

Right to Housing and Indian Policy: A Story of Federal Structure Limitations

Sahansheela Sharma¹

Abstract

A shelter and housing give an opportunity to an individual to live a life of dignity and privacy. The government since the time of independence segregated certain funds for housing and shelter. There are policies and laws of the government that supports the housing for all. But the main problem for the implementation of the housing policies is structure of federalism in India. In the paper the authors will assert that housing and shelter is a fundamental right in itself and needs a deeper protection from the state. Thereafter the author will look upon the status of shelter and housing in India and how federal structure impacted its development. The author will also attempt to understand the reason behind the lack of housing infrastructure in India and individually discuss these problems in the context of global development. Finally, attempt will be made to form a policy which will be suited to the Indian circumstances and enhance the housing infrastructure in India.

KEYWORD: Federal Structure, Dignity, Privacy, Housing, Constitution

I. Introduction

Housing and shelter are basic necessity of human life. It affords dignity and privacy to the individual to fulfil their life choices. In legal and policy literature a debate exists on separate standing of housing as a fundamental right in itself.² This debate came into existence as countries around the world failed to ensure housing for all. Developed countries like the U.K and USA failed significantly in ensuring housing for all.³ However, the situation appears graver in underdeveloped or developing countries. In those countries due to lack of social

¹ Research Scholar, Department of Law, University of North Bengal, West Bengal, India.

² Chester Hartman, *The case for a right to housing*, 9(2) Housing Policy Debate, 223, (1998).

³ *Ibid.*

security it has become a greater issue. These countries face difficulties in ensuring housing infrastructure for the most vulnerable of its members.⁴ Hence, in the last few decades state as well as international institutions have shifted their focus on the road to ensuring housing for all. The UN as well as other global institutions have spent a noteworthy time on framing policies for better as well as equally accessible housing for all.⁵ This focus has brought housing in the lamplight of global policy concerns.

The Indian state too is an important part of this policy debate. Since independence a considerable expenditure has been made to enhance the housing and shelter infrastructure in the country.⁶ This includes various government policies/ legislations and government support to the private players for ensuring housing for all. Nevertheless, the Indian state faces problems different from the globe on the housing spectrum. Therefore, the policies adopted by the government must recognise those differences in its substance. One of the indispensable problems that may originate in formation of such policies is complex federal infrastructure of the Indian state. The Indian Constitutional structure is federal in characteristic.⁷ Powers are divided between the union and the states.⁸ No one either from union or state can interfere in the working of the other.⁹ It creates the problem of responsibility. Who shall be responsible for the development of policies for housing. Whether it should be a mutual co-operation. While forming the policy answering these questions is very important. It could be assumed and will be argued by the author that inappropriate co-ordination between the centre and the state is the reason of failure of housing policies in India.

II. Housing And Shelter: A Fundamental Right on Its Own

A debate exists on the status of housing as a right. It's not been the case that housing is not recognised as a right. Various international legal instruments

⁴ Mathew Idiculla, *A Right to the Indian City? Legal and Political Claims over Housing and Urban Space in India*, 16(1) Socio Legal Review, Article 1, (2022), 3.

⁵ *Supra* Note 1.

⁶ Boitumelo Obert Mmusinyane, *Comparative implementation strategies for the progressive realisation of the right to adequate housing in South Africa, Canada and India*, PH.D Thesis, University of South Africa, (2015) 207.

⁷ Article 245, Constitution of India 1950.

⁸ *Ibid.*

⁹ *Ibid.*

recognise housing as an important right. Most significant of them being UDHR¹⁰ and ICESCR.¹¹ The UDHR does not recognise housing as a right in itself. The UDHR consider housing as an ancillary right in following words- Article 25(1) stipulates that:

“Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including fooding, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹²

UDHR discusses various requirements for appropriate living, one of them being housing. Similarly appears to be true with ICESCR. Although the convention discusses housing it discusses them as an ancillary aspect of appropriate standard of living to be developed by the state for the welfare of the people. This could be gathered from the following clause- Article 11(1) of the ICESCR states that:

“The states parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate fooding, clothing, and housing and to the continuous improvement of living conditions. The states parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.”¹³

Therefore, it can be concluded that although international law recognise housing as an essential aspect of just living conditions. It identifies it as an ancillary necessity. This in return divides resources of the government in multiple aspects of living rather than just housing. However, it is important to understand that appropriate housing is much more significant than other aspects of just living conditions. To demonstrate this point we will take a case study.

