

# **A CRITICAL ANALYSIS OF LEGAL FRAMEWORK RELATING TO HOUSING INDUSTRY IN PAKISTAN**

**Ph.D. THESIS**



**Submitted By**

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**Submitted to  
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This thesis is submitted to International Islamic University, Islamabad in partial fulfillment of the requirements for the degree of Ph.D law.

Submitted to

**International Islamic University  
Islamabad.**

## **Student's Declaration**

I hereby declare that the thesis submitted by me titled "**A Critical Analysis of Legal Framework Relating to Housing Industry in Pakistan**" is based on my own research work and has not been submitted to any other institution for any other degree.

Date: 24-02-2021

  
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## **Abstract**

The present legal framework relating to housing industry weak so the mal practices can not be controlled under it. The goal of housing for all can not be achieved under it so it needs to be strengthened in the light of international best practices. Government of Pakistan can not work as developer of housing industry the role of government is to work as facilitator of housing activity. The role of developer of housing society has been assigned to the private sector. The focus of private sector is to earn more and more money by serving the needs of the elite class. Government of Pakistan should not allow unbridled housing activity by the private sector. There is a need to put a constant check and balance on the housing activity performed by the private sector. The regulatory framework needs to be strengthened in the light of international best practices.

### **Key words:**

**Legal framework, private sector, Goal of housing for all.**

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**Shahid Rizwan**

## **Dedication**

To my parent's commemoration, much-loved family, my highly regarded teachers and associates for constantly assisting and facilitating me.

**Shahid Rizwan**



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### FINAL APPROVAL

It is certified that we have read the dissertation submitted by Mr. Shahid Raza, Registration No. 90-FSI-PhD Law 116 on "A critical Analysis of Legal Framework Relating to Housing Industry in Pakistan" in Department of Law, Faculty of Shariah & Law. We have evaluated the dissertation and found it upto the requirements in its scope and quality by the International Islamic University, Islamabad, for award of PhD Law Degree.

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# **A CRITICAL ANALYSIS OF LEGAL FRAMEWORK RELATING TO HOUSING INDUSTRY IN PAKISTAN**

**Ph.D. THESIS**



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## CHAPTER 1

### INTRODUCTION

#### 1.1 THESIS STATEMENT.

The present legal framework relating to housing industry in Pakistan is weak, unable to check malpractices, so it needs to be improved to achieve the goal of *housing for all* as envisaged by UN Habitat Agenda, in the light of international best practices.

#### 1.2 INTRODUCTION TO RIGHT TO ADEQUATE HOUSING.

Right to adequate housing is viewed as one of the most important human rights. UN Habitat has laid down the minimum criterion for adequate housing which includes following things, security of tenure, availability of services, materials, facilities and infrastructure, affordability, availability, accessibility, location and cultural adequacy, privacy, protection against forced evictions and freedom of movement.<sup>1</sup>

In the developing countries like Pakistan a large number of people lack shelter. Right to housing is a precondition for the development of a human being in all respects.<sup>2</sup> Satisfactory and moderate housing is not only important for security and solace, but at the same time it is a basic thing in cultivating social union and development of a country. The industry of construction and housing has the capability of retaining an enormous number of gifted and incompetent workforce, essentially alleviating joblessness and, in this way, decreasing destitution in the nation.<sup>3</sup>

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<sup>1</sup> Right to Adequate Housing, Fact Sheet 21. OHCHR&UN-Habitat.

<sup>2</sup> The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm), Visited on 05-06-2020.

<sup>3</sup> Charles Abrams, Revolution in Land, Housing in the modern world, man 'struggle for shelter in an urbanizing', Institute of Caribbean Studies, 1965, pag 99.

Housing construction productivity and activity has been ascending in Pakistan lately from low level; as yet housing sector is in its early stages as compared to other countries. There is a gigantic potential for growth, given a generally steady and growing economy, a quickly expanding populace, neglected housing request, and a growing attention to housing money alternatives. When the housing industry would develop all the allied industries would also development which would lead to the overall development of the country.<sup>4</sup>

All things considered, there stay difficult issues in the housing industry, which require consideration, on the grounds that the extremely high land prices, high and rising interest rates and rapid increase in construction materials are undermining the growth.

