**India**

*The purpose of the Housing Rights and Human Rights Brief is to provide a succinct overview of housing rights and human settlements-related human rights within a specific country. It is designed for project designers to familiarize themselves with the human rights situation in the country that they are working in. The Housing Rights and Human Rights Brief is not intended to be a comprehensive analysis of all human rights, yet to provide an overview of housing rights and other human settlements-related human rights within the national and the UN Delivering as One contexts. Further, this Brief is not intended to cover the entire legislative and regulatory framework of the country concerned.*

*The Brief outlines specific articles of the Constitution, national and local legislation, and other human settlements-related policies and acts. It further explains specific international legal commitments, with particular emphasis on the key conventions that the country has signed and/or ratified. UN reviews and recommendations, particularly the Universal Periodic Review process, are also outlined. The final section provides information on previous UN-Habitat projects in the country and links for further information and elaboration.*

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**Revision History**

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| 1 | 21.04.2016 | TB |
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**Summary**

The Constitution of the Republic of India does not make provisions for the right to adequate housing. However, it does specify adherence to international laws the country has signed a commitment of protection against discrimination amongst its citizens.

The Ministry of Housing and Urban Poverty Alleviation is the apex authority of Government of India at the national level to formulate policies and monitor the programmes concerning all the issues of urban employment, poverty and housing in the country. The National Urban Housing & Habitat Policy (NUHHP) seeks to promote various types of public-private partnerships for realizing the goal of “Affordable Housing for All” with special emphasis on the urban poor.

The Ministry of Law And Justice comprises of the Legislative Department and the Department of Legal Affairs. The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 contains many provisions to protect the interests of not only the land owners but also landless project affected persons such as farm labour and slum dwellers.

India has ratified most of the major human rights conventions, including the International Covenant on Economic, Social and Cultural Rights, which includes the right to adequate housing as a component of the right to an adequate standard of living.

UN Review mechanisms have noted the complexity of housing and land rights in India, and expressed concern about the acute shortage of affordable housing. UN Review mechanisms have urged that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions. UN-Habitat has worked on a number of projects in India.

**National Legal Framework**

***Constitution[[1]](#footnote-1)***

The Republic of India is governed in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January 1950. The Constitution does not make provisions for the right to adequate housing. However it does specify adherence to international laws the country has signed and a commitment of protection against discrimination amongst its citizens.

‘Article 15

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.’

‘Article 21

No person shall be deprived of his life or personal liberty except according to procedure established by law.’

‘Article 51

The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.’

**Government**

***Political System***

India is a Union of States. According to its constitution, India is a "sovereign, socialist, secular, democratic republic." India has a federal form of government. However, the central government in India has greater power in relation to its states, and its central government is patterned after the British parliamentary system. India's central government is divided into three distinct but interrelated branches: executive, legislative, and judicial.[[2]](#footnote-2)

The government exercises its broad administrative powers in the name of the president, whose duties are largely ceremonial. The president and vice president are elected indirectly for 5-year terms by a special electoral college. Their terms are staggered, and the vice president does not automatically become president following the death or removal from office of the president. Real national executive power is centered in the Council of Ministers (cabinet), led by the prime minister. The president appoints the prime minister, who is designated by legislators of the political party or coalition commanding a parliamentary majority. The president then appoints subordinate ministers on the advice of the prime minister.

Parliament consists of a bicameral legislature, the Lok Sabha (House of the People-the lower house) and the Rajya Sabha (Council of States-the upper house). The legislatures of the states and union territories elect 233 members to the Rajya Sabha, and the president appoints another 12. The elected members of the Rajya Sabha serve 6-year terms, with one-third up for election every 2 years. The Lok Sabha consists of 545 members; 543 are directly elected to 5-year terms. The other two are appointed.[[3]](#footnote-3)

The Supreme Court is made up of one chief justice and 25 associate justices who are appointed by the president and remain in office until they reach the age of 65 or are removed for "proved misbehaviour".

***Ministry of Housing and Urban Poverty Alleviation[[4]](#footnote-4)***

The Ministry of Housing and Urban Poverty Alleviation is the apex authority of Government of India at the national level to formulate policies, sponsor and support programme, coordinate the activities of various Central Ministries, State Governments and other nodal authorities. It also monitors the programmes concerning all the issues of urban employment, poverty and housing in the country.