¹⁰ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 12 March 2023]

¹¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 12 March 2023]

¹² *Supra* note 6, Article 25.

¹³ *Supra* Note 7, Article 11.

Let us take an example of a developing country to understand the point. South Africa is a modern democracy with a past full of apartheid.¹⁴ The country has seen discriminatory intent of the law and policy makers towards the black South African. This has led to a significant economic gap between the white and the black South Africans.¹⁵ Due to this many black South Africans were not able to afford a reasonable shelter for themselves. Therefore, when the time came to frame a new constitution for the newly democratic republic, an essential question before the constitution makers was to what extent they will provide rights to the people of South Africa.¹⁶ Some of the advisers suggested that it shall be restricted to mere civil rights. However, others denounced this view.¹⁷ They argued that the non-inclusion of social economic rights will not make a significant change in the South African societal structure.¹⁸ Keeping all this in mind the committee recommended and adopted various socio-economic rights as fundamental rights under the South African Constitution. One of these rights being housing.¹⁹ Inclusion of housing as a right under the constitution had a significant impact on the adjudicatory characteristic of the right. It gave opportunity to the South African constitutional court to develop a jurisprudence on housing which will enhance the efforts of the government in ensuring housing for all. This can be seen in the first judgment of the South African constitutional court in itself in the matter of Government of the Republic of *South Africa v. Irene Grootboom*.²⁰ In this matter the petitioners were living in a dismal condition in the land of the municipality. The municipal authorities have evicted them from the land. Due to

¹⁴ JEFFREY GOLDSWORTHY (ED.), *INTERPRETING CONSTITUTIONS: A COMPARATIVE STUDY*, 268 (Oxford university Press, 2007)

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Constitutional Assembly, Constitutional Committee Sub-Committee Draft Bill of Rights, Volume I, Explanatory Memoranda 9 October 1995, 1-285 at 154.

¹⁸ *Ibid.*

¹⁹ Section 26, Constitution of Republic of South Africa.

26. (1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

²⁰ Government of the Republic of South Africa v. Irene Grootboom, [2000] ZACC 19.

the eviction they went to the constitutional court of South Africa for protection of their rights.²¹ In its judgment the court developed an idea of protection of right that will help us assert our argument of recognising housing as a fundamental right in Itself. The court observed that the government has the responsibility to ensure housing for all to the extent the administrative authority has access to resources. The observation of the court was as follow-

“Everyone has a right to have access to adequate housing...The state must take reasonable legislative and other measures, within its available resources, to a progressive realization of this right...The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing”²²

Thus, the government has the responsibility to take positive action and utilise resources to meet the demands of those who live in extreme poverty. However, an argument is generally raised that whether housing is the most essential right. Should the government not focus on food or health first, then housing. This is the sole argument that has kept housing at the backseat. Similar arguments have also been raised before the constitutional court of South Africa. Nevertheless, the constitutional court answered this question in comprehensive manner in following words-

“[A] court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met.”²³

Therefore, in its judgment the court asserts that it might be the case that there would be better opportunities of expenditure for enhancing the standard of living of an individual. However, mere existence of those opportunities will not become a justification for the government not to spend its money on the development of

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

housing and shelter. Therefore, the argument that housing is not significant as Food or healthcare cannot clear off the government from its responsibility. The idea of housing being essential came into existence in South Africa because it was recognised as a right that the courts can adjudicate. Had housing as a separate right wouldn't have existed in the constitution of the South African then the constitutional courts could not have taken a strong stance for the protection of the right. To assert our claim, we can take the example of India. A state has similar economic characteristics as South Africa. In India housing has not been recognised as a fundamental right *per se*. Initially it was believed that housing originates from DPSP.²⁴ Later on the courts have asserted that housing as a right exists under Article 21 of the Indian constitution.²⁵ However, mere recognition of housing under Article was not enough. There has been a complex dichotomy between the judgements of various constitutional courts that gave other rights priority over housing.²⁶ This we will discuss in the next part. However, it shows that non-recognition of housing as a fundamental right fails to protect the right of shelter when there is a dichotomy of rights.