### **1.3 NEED FOR HOUSING FOR THE HUMAN BEINGS.**

It is a right of every human being to have an adequate housing not only for himself but for his family in addition to food and clothes.<sup>5</sup>

Inspite of the fact that housing is a very essential need for a human being there are numerous people who are still deprived of this basic necessity.<sup>6</sup> The housing industry, in spite of its significance and acknowledgment, remained ignored in Pakistan and has not had the option to draw in even a humble allotment of public sector assets.<sup>7</sup>

Pakistan is considered one of those countries which has experienced urbanization and insufficient housing because of mass migration of populace from

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<sup>4</sup> JIANG, D., CHEN, J. J., and ISAAC, D. (1998) The Effect of Foreign Investment on the Real Estate Industry in China, *Urban Studies*, 35, pp. 2101-2110

<sup>5</sup> [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm), Visited on 10-05-2020.

<sup>6</sup> FIAS, Improving the Performance of the Housing, Tourism, and Retail Sectors 2005 Pakistan; World Bank.

<sup>7</sup> Mohammad Arshad Khan, "Role of Banks in Housing Finance".

less developed areas to big cities territories in the last sixty years. Of the all-out populace of very nearly nineteen crores, the urban populace in Pakistan comprises about thirty-six, and is expanding at a rate of two point six every year.<sup>8</sup>

This trend of rapid shifting from the less developed areas to big cities has put a lot of pressure on the housing demand and has worsened the housing conditions.<sup>9</sup> The existing housing conditions are characterized by congestion, insufficient sewerage, contamination and poor structure construction, which offer no security of residency or assurance from climate furthest points.

Twelve years ago, the yearly assessed housing request was five lakh and seventy thousand units while the real supply was just three lakh housing units leaving a shortage of two lakh and seventy thousand housing units for each year. As a result of this circumstance about forty percent of the population of the all-out urban populace lives in casual squatter settlements.<sup>10</sup>

During the ongoing years, progressive Governments displayed familiarity with the issues relating to housing shortfall in Pakistan. Different plans have been started as policy choices including plans and programs for unraveling the urban development and housing issues of the regularly growing populace in Pakistan. A national housing policy was outlined which secured every single applicable part of housing, including arrangement of land financing, construction technology, building materials, low pay housing research, institutional system and usage instrument. The significant accentuation of the nation's housing policy is on asset activation, land accessibility,

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<sup>8</sup> CIA World Fact book, 23 August 2014

<sup>9</sup> Statement by Mr. Tahir Iqbal, Minister of State for Environment, Local Government and Rural Development in the Twelfth Session of the UN Commission on Sustainable Development (30 April 2004).

<sup>10</sup> Akhter Hameed Khan, Pakistan: Scaling up Rural Support Programs, Poverty Alleviation Policy Paper series monograph No.1, Shanghai, May 25-27, 2004.



motivators for home possession, impetuses to developers and constructors and advancement of research and development exercises to achieve housing for all.<sup>11</sup>

The target of present thesis is to survey and assess the present regulatory legal framework of housing at the three layers of the Governments. The significant point of this thesis is to find out the issues of housing laws, rules, and regulations and to suggest some recommendations to strengthen it so that the goal of housing for all may be achieved in Pakistan.

#### **1.4 HOUSING AS AN IMPORTANT RIGHT.**

Right to housing has an important link with other rights including right to water, right to health, right to food. It has also a link with right to education, right to expression, right to hold property, right to work and freedom from arbitrary interference on the part of others.<sup>12</sup> Housing is an essential and key human need. Today, there is a virtual housing emergency in the nation. Fast populace growth, stuffing, deficiency of supply, maturing housing stock, development of ghettos and Katchi Abadis and absence of a strong legal framework to regulate it has additionally disturbed the circumstance and the goal of housing for all has become a dream.

