic rights enunciated in the Covenant.¹² In synchronization with this international legal milieu, many regional instruments guarantee the respect of home of each individual and strive to ensure that homelessness of disadvantaged people should be avoided.¹³ Human Rights instruments in America and Africa also directly or indirectly recognize the right to adequate housing with particular emphasis on vulnerable classes of people like women, children, and parents.¹⁴ The ‘justiciability’ of these instruments was observed in various regional Human Rights Courts including the Inter-American Human Rights Court which declared the forcible removal of a group of people from their homes without any measure of rehabilitation as unlawful.¹⁵ European Court of Human Rights also did not allow forcible removal of people from houses without alternative even in pressing social needs.¹⁶ In *Ogoni* case, the African Human Rights Court declared eviction and demolition of the households of *Ogoni* community as gross violation of the right to adequate housing.¹⁷ The recognition of the right to adequate housing in three continents of the world sufficiently point that there is an emerging consensus in the world that state should arrange adequate housing particularly to the dwellers of *Katchi Abadis* and they should not be evicted whatsoever unless there is suitable rehabilitation.

⁹ International Covenant on Economic, Social and Cultural Rights 1966, Article 2.

¹⁰ Ibid (n.1)

¹¹ Henry Shue, *Basic Rights: Subsistence, Assistance and U.S. Foreign Policy* (Princeton University Press, 1980) 58.

¹² UN Committee on Economic, Social and Cultural Rights (CESCR), ‘*General Comment No. 7: The right to adequate housing (Art.11.1): forced eviction*’, (1997) E/1998/22, Paragraph 5 and 13.

¹³ European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Article 8; European Social Charter, Article 31

¹⁴ The Protocol of the African Charter of the Human and Peoples’ Rights on the Rights of Women in Africa 2003, Article 16; African Charter on Human and Peoples’ Rights, 1990, Article 14, 16 and 18 (1); African Charter of the Rights and Well Being of the Child 1990, Article 20; American Convention on Human Rights, 1969, Article 11; Charter of the Organization of American States (OAS Charter) 1948, Article 34(k)

¹⁵ Ludovic Langlois-Thérien, ‘The Justiciability of Housing Rights: From Argument to Practice’ (2012) 4(2) *Journal of Human Rights Practice* 213, 215; *Maria Mejia v Guatemala* Report N. 32/96 (IACHR, 16th October 1996)

¹⁶ *Connors v The United Kingdom* [2004] ECHR 223

¹⁷ *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* Communication No. 155/96 (ACHPR, May 27, 2002)

Situational Assessment of Pakistani Laws:

Pakistan has not complied with these international legal obligations as evident through many statutory laws which directly or incidentally coincide with these international legal obligations. Pakistan's treatment of the dwellers of the *Katchi Abadis*, slums, and shelter-less citizens is not reflective of any the aforementioned international legal corpus. In many cases, the residents of the illegal localities are evicted without any notice and the government is mostly unsympathetic to their experiences. For instance, the Capital Development Authority destroyed an informal settlement which displaced 15,000 people in 2015.¹⁸ The lack of access of any suitable amenities in these localities demonstrates that requirements of adequate housing as envisioned in ICESCR are not fulfilled. The Pakistani government has not unveiled any effective legal mechanism which could synchronize with the ground realities in Pakistan. Therefore, it is necessary to peruse through the Pakistani legal regime to uncover areas where innovative solutions should be incorporated into the law and gaps in existing laws can be clotted.