Therefore, the case study of South Africa tells us that it is essential that we consider the right of housing *at par* with other fundamental rights. Doing this will give the courts opportunity to enhance the right to housing jurisprudence and consider housing independent of other conflicting rights. In a country like South Africa or even India where the government has access to limited resources, recognising housing as a fundamental right in itself will support additional expenditure in housing policy of the government. There is another aspect of this view. Housing is not just a right in itself. Proper shelter and housing ensure fulfilment of other aspects of life.

Let us understand this with the help of an example. Let's consider a person who has access to basic necessities such as food and healthcare. However, he does not have access to proper housing. This means he has to live in a slum where there is no environment of healthy lifestyle. This will make him more susceptible to illness. Even though he has access to healthcare due to his ill health he will not be able to contribute much to the society. Secondly, non-accessibility to improper

²⁴ *Supra* Note 5.

²⁵ *Olga Tellis v Bombay Municipal Corpn*, (1985) 3 SCC 545.

²⁶ *Almitra H. Patel v Union of India*, (2000) 2 SCC 166.

housing will violate his right to privacy and impact his dignity. He will not be able to make his own choices. Let's say he is interested in crossdressing. Due to improper housing and no privacy, he cannot fulfil his choices as cross dressing is considered taboo in the society. This in essence will violate his privacy and dignity and his individualism. Hence, housing is not, merely an ancillary right. It is a right that gives access to a bundle of rights to the Individual. Therefore, housing should be considered as a fundamental right. It should be fulfilled by the governments to the best of their abilities from the beginning and not at the end.

A counter argument that may originate is India do not have similar characteristic as South Africa. In India subject of housing comes within the ambit of both union as well as state²⁷, in contrast to South Africa where the issue is covered by the provincial government.²⁸ The argument is appropriate. However, let us take the example of Canada. A state having similar characteristic as India. The 1982 Constitution of the Canada²⁹ did significant changes in the British North America Act of 1867.³⁰ According to the new Constitution housing fell within the ambit of both centre as well as provinces.³¹ In that case the union provided autonomy to the provinces and gave them the opportunity to achieve the goals of 2017 housing policy³² by their own pace. This could very well assert that mere difficult co-ordination in the policies of federalism could not be the reason for the failure of housing as fundamental right. The Indian state must take positives from Canada and implement the same system in India.

III. Housing in India: A Story Full of Failures

India is a developing economy having a colonial past. A past in which the Indian state lost all of its resources and economy to the colonial state. Therefore, post-independence the state has tremendously struggled in fulfilling the basic life necessities of its citizens. Similar appears to be true for housing. The issue of proper housing and shelter is not new in India. It exists even prior to

²⁷ 7th Schedule, Constitution of India 1950.

²⁸ Section 104, Constitution of Republic of South Africa.

²⁹ Constitution Act 1982 (Canada).

³⁰ Constitution Act 1867 (Canada).

³¹ *Supra* Note 28.

³² National Housing Strategy Act 2017, (Canada).

independence.³³ After the end of the second world war a change was seen in the migration culture of the Indian economy. People who were essentially restricted to the rural areas in the beginning of the 20th century were now moving towards the urban centres.³⁴ This has created the issue of improper housing and development of slums in the urban centres. It was not the case that the slums did not exist in the urban centres. The policies of the British government were discriminatory towards the native population.³⁵ The colonial government has divided towns into black and white towns.³⁶ With black towns having access too little to no resources. However, after the end of the second world war the issue became more significant as a huge chunk of the population started shifting to urban areas.³⁷ This migration brought before the colonial government the problem of housing in the cities. Due to this the focus of the government shifted to proper housing in cities only which continued for many years even after independence.³⁸

Another issue that arose in respect of housing in India was settlement of refugees post partition. After partition more than 15 million people moved to India from Pakistan.³⁹ This has led to a significant refugee population in India who have no access to houses.⁴⁰ Therefore, the government must ensure that each and every member shall get access to proper housing and shelter. These difficulties have led to years of policy on housing in India. It has further led to inclusion of judiciary in important policy matters of housing and its accessibility to the weakest members of the Indian society.