The Jawahar Lal Nehru National Urban Renewal Mission (JNNURM) 2005[[5]](#footnote-5)

This Mission provides focused attention to integrated development of urban infrastructure and services in select 65 cities with emphasis on urban poor, slum improvement, community toilets/ baths, etc. The mission has two sub-missions:

1. Basic Services to the Urban Poor (BSUP)[[6]](#footnote-6) was launched to assist cities and towns in taking up housing and infrastructure facilities for the urban poor in 63 selected cities in the country.
2. Integrated Housing & Slum Development Programme (IHSDP) was launched simultaneously with BSUP in December 2005, is taking up housing and slum upgradation programmes in non-BSUP cities.

National Urban Housing & Habitat Policy (NUHHP), 2007 [[7]](#footnote-7)

The Policy seeks to promote various types of public-private partnerships for realizing the goal of “Affordable Housing for All” with special emphasis on the urban poor. The policy does not speak of Housing Rights and evictions at all andmentions adequate housing only once, in section II. Aims:

1. The National Urban Housing and Habitat Policy aims at:

a. Creating adequate housing stock both on rental and ownership basis with special emphasis on improving the affordability of the vulnerable and economically weaker sections of society through appropriate capital or interest subsidies.

***Ministry of Law and Justice [[8]](#footnote-8)***

Ministry of Law And Justice comprises of the Legislative Department and the Department of Legal Affairs. The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [[9]](#footnote-9)

The 2013 Act marked a paradigm shift in the land acquisition process and contains many provisions to protect the interests of not only the land owners but also landless project affected persons such as farm labour and slum dwellers. The new law links land acquisition with the accompanying obligation for Resettlement and Rehabilitation (“R&R”) of all project affected persons, including the landless people. All affected families are entitled to a house, provided they have been residing in the area for five years or more and have been displaced. If they choose not to accept the house, they are offered a one-time financial grant in lieu of the same.[[10]](#footnote-10)

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (2nd Amendment) Bill, 2015 [[11]](#footnote-11)

The 2015 Law is currently moving through the Indian government. It has been passed in Lok Sabha, however, a decision has not been reached in the Rajya Sabha. The 2015 Law came into existence as a result of strong resistance from industry to the provisions specified in 2013 Act. It does away with the social impact assessment and consent requirements, in cases where the land is being acquired for the purpose of five specified sectors; 1. defence, 2. rural infrastructure, 3. industry corridors, 4. housing for the poor, and 5. social infrastructure projects. The Act deemed the head of a government department guilty for an offence by the department. The Bill removes this and adds the requirement of prior sanction to prosecute a government employee.

***Kerala State Legislature***

The Kerala Prevention of Eviction Act, 1966[[12]](#footnote-12)

The Act is intended to provide for the prevention of eviction of cultivating tenants in the State of Kerala.

***Goa Legislative Assembly***

The Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975[[13]](#footnote-13)

The Act is intended to provide for better protection to Mundkars against eviction from their dwelling houses and for granting them the right to purchase the same.

**Judiciary**

The Constitution (74th Amendment) Act has further delegated many of these functions to the urban local bodies. The constitutional and legal authority of the Govt. of India is limited only to Delhi and other Union Territories and to the subject which State Legislatures authorise the Union Parliament to legislate. As a result, decisions on housing and land are disseminated on from the state and municipal level. Case law related to housing and land has been retrieved from the judiciaries of state and municipality.

The human right to adequate housing has also been upheld by the Supreme Court, in various judgements, as an integral part of the right to life. Majority of the Indian population, in urban as well as rural areas, however, lives in extremely inadequate and insecure conditions.

In a ruling in January 2012, the Supreme Court directed compliance with Article 21 by providing night shelters for the homeless since people sleeping on pavements in the night was a breach of their right to live with dignity.[[14]](#footnote-14)

Olga Tellis v Bombay Municipal Corporation, (1985)[[15]](#footnote-15)

One of the first and most important housing rights cases to go up to the Supreme Court in India was Olga Tellis in 1985. This case, for the first time, held that the Right to livelihood and shelter as being an important component of the Right to Life. This public interest litigation was filed on behalf of the pavement dwellers of Bombay city in the Bombay High Court. The judgment given by the Supreme Court in this case, for the first time, expanded the Right to Life guaranteed under Article 21 of the Indian Constitution to be wide enough to include within its scope, the right to livelihood which was translated in this context to mean the right to be allowed to remain on the pavements. The Supreme Court order also laid down that the eviction of the slum and pavement dwellers could be done only after arranging alternative accommodation for them and not before that.