Pakistani Constitution envisions that government must take steps towards ensuring that social justice is provided to the poorest people.¹⁹ Article 9 guarantees right of life which includes the right to enjoy and sustain clean life including the right to shelter.²⁰ It is observed that Pakistani government is not particularly vigilant on this constitutional intention as various domestic statutes have pores within the legal texts. One of these spaces is present within the Punjab Katchi Abadis Act 1992 ("Abadis Act") which aimed to regularize the *Katchi Abadis* throughout the province of Punjab. Similar Acts are also enacted in other provinces. A recognizable deficiency in the Abadis Acts is that there is no deadline which can compel the authorities to regularize *Katchi Abadis*. The Abadis Act also requires a dwelling to be notified as *Katchi Abadi* and for that a minimum number of 40 units are required. The Act further restricts from notifying a dwelling as *Katchi Abadis* if the land is reserved for any social benefit purpose.²¹ As a result, many *Katchi Abadis* cannot be regularized and the protection of law from no dislocation is not accorded to the people who do not fall within the purview of this criteria.²² The impediments present within the Abadis Act cause frictions which deter the true realization of the *ratio legis* of the Act.²³ The Pakistani Government's National Housing Policy 2001 reflected this spirit which aimed to regularize the *Katchi Abadis* and prevent any dislocation without a remedy.²⁴ However, in violation of this spirit, Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965 ("CGLB") allows unauthorized occupant on government lands to be evicted with no exception to illegal *Katchi Abadis*.²⁵

In 2020, the Federal Legislature passed Naya Pakistan Housing Development Authority Act 2020 ("**Naya Pakistan Act**") which provided an elaborate mechanism including granting of

¹⁸ Waqar Gillani, 'When the state turns tyrant' *The News* (Lahore, 20 December 2015)

¹⁹ *Benazir Bhutto v. Federation of Pakistan* [1988] PLD 416 (SC); Constitution of Pakistan, Article 3, 37, 38; *Nazir Ahmed v. Punjab* (2007) CLC 107 (LHC)

²⁰ *Shehla Zia v. WAPDA* [1994] PLD 693 (SC); Constitution of Pakistan 1973, Article 9

²¹ Punjab Katchi Abadis Act 1992 s. 6, 7

²² *Pakistan Railways v Kishwar Bibi* [2006] YLR 1566 (LHC)

²³ *Nasreen Riaz v LDA* [1998] CLC 1099 (LHC); Constitution of Pakistan 1973, Article 2A

²⁴ Government of Pakistan, *National Housing Policy 2001* (Islamabad 2001)

²⁵ Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965, s 5

land; acquiring of land; preparation of schemes, and financial backing for providing affordable housing to low- income groups.²⁶ However, the Naya Pakistan Act failed to specify any reasonable roadmap within the legal text to ensure the regularization of illegal subdivisions and prioritizing incremental housing schemes in line of housing policy as opposed to any other scheme.

The Land Acquisition Act 1894 allows the acquiring of land on market rate for public purposes.²⁷ The courts have haphazardly interpreted public purpose and in some instances allowed housing for a class of government professionals.²⁸ As a result, many housing schemes are actually made for the upper-middle class even if originally intended for vulnerable or retired government employees under the guise of these laws. This feeds into the extreme speculation observed in various housing schemes causing housing to be over-priced for the low-income group. It is also frequently observed that market rate is not provided while some private developers use pressurizing tactics with the help of government to force the villagers to sell land.²⁹ Consequently, the villagers are deprived not only from their houses but also from their livelihood forcing them to live in poor urban areas. Moreover, Malir Development Authority and other Development Authority Acts (“Authority Acts”) allow areas to be declared as ‘controlled areas’ to prevent haphazard growth. In these areas, they can prepare schemes for which they can acquire land, lease, or exchange land; and a private party can also be an applicant for the preparation of such schemes.³⁰ The land acquired can be deemed as the ‘public purpose’ for the development of schemes.³¹ The interesting gaps within these laws were revealed in *BTLK* case. In the *BTLK* case, the court noted that the preparation of scheme in the controlled area and the exchange of land within the controlled area to a private party can be easily used for malice intent as the government can excessively benefit a private party.³² Such actions are clear violation of law.³³ These actions to develop luxury colonies shift the poor to the urban fringes and turn villages into *Katchi Abadis* in middle of elite towns.