The Indian state after independence adopted the soviet backed five years planed system of growth.⁴¹ In this system the government marks few essential areas of focus where the government would pour in their resources for enhancement and development of those areas for next five years. Housing being a matter of concern

³³ *Supra* note 5.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

for the government demanded significant resources from the five-year plans. Each five-year plan has focused upon housing. However, the trend of these plans was very complex. On many occasions the government shifted the manner and mechanism of implementation of these plans.⁴² A deeper dive into the plans will tell us the development and failure of housing and shelter for all in India.

From the beginning of the five year plans the focus was initially not on the lower income groups however on construction of houses.⁴³ For the first five year plan the government has the budget of 3.5 crores for the development of housing infrastructure.⁴⁴ Yet this budget was not for the slums or poor section of the society. Rather the budget was utilised for the construction of house for government servants and officials.⁴⁵ This put the slum dwellers at the back seat and forced them to remain marginalised in the context of housing.

For the next two five year plans the focus shifted a bit. Under these plans the government gave money to the local authorities in the city to buy and acquire land and construct houses for the general public.⁴⁶ The local authorities did so. However, the biggest difficulty and reason for failure of these plans being the prices of the house set by the local authorities.⁴⁷ In Delhi and Chandigarh plans were made and houses were built but at the time of distribution the houses were provided to the middle class residents rather than the slum dwellers.⁴⁸ The reason behind this was the prices of the house. Those houses could only be afforded by the middle-class members of the society.⁴⁹ Due to this the plan failed and a significant amount of the population remained without shelter. Another issue with these initial plans were that they remained focused upon the urban areas and

⁴² *Ibid.*

⁴³ First Five-Year Plan (1951-1956), Housing Chapter 35, (date accessed 12th March 2023)

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Second Five Year Plan (1956-1961), Housing, chapter 26, Third Five Year Plan (1961-1966) Housing and Urban and Rural Planning, Chapter 33.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

did not consider rural areas of any significance.⁵⁰ A high number of rural populations too remains without a shelter, yet the focus was on urban centres.

Things changed a bit after the third five-year plan and in the fourth five-year plan. The government employed resources for the rural population as well in that plan.⁵¹ The government realised that the problem with the current regime of plans is that they are urban centric. Due to this even if government build innumerable houses in the cities, it will not be able to accommodate the population influx arriving from the rural areas.⁵² Therefore, now the government focused upon the sustainable development of houses in urban as well as rural areas. This includes development of appropriate living conditions near the settlements. The government attempted to ensure accessibility to basic life needs to the population.⁵³ The same trend continued with future five year plans. An important shift being the increase in the role of state governments. Earlier the central government use to take important decisions in this matter. However, in the new plans the decision-making power shifted to the state governments and local authorities.⁵⁴ However, nothing was of much benefit.

The later plans followed the same trend. In these plans the administrative authorities attempted to enhance housing infrastructure in towns as well as villages. However, now the focus has shifted from universal accessibility of housing to targeted accessibility to housing. The government focused upon specific groups without truly understanding the problem of housing and shelter accessibility in India. The trend even continues today. Even today the government has adopted various policies for making housing accessible for all, yet these policies focus upon target groups.⁵⁵ That leads to limited implementation of accessibility of shelter for all.

⁵⁰ *Ibid.*

⁵¹ Fourth Five Year Plan (1969-1974) Regional Development, Housing and Water Supply, chapter 19.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Supra* Note 5.

⁵⁵ *Ibid.*

IV. The Federal Polity's Limitations on Housing For All

India is a federal state. The powers are divided between the union and the state. Nevertheless, Indian state had different federal polity than the other states.⁵⁶ Other federal states have originated in light of laissez faire.⁵⁷ Due to this there was no element of planning in their method of governance. However, in the Indian state planning was the most important aspect of governance. India took the idea of planning from the erstwhile Soviet Union. Under this system burden of planning fell upon the union government.⁵⁸ However, the problem of co-ordination remains pertinent.⁵⁹ The Indian constitution segregates power between the Union and the state. This segregation has been done in the seventh schedule of the Constitution.⁶⁰ In this schedule housing has also been defined. In the seventh schedule of the Constitution matters of urban development and housing falls under the state list. Nonetheless, the responsibility to make schemes upon housing falls in the union list.⁶¹ This creates immense confusion in the matters of housing. Although the State government is responsible for housing. For schemes it would be dependent upon the union government.