**International Conventions[[16]](#footnote-16)**

India has ratified most of the major human rights conventions, including the International Covenant on Economic, Social and Cultural Rights, which includes the right to adequate housing as a component of the right to an adequate standard of living.

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| --- | --- | --- | --- |
| [Treaty Description](javascript:__doPostBack('ctl00$PlaceHolderMain$dgReports$ctl00$ctl02$ctl00$ctl03','')) | [Treaty Name](javascript:__doPostBack('ctl00$PlaceHolderMain$dgReports$ctl00$ctl02$ctl00$ctl04','')) | [Signature Date](javascript:__doPostBack('ctl00$PlaceHolderMain$dgReports$ctl00$ctl02$ctl00$ctl05','')) | [Ratification Date, Accession(a), Succession(d) Date](javascript:__doPostBack('ctl00$PlaceHolderMain$dgReports$ctl00$ctl02$ctl00$ctl06','')) |
| Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment | CAT | 14 1997 Oct |  |
| International Covenant on Civil and Political Rights | CCPR |  | 10 Apr 1979 (a) |
| Convention on the Elimination of All Forms of Discrimination against Women | CEDAW | 30 Jul 1980 | 09 Jul 1993 |
| International Convention on the Elimination of All Forms of Racial Discrimination | CERD | 02 Mar 1967 | 03 Dec 1968 |
| International Covenant on Economic, Social and Cultural Rights | CESCR |  | 10 Apr 1979 (a) |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | CMW |  |  |
| Convention on the Rights of the Child | CRC |  | 11 Dec 1992 (a) |
| Convention on the Rights of Persons with Disabilities | CRPD | 30 Mar 2007 | 01 Oct 2007 |
| Convention (and Protocol) Relating to the Status of Refugees | Refugee Convention |  |  |
| Convention Relating to the Status of Stateless Persons | Stateless Convention |  |  |

India has not ratified:

* Convention (and Protocol) Relating to the Status of Refugees
* Convention Relating to the Status of Stateless Persons
* International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

**UN Reviews and Agencies**

UN review mechanisms have recommended India to continue efforts aimed at ensuring every household enjoys the right to safe drinking water and sanitation. UN review mechanisms have also expressed concern over the risk of forced evictions in areas surrounding the Sardar Sarovar dam development.

**Universal Periodic Review*[[17]](#footnote-17)***

*The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.*

First UPR 2008[[18]](#footnote-18)

India was reviewed in the first UPR cycle in the 1st session in 2008.

‘Recommendation 18: Continue efforts to allow for a harmonious life in a multi-religious, multi-cultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one fifth of the world’s population to be well fed, well housed, well cared for and well educated.’

Second UPR 2012[[19]](#footnote-19)

India was reviewed in the second UPR cycle in the 13th session in 2012.

‘Recommendation 138.137: Continue to implement plans adopted in the area of housing and rehabilitation, particularly the Rajiv Awas Yojana (RAY) plan launched in 2011 aimed at preventing the construction of new slums. The scheme provides financial assistance to states willing to assign property rights to slum dwellers and to avail of the same level of basic amenities as the rest of the town.’

‘Recommendation 138.138: Ensure that every household enjoys the right to safe drinking water and sanitation.’

***Report of the United Nations High Commissioner for Human Rights[[20]](#footnote-20)***

*The Report provides a comprehensive review of the Human Rights situation in a given country and is presented to the Human Rights Council.*

The Committee was deeply concerned about the increasing height of the Sardar Sarovar dam. These circumstances will endanger the survival of around 40,000 families still awaiting alternative land, livelihood, and housing at resettlement sites. Submerging their lands would, in these circumstances, violate their land and livelihood rights under the recently enacted Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCLARR). As well as international law such as the International Covenant on Economic, Social and Cultural Rights.[[21]](#footnote-21)

***Committee on Economic, Social and Cultural Rights[[22]](#footnote-22)***

*The Committee specifically reviews states that have ratified the ICESCR on their compliance with the rights enshrined in it, including the Right to Adequate Housing.*

The Committee urges the State party to address the acute shortage of affordable housing by adopting a national strategy and a plan of action on adequate housing and by building or providing low-cost rental housing units, especially for the disadvantaged and low income groups, including those living in slums.[[23]](#footnote-23)

The Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and/or offered alternative accommodation.[[24]](#footnote-24)

***United Nations Country Team (UNCT)[[25]](#footnote-25)***

*The UNCT ensures inter-agency coordination and decision-making at the country level. The main purpose of the Country Team is for individual agencies to plan and work together, as part of the Resident Coordinator system, to ensure the delivery of tangible results in support of the development agenda of the Government.*

The UNCT developed the United Nations Development Assistance Framework (UNDAF), India for the period of 2008 to 2012. The overarching objective of the UNDAF is to promote social, economic and political inclusion of the most disadvantaged, especially women and girls and the specific goals are in line with the national priorities of the Government of India’s 11th Five-Year Plan.

***United Nations Development Assistance Framework (UNDAF)[[26]](#footnote-26)***

*The UNDAF is the strategic programme framework that describes the collective response of the UN system to national development priorities. The UNDAF forms the overall framework for the UNCT’s work between “year” and “year.”*

The UNDAF specifies several priority areas and fundamental challenges facing India that the UN can help to address. These are: inclusive growth, food and nutrition security, gender equity, equitable access to quality basic services, governance, and sustainable development.

Given the demographic reality that the majority of the urban poor are young, UN-HABITAT will also support youth-led organizations in designing and implementing projects that will increase the opportunities of urban young people to improve the living conditions for themselves and their communities. Specifically, UNHABITAT will continue its work through the Urban Youth Fund to pioneer youth-led “laboratory” projects to be the conduit for disseminating and promoting the lessons learned and replicable project ideas.

**UN-Habitat[[27]](#footnote-27)**

UN-Habitat has worked on a number of projects in India. To date the total value of UN-Habitat investments (2008-2015) has been US$808,851. UN-Habitat projects in India include:

Urban Youth Fund in India

In India, the India window of the Urban Youth Fund was set up in partnership with the Narotam Sekhsaria Foundation (NSF). A total of 15 youth-led organizations have been provided with funds to undertake youth-led activities.  A monitoring and evaluation exercise was undertaken in all the project activity areas.

Promoting Urban Low Emission Development Strategies (Urban LEDS)

The objective of the Project was to enhance the transition to low emission urban development. The project supported the cities in developing LEDS strategies, various training activities were undertaken in the cities on innovative tools for climate change planning, and Thane and Rajkot completed GHG inventories. In Panaji, UN-Habitat created synergies with its urban planning work and helped integrate the climate change strategy within the urban development plan.

Post-Tsunami Water and Sanitation Reconstruction in Cuddalore, India

The project is to assist Tsunami affected families in 7 settlements that do not have access to safe drinking water and sanitation in Cuddalore District of Tamil Nadu, India. The project assists up to 10,000 people, including children, women, men and up to 2,000 people with disabilities gain access to improved sources of water supply and sanitation.

Water and Sanitation Trust Fund – BASF Social Foundation

BASF Social Foundation Contribution for WATSAN education in Mangalore, India.

Standardised tools and methodologies for safer schools and hospitals

This project covered India, Nepal and Pakistan. With a view to contribute to localizing Hyogo Framework for Action (HFA), as requested by UNISDR Asia-Pacific Secretariat, under the World Bank’s Global Facility for Disaster Risk Reduction (GFDRR), UN-Habitat Bangkok, a sub-office to ROAP, a standardized Tool Kit, which facilitates assessment of the safety of critical infrastructure, focusing on schools and hospitals in South Asia was developed. The Tools provides a concrete set of recommendations for those local authorities, which have signed up for the Resilient Cities Campaign.

Enabling Access of Koshi Flood Affected People to Water and Sanitation Facilities in Bihar-India and Sunsari District Nepal

The project assisted flood affected families with access to safe drinking water and sanitation, after a breach that occurred in the eastern embankment of a barrage constructed to regulate the flow of Koshi River on 18 August 2008, affecting 3,345,545 people in about 3,000sq km of land in Bihar (India) and Sunsari (Nepal).

UN-Habitat Information and Dissemination Office

The objective of the Chennai Office in India was to provide support to the dissemination of UN-Habitat publications in India, raise awareness of urban issues in India through organization of World Habitat Day events, maintain a list of partners in India to support marketing and increased participation of Indian partners in UN-Habitat’s key events, and improve knowledge exchange through the library maintained by the office.

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