Legislative Policy Recommendations:

Solution which emanates from the examination of the loopholes within domestic laws encapsulates four steps:

1. The first step includes an immediate amendment in the Abadis Act in all provincial legislatures. This amendment shall provide a deadline to regularize all *Katchi Abadis* and illegal slums if no alternative is given to their dwellers. It shall also waive the requirements to be categorized as *Katchi Abadis* except presence of dwelling in ‘hazardous area’ as right to housing is not any less right than other rights. However, amendment must include that *Katchi Abadis* must be present for more than 1 year to deter government inaction. In this amendment, all illegal subdivisions must also be

²⁶ Naya Pakistan Housing Development Authority Act 2020 S 5(a-h), 16, 17, 19, 26, 47

²⁷ The Land Acquisition Act 1894, s 23(1)

²⁸ *Federation of Pakistan v. Province of Punjab* [1993] SCMR 1673 (SC)

²⁹ Fahim Zaman, Naziha Syed Ali, ‘DHA City Juggernaut rolls in the name of development’ *The Dawn* (Karachi, 8th April 2019)

³⁰ Malir Development Authority Act 1993 s14, 17, 25, 31; Lahore Development Authority Act 1975 s 18(3), 13(A), s13, s6(3)(iii)(iv)

³¹ Lahore Development Authority Act 1975 s 25; Defence Housing Authority Ordinance 1999 s 11

³² *Syed Mehmood Akhtar Naqvi v. Malik Israr* [2018] PLD 468 (SC)

³³ Sindh Disposal of Urban Land Ordinance, S. 6

regularized within the Abadis Act without any notice to protect the dwellers from blackmailing of developers of these areas.³⁴ The amendment shall ensure that there is no official misconduct which can snatch houses of the dwellers of illegal *Katchi Abadis* and subdivisions.

2. The second step requires the government to encourage ‘incremental housing’ as it is the cheapest solution for vulnerable people who are shelter-less or have become shelter-less due to demolition of illegal *Katchi Abadis*.³⁵ Therefore, the Provincial Legislature and Federal Legislature through a majority vote in respective legislatures should introduce amendments in the Authority Acts. This amendment shall require the development authorities to prefer incremental housing as opposed to other schemes in their ‘scheme clauses’ to adjust shelter-less. However, for effective implementation, it must be mentioned in the amendment that the applicant must not own any immovable property and must raise some impermanent structure within 3 months while some permanent structure should be built within 1 year of the allotment. Moreover, the applicant cannot sell the land or leave it vacant for more than 10 days save in emergency. The applicant must also reside at the quarters located at the entrance of the scheme built for this purpose for 1 month before being allotted the plot. In this way, only the most vulnerable will be allotted land; speculation will be controlled; government will be absolved of all the construction cost, and irregularities as observed in *BTLK* judgment shall be lessened.³⁶ The governments can use the vast vacant tracts of land of its departments as well as acquire land in sub-urban areas for this purpose.
3. The third step of this solution aims to provide ‘adequate’ housing ‘progressively’ to the dwellers of regularized *Katchi Abadis*; *Katchi Abadis* which could not be regularized; slums and illegal subdivisions. It shall require a new legislation which needs a majority vote in all Provincial Legislatures for promulgation. This statute shall provide affordable apartments or houses in sub-urban areas to compensate for the tentative acquisition of their houses. This is important to remove hazardous areas in cities to make them aesthetically pleasing and disease-free. The government in this new legislation should strive to develop apartments or housing schemes with all basic utilities.³⁷ The amendment must require that developer should be absolved from advertising costs, taxes, and must be provided with subsidized construction material. In return, the developer should charge zero profits on housing and take full profit on commercial properties within the new scheme.³⁸ In addition, a clause should be added in this amendment that government should facilitate the developer in all possible ways to devise a plausible financial model for these schemes. Moreover, these properties must not be alienated for 5-10 years. This provision shall deter speculation. In this way,

³⁴ Tasneem Siddiqui, ‘Affordable Housing : Is it Possible ?’ (2011) 1 *Pakistan Journal of Urban Affairs* 29; Illegal subdivisions are similar to the incremental housing as the developer through his links within government protects dwellers. However, unlike incremental housing schemes, illegal subdivisions are built on the government land without permission of government.