Then there is issue of financing. As we have comprehensively discussed in this paper that housing has been developed by way of five-year plans. In these plans the union government distribute resources between the states. In the Indian federal structure, the state government has access to very limited economic resources. They were completely dependent upon the grants provided by the central government.⁶² Therefore, the state governments could not make policies according to their own wishes. This problem has been covered properly in the last part of the paper where the author has asserted that five years plans failed because of lack of autonomy. The state hadn't had the opportunities to form their own policies. They are bound by the policies of the union government. Even

⁵⁶ M.P JAIN, 'FEDERALISM IN INDI' 6(4) JILI 355 (1964).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ 7th Schedule, Constitution of India 1950.

⁶² Article 266-280, Constitution of India 1950.

though the power to make laws were within the ambit of state the nonviability of funds forced them to step back.

Indian constitution may be a federal document however, there are various article which gives union more power in contrast to the state.⁶³ Even the governor in many cases acts as a representative of the union. Due to this, governors keep many bills for taking up the advice of the president.⁶⁴ M.P Singh has asserted that on many occasions the governor keeps the bill for the advice of the president on matters of social security.⁶⁵ All these points asserts that the states have little to no autonomy in the matters of housing. To understand this point, take example of Delhi. The Delhi Development Authority was created to settle the refugees. Even after the creation of state of Delhi the Union government kept the control of this authority in its own hand. Due to this on many occasions the state government is not able to do a significant change. This shows the flow in the approach of the application of housing policy in India and failures on the part of the governments. To understand this point properly take example of west Bengal.

The problem with the state of West Bengal was it has limited urban centres. Therefore, a need was felt to develop small and medium size towns. In the year 1979 the government adopted the policy to develop new centres which was called Integrated development of small and medium towns. However, the government did not get much support from the union as the union was interested in developing villages. Therefore, the policies of the government failed. Initially it has been agreed that the union will fund the project. Yet later on the government of the union changed its mind, therefore, the scheme failed. The government was pretty interested in developing towns for refugees rather than common people.⁶⁶

Later on, the West Bengal government introduced policy for slum dwellers. The government at the centre did support these policies.⁶⁷ Nevertheless, these policies were supported as they were in line with the policies of the union. Therefore, we

⁶³ Article 248-260, Constitution of India 1950.

⁶⁴ *Supra* note 55.

⁶⁵ *Supra* Note 55.

⁶⁶ Cabeiri Debergh Robinson. "Too Much Nationality: Kashmiri Refugees, the South Asian Refugee Regime, and a Refugee State, 1947–1974" Vol. 25, No. 3 *Journal Of Refugee Studies* 344 (2012).

⁶⁷ Housing Department, Government of West Bengal.

see a clear trend that the union will support only those policies that are in consonance with the goal of the union. It should be accepted that the states have their own limitations. They have economic restraints hence the state cannot work upon housing policies on their own. therefore, it could be argued that the conflict and improper co-ordination between the union and the state government leads to improper housing in India. This ultimately leads to improper housing and increase in slum dwellers. Which ultimately leads to judiciary's judgements on clearing the streets.

Prior to delving into this let us first consider the status of housing as a right in India. In 1985 the first case came to the Supreme Court in the form of *Olga Tellis*.⁶⁸ In this matter a *Basti* was demolished and after demolition the petitioners went to the Supreme Court. The judgment is connected to the right to shelter, right to livelihood and right to life.⁶⁹ The court observed that "*the right to livelihood is an important facet of the right to life*".⁷⁰ The Court observed that people "*live in slums and on pavements because they have small jobs to nurse in the city and there is nowhere else to live... to lose the pavement or the slum is to lose the job*"⁷¹ and the "*eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life*".⁷²

Therefore, housing and shelter became a fundamental right that is protected under Article 21 of the Constitution. The same trend continued in *Chameli Singh v State of U.P.*,⁷³ here "*the Supreme Court recognized the right to shelter as a component of the right to life under Article 21 and freedom of movement under Article 19(1)(e)*".⁷⁴ However, the trend changed significantly in *Almitra H. Patel v Union of India*,⁷⁵ In this case the matter essentially belongs to solid waste management. Yet the court extended their jurisdiction and criticised slums for generating solid waste. The court went to the extent of observing that slums have

⁶⁸ *Olga Tellis v Bombay Municipal Corpn*, (1985) 3 SCC 545.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Chameli Singh v State of U.P.*, (1996) 2 SCC 549.