The accessibility of moderate housing is a major cause of migration of the people from the rural areas of Pakistan to the urban areas of Pakistan. After more than seventy years of presence, Pakistan has not been able to provide housing units to all the people. The combined setback in supply of housing units has reached upto 8.0

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<sup>11</sup> National Housing Policy Report 2001, Ministry of Housing and works tourism.

<sup>12</sup> Human Rights in Cities Handbook Series, The Human Rights-Based Approach to Housing and Slum Upgrading, UN Habitat for A Better Urban Future, Page 13.

million units as indicated by current gauges and is expected to reach at the 10 million housing units till 2020.<sup>13</sup>

The housing emergency in Pakistan started after independence due to flow of displaced people into the domains that became part of Pakistan. The administration of Pakistan embraced the welfare-state model as its development policy at the hour of freedom. As indicated by this model, the state attempted to give housing and asylum to its residents. Undertakings were propelled in numerous urban areas of the nation to give essential housing (a couple of rooms, latrine and kitchen) for low-salary gatherings and Government workers.

The biggest housing activities were in Karachi where, through the Greater Karachi Resettlement Plan of 1958, the administration planned for giving 500 little portions over various periods. The payment plan to get those housing units consisted of unpredictable installments but that plan could not be materialized. Various other housing plans in different urban areas were introduced which could not be successful and the situation of housing for all further worsened.

The Governments of Pakistan in order to provide housing units to the citizens of Pakistan have adopted various policies including formation of cooperative housing societies and providing these societies lands at a subsidised rate. As per last census of nineteen ninty eight, the total number of housing units all through the nation was nineteen point three million. Sixty-seven point seven housing units were in rural zones and thre two point three in urban territories. The general housing stock involved

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<sup>13</sup> [http://hdr.undp.org/en/media/HDR\\_2007, 2008\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2007, 2008_EN_Complete.pdf), Accessed on 14-09-2016.

three nine percent kucha houses (made of mud), forty percent semi pukka houses (join with mud and concrete) and twenty one percent pukka houses (made of bonds).<sup>14</sup>

Today, Pakistani urban areas experience the ill effects of housing shortages of around three million units (while almost half of Pakistani who live in big cities they live in ghettos). The stock of city housing is additionally undermined by rental laws which have undermined the concept of housing as a right. That is the reason due to which only about 5% of housing units in Pakistan are leased out.

There were almost twenty-one point seven million housing units in the nation for one hundred and seventy-seven million inhabitants and the necessary required number of housing units for the populace was twenty five point eight three million, indicating deficiency of about seven million housing units in 2011. There were sixty seven percent housing units in the rural areas in provincial zones and thirty one percent in urban regions in nineteen ninty eight.<sup>15</sup>

### **1.5 HOUSING AS A BASIC NECESSITY.**

According to the report of World Bank the legislature can reinforce property rights and land organization process as a team with the private sector. It can likewise fortify the property development system, bolster the structure business, encourage the growth of essential and optional housing account markets, and present valuable focus on housing money program.<sup>16</sup>

Housing for the urban poor is the most imperative territory of concern for policy makers, organizers and development organizations in urban communities and

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<sup>14</sup> Ibid, Page 1.

<sup>15</sup> [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk), Accessed on 12-6-2017.

<sup>16</sup> Government of Pakistan, Population Census Organization, The Pakistan Development Review 37.4/II (winter 1998), National Institute of Population Studies NIPS, Planning and Development Division, Islamabad, (2013), pp 37:4,481-493

towns. The Karachi Strategic Development Plan 2020 indicates us that urban poor households who dwell in casual settlements of different sorts have reached to 941,968 housing units in 2010 and every year 100,000 new households in this class are included.

The rise of katchi abadis in Islamabad likewise mirrors the way that better controlled and oversaw urban areas have not had the option to stretch out moderate choices to the urban poor. According to Capital Development Authority (CDA) records, more than fifteen katchi abadis have advanced in various areas in Islamabad involving a differing number of households. Once made, katchi abadis offer the intense issues including the various modes and plans to regularize the kachi abbadis (slums) in addition to various other planning issues.

The market has been not been able to satisfy the growing needs to supply housing stock at reasonable prices. Despite the fact that interest for moderate housing, especially rental housing that is reasonable for low and average class salary workers, has increased, the stockpile has not. The growing gap between rich and poor has further increased instead of decreasing during the last forty years. The situation of housing shortage and repid increase in the prices of the housing units has further worsed the situation of an access to housing for the poor people.

The housing request and supply expands in Pakistan. According to a recent report by the World Bank, housing-account to-GDP proportion in Pakistan is simply one percent. But according to the same report the ratio in our neighbouring country i.e. India is seven percent and this ratio is half in rest of the developed world. The International level of housing per room inhabitance is three-point four people; though

in our country (Pakistan) is six point seven individuals per room.<sup>17</sup>It is an indication of very high congestion. It requires a Legal Framework by which the ease of doing housing activity can be made a mode to achieve a further higher goal of housing for all at higher level.

#### **1.6 ACKNOWLEDGMENT OF HOUSING AS A RIGHT IN THE LEGALFRAMEWORK OF PAKISTAN.**

The right to housing or safe house is acknowledged in Constitution of Islamic Republic of Pakistan 1973, as an essential right. The article 38(D) of the Constitution of Islamic Republic of Pakistan 1973 recognises housing as an important social right. State should take all possible measures for giving essential needs of life to the residents across the board, which includes including housing as well. Pakistan likewise embraces different international understandings, including UN Habitat agenda to take measures in the provision of housing units to its citizens subject to availability of resources. Additionally, housing as a right is explicitly referenced in the United Nations Vancouver Declaration on Human Settlements.

There are different strategies that straightforwardly or in a roundabout way address the housing issues. Housing as a right is not included in the Fundamental Rights provided under the Constitution of Islamic Republic of Pakistan 1973. As per National Housing Policy 2001, the Government of Pakistan cannot perform the role of a developer to provide housing units directly to the homeless persons. This fact was further fortified and clarified by the apex court of Pakistan.

It was held by the Supreme Court of Pakistan with regard to manner of exercise of powers by an authority with respect to allotment of housing units that

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<sup>17</sup> Burke, Jason, "Pakistan looks to life without the general". *The Guardian*, London, 17 August 2008.

looking at the powers of the Chief Minister for allotment of public property, the principle laid down in the case of *Iqbal Hussain v. Province of Sindh through Secretary, housing and Town Planning Karachi* and others, will be useful wherein this court has observed as under, at this juncture, germane to refer a judgment authored by me in CPNo.S-878 of 2014 where following the above dicta, it was concluded that:

- I. a state land is the property of people of Pakistan;
- II. the authority is custodian of such rights of people of Pakistan;
- III. the authority is meant and believed to act to protect such property of people of Pakistan which includes disposal of such property at proper market rate/price;
- IV. An illegal order, regardless of status of person, passing/ issuing it, shall not have binding effect upon subordinate.<sup>18</sup> From this case it is very much clear that such type of housing policy cannot be followed in which Chief Minister or Prime Minister of Pakistan can provide pieces of lands to homeless people to achieve the goal of housing for all. Based upon this approach the Legal Framework of Pakistan relating to housing industry should be designed in such a manner that private sector should be assigned the main role to perform the housing activity.<sup>19</sup> But it does not mean that the provision of housing units to the citizens of Pakistan should be left to the sweet will of the private sector. Unbridled housing activity by the private sector cannot be allowed. The Government of Pakistan should keep a check and balance on the activities of housing industry through a strong Legal Framework. The role of the three layers of the Governments in Pakistan should be of a facilitator and regulator instead of developers of the housing industry.

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<sup>18</sup> Government of Punjab Vs Syed Asghar Hussain, 2014 SCMR 1611.

<sup>19</sup> Iqbal Hussain Vs Province of Sindh, 2008 SCMR 105

## 1.7 IMPORTANT CAUSES AND REASONS FOR NOT ACHIEVING THE GOAL OF HOUSING FOR ALL IN PAKISTAN.

Housing is one of the important necessities of life and it occupies the biggest portion of any human settlement. Housing ownership promotes social cohesion. Housing enables participation in other development activities of the human being.<sup>20</sup> Pakistan is also trying to achieve it and following the practice of the developed countries. Research has proved that to produce better citizenship in a state no other element helps more towards achieving a good civilization than to provide housing units to the citizens by a Government in a state.<sup>21</sup>

Although at this moment housing is not a fundamental right under the Constitution of Islamic Republic of Pakistan 1973 but right to housing has been included in the chapter of principles of policy in the Constitution of Islamic Republic of Pakistan 1973. In order to provide housing as a right as envisage under the UN Habitat agenda, housing is discussed under Article 38 of the Constitution of Islamic Republic of Pakistan 1973. Pakistan is a party to UN Habitat agenda and the Istanbul declaration on human settlements promised "*The full and progressive realization of the right to adequate housing*".<sup>22</sup>

A target of housing for all has been set in the UN Habitat agenda but for the time being the situation of housing for all is not encouraging in Pakistan and a lot of work is yet to be done. At this moment Pakistan is facing a shortfall of four point three million housing units and there is an annual demand of five lakh seventy

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<sup>20</sup> Medium Term Development Framework, 2005-2010, Page-175.

<sup>21</sup> John M. Gries "Housing in The United States" The Journal of Land & Public Utility Economics, 1, 1925, P 23-35.

<sup>22</sup> Lou Haysom, "No place Like Home", Agenda, No. 30, Provinces in Focus, 1996, p.87-90.

thousand housing units as against a supply of three lakh housing units per annum. As a result of it, there is a recurring annual shortfall of two lakh seventy thousand housing units each year.<sup>23</sup> The cumulative shortfall in supply of houses equals eight million units according to current estimates and is expected to reach the ten million housing units figures by the year 2020.<sup>24</sup>

If we look at the near past, the situation became worse when after the incident of 9/11, housing activity become totally a commercial activity and a hub of speculation. The immense potential of investment in the Housing Industry of Pakistan was exploited by the developers of the housing industry to earn abnormal profits. Boom in the housing industry was seen after 2001, when 9/11 incident proved fuel to the fire and housing industry underwent an intense period of growth. During this period of time overseas Pakistanis from Gulf and Europe pulled billions of dollars out of foreign markets.

Due to uncertain situation and insecurity of the invested capital in the foreign markets the foreign investment was routed to the housing industry of Pakistan. During this period of time speculation in the housing industry was at a peak. Housing was out of range for poor and middle class and only elite class could afford to purchase a house. As a result of large scale of its overseas remittances jumped from one point five billion dollars to four billion dollars in 2002, which was an unprecedented development.<sup>25</sup> Most of this money was invested in the housing and real estate sector of Pakistan.

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<sup>23</sup> National Housing Policy 2001, P1.

<sup>24</sup> Muhammad Arshad Khan, "*Pakistan Institute of Development Economics*", (Islamabad, 2007), 28.

<sup>25</sup> [www.finance.gov.pk](http://www.finance.gov.pk) visited on 1<sup>st</sup> March, 2017.



Due to poor performance of other industries the local investors in the country also preferred to invest in the housing industry of Pakistan. The decision of state bank of Pakistan to reduce interest to three percent from twenty two percent resulted in greater use of credit facilities to invest capital in the housing industry.<sup>26</sup> To make investment of the saved money also encouraged the people of Pakistan to invest in the housing industry of the country.

Diminishing output of the other industries, commercial activities, manufacturing units, processing the power brokers, capitalists and investors preferred to invest in the housing industry of Pakistan. Investment in housing industry is considered safe as compare to investment in other industries due to multiple risks involved. Housing being a fix asset and the risk in the sudden loss of investment are limited due to this reason housing activity became a top trend business Pakistan.<sup>27</sup> Due to this reason the housing for poor and middle class became a dream. Only elite class was able to purchase a housing unit for it.

General feeling among the investors that in the age of highinflation the investment in housing industry was safer and more profitable became another reason to invest money in the housing industry of Pakistan. In USA the investors invested in housing industry as they considered it as a safe investment. Furthermore, they considered it a good investment in the age of high inflation due to this reason many people preferred to invest in the housing industry.<sup>28</sup>

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<sup>26</sup> Zahid Iqbal, "Pakistan: The Housing Market Thrives as More Pakistani Capital Returns Home", Daily Dawn 29 December, 2007.

<sup>27</sup> Daily, The News, Allaudin Masood, "Article", "Housing Deficit", 6th December 2007.

<sup>28</sup> Frederick P. Stutz and Arthur E. Karthman, "Housing Affordability and Spatial Price Variation in the United States", Economic Geography, 58, 1982, P 221-235.

Due to the above-mentioned reasons the people invested money in the housing Industry of Pakistan as a purely business activity and this nasty business activity became a reason of artificial inflation in the prices of housing units. The same thing happened in case of USA where along with other economic factors causing housing shortfall the major reason was the notion that housing was a commodity which had speculative possibilities and housing instead of a basic necessity of life was treated as a pure business activity.<sup>29</sup>

High population growth, inadequate attention towards construction of new houses, migration from rural to urban areas and breakup of the traditional joint family system were also the major reasons along with the reasons mentioned above.<sup>30</sup>

The Government of Pakistan was unable to provide housing to the people of Pakistan due to shortage of resources so the private sector hunted the immense potential of investment in the housing industry of Pakistan. In order to take undue advantage of this situation there has been a mushroom growth of housing societies.

The cooperative housing societies and private housing companies registered themselves with the registration authorities i.e. Cooperative Housing Societies' Department and with Securities and Exchange Commission of Pakistan. The process of registration was done by taking undue advantage of weak legal frame work relating to registration of housing developers, resultantly, these developers managed to register themselves even without having any piece of land. These housing developers bypassed the legal framework of housing industry with impunity by taking full undue advantage of the weaknesses in the legal framework relating to

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<sup>29</sup> Bernard J Newman," Factors in the Housing Problem", Annals of the American Academy of Political and Social Science", 1937, P1-6.

<sup>30</sup> Ibid, p,10.

housing industry. This practice was done in two ways, firstly, by inviting applications for allotment of plots without having possession of land and in this way deprived the genuine investors from their hard-earned income.

This happened because either there was a weak legal framework or legal framework was there but there were some difficulties on the implementation side due to overlapping of jurisdictions of various departments of various layers of the Governments under the legal framework. Secondly, housing developers did the same kind of activity and deprived the investors from their money by inviting applications of plots more than the land held by them and by issuing fake allotment letters to the general public.

Housing shortfall and frauds in the housing industry are also made due to ambiguity/inclarity of jurisdictions. Overlapping of jurisdictions of various regulatory authorities of housing industry is another reason for not achieving the goal of housing for all. Although states are members of the international treaties but the matters like housing and town planning are tackled and handled by the local Governments.

As per fourth schedule in the Constitution of Islamic Republic of Pakistan 1973, the subject of housing is purely a provincial matter but many authorities of the Federal Government i.e. securities and exchange commission of Pakistan along with Provincial departments were dealing with the affairs of housing developers due to which there is an overlapping of jurisdiction and shifting of responsibilities among the three Governments i.e. Federal, Provincial and Local Governments.<sup>31</sup>

Before promulgation of Local Government Ordinance 2001, housing used to be a subject of concurrent legislative, the Provincial Governments used to exercise

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<sup>31</sup> Constitutional of Islamic Republic of Pakistan 1973, 4th Schedule, 3rd Edition, Pakistan Law Times, 2002.

authority over this subject along with Federal Government. Governments of the provinces of Punjab and Sindh