³⁵ In these incremental housing schemes, the government only provides land plot at extremely low installment prices while just developing the map for the whole scheme and providing water. The dweller progressively builds their houses and provided amenities with time collectively in streets on their own funds.

³⁶ Tasneem Siddiqui, ‘Affordable Housing: Is it Possible?’ (2011) 1 *Pakistan Journal of Urban Affairs* 29, 32-34

³⁷ Naomi Blumberg, ‘Alejandro Aravena’ Encyclopedia Britannica

³⁸ Murtaza Haider, ‘Here is how to house the poor in Pakistan’ *The Dawn* (Karachi 25 February 2015)

dwellers of *Katchi Abadis* and slums can enjoy housing with quality living in accordance with International Human Rights Laws. The slums are usually in the center of the city and reclamation of that land shall generate revenues which can partially compensate for the expenses in these schemes. The government can also fulfill the deficit through easy mortgage loans with the help of banks, shared equity, and second mortgages which increases with the price and are payable only on alienation.³⁹ This model should also be incorporated *mutatis mutandis* through an amendment in Naya Pakistan Act and Authority Acts which require the authorities therewith to prioritize these schemes under these provisions as opposed to other form of scheme so that corruption and speculation can be controlled and the most vulnerable are provided housing.⁴⁰ Effective implementation of this new legislation shall require that speculation generally in market to be controlled with redefining ‘public purpose’ in Land Acquisition Act 1894 and Authority Acts through a majority vote in all legislatures of Pakistan.⁴¹ The redefinition should clearly exclude any housing scheme which is not built for the main purpose of providing housing to deprived segment of society.⁴² These actions shall deter further increase of ‘empty’ housing societies and shall divert the developers to the above-mentioned ways of developing schemes.

4. The fourth step envisions that specialized courts with appointments of judges well versed in property law must be developed. This shall need a new statute at Provincial Legislatures. The purpose of this court should be to ensure that true market value of property is given to a tenant when acquired under public purpose or sold to a developer either by state or private party; that there is no coercion; that incidental impacts of acquiring land like loss of livelihood is compensated; that there is no tampering of prices and all the provisions of property laws dealing with acquisition, selling land for schemes and granting of land are implemented in ‘letter and spirit’. This court shall also hear and order investigation of complaints within three months and shall be under respective Superior Courts. The complaint procedure must be very dilute so that an illiterate person can approach it without heavy legal fees. This statute would neutralize the injustices observed in *BTLK* case. It shall help to control speculation which will lower the general price of property to help people escape *Katchi Abadis* and prevent urban stretches which can turn villages into *Katchi Abadis*.

³⁹ Staff, ‘2019 in Review; Option by the numbers’ (*Option for Homes*, 16th December 2019)

⁴⁰ Lahore Development Authority Act 1975, S 13A.

⁴¹ The Land Acquisition Act, s 3(f)

⁴² *Nazir Ahmed v. Punjab* (2007) CLC 107 (LHC)

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Conclusion:

In summation, the gruesome milieu of fragile property rights of dwellers of *Katchi Abadis*, slums, illegal subdivision, and shelter-less citizens in Pakistan requires that aforementioned steps be executed to remedy the dire situation of lack of housing for low – income Pakistanis. In line with international obligations, the first step shall ensure that state ‘respect’ adequate housing rights; the second and third step shall help the state to ‘provide’ the right to adequate housing while the fourth step shall ensure that government ‘protect’ adequate housing rights.