⁷⁴ *Ibid.*

⁷⁵ *Almitra H. Patel v Union of India*, (2000) 2 SCC 166

become a business where people grab private lands.⁷⁶ The court observed that Delhi is a showpiece of India, therefore, there must be no slums in Delhi. Slums in Delhi bring bad names to India.⁷⁷ Similar tone could also be found in *Okhla Factory Owners' Assn. v Govt. of NCT of Delhi*,⁷⁸ judgment where the Delhi High Court held that recent provision with regard to alternate sites “*only created a mafia of property developers and builders who have utilised this policy to encourage squatting on public land, get alternative sites and purchase them to make further illegal constructions.*”⁷⁹ This kind of judgment has led to the development of Delhi High court, what Anuj Bhuwania calls the Slum Demolition Machine.⁸⁰ In this approach the Delhi High Court gets a PIL from residents welfare group. Through this PIL the court then demolishes all the slum structures even though the petitioners demanded for such demolition or not. After passing these orders the judges praise themselves by observing that they have converted Delhi into a world class city.⁸¹ A city without Slums. This trend of demolishing slums began when Delhi got the hosting rights for the 2010 commonwealth games. To present a beautiful picture of Delhi to the world, innumerable slums have been demolished.

Hence, both the administrative as well as the judicial part of the state commit inequality against the citizens daily who do not belong to the civil society. The essential reason behind this is improper coordination between the union and the state. Therefore, discrimination is a significant defect in housing and shelter for all policies. Hence, the time has come for a change in these policies. A new policy must be formed where other factors such as financing, privatization and inequality won't make housing inaccessible for marginalised sections of the society.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Okhla Factory Owners' Assn. v Govt. of NCT of Delhi*, 2002 SCC OnLine Del 1337

⁷⁹ *Ibid.*

⁸⁰ Anuj Bhuwania, 'Public Interest Litigation as a Slum Demolition Machine' (2016) 12 MIT J Plan 67.

⁸¹ *Ibid.*

V. Conclusion

In this paper we have comprehensively discussed the problems and limitations in federal structure with the right to shelter and house for all in India. In this part we will attempt to suggest a solution to the problem of inaccessible housing in India. As we have seen in the context of South Africa recognising housing as a fundamental right resolves many issues in itself. It gives adjudicatory authority to the court. Due to this when conflict arose as to the beauty of the town and right to shelter the court could not choose first over second. In present time the courts can choose first over second as both of these rights find their origin in Article 21 of the Constitution.⁸² However, if housing becomes a fundamental right, mere beautification of town won't lead to demolition of slums. Secondly, if a right becomes a fundamental right, then the burden to justify taking away that right increases. Hence, if the right to shelter becomes a fundamental right in itself then a court as well as government won't be able to demolish houses as easily as they do today. Hence, recognition of housing as a fundamental right in itself will resolve the problem of inequality in matters of housing and shelter.

However, there still remain two more issues that we have discussed in this paper. The first is federal failure of Indian state and the second is privatization. In modern times privatization is essential. Nevertheless, it should be ensured that even with privatization the government must follow its social welfare administration. This could be achieved by targeted delivery of benefits. The authors agree that modern theories favour universalism of targeted delivery of resources. However, in a state that is not fully grown up economically it is very difficult for the government to provide benefits for all. Therefore, the government must choose sectors geographically where there is significant lack of housing. This will ensure better coverage of housing. By this approach the government can achieve shelter for all in a phased-out manner.

Finally, regarding the failure of federal structure, the time has come that the union and state co-ordinate with one another to resolve this issue. Housing has become a severe problem. Therefore, a separate commission must be created to deal with this issue. The example could come from GST Council. GST was a complex national issue that impacted the finances of both centre as well as states. Yet both

⁸² INDIA CONST. art. 21.

the centre as well as states chose to co-ordinate among themselves. Therefore, if these institutions could co-ordinate with regard to taxes, they can co-ordinate on housing as well. Hence, time has come to take a balanced approach and enhance co-ordination between both the governments. It will end the problem of housing in the country of India in true sense.

Hence, the government may with the help of its policies and changes in the constitution ensure housing for all irrespective of the limitations it has to face in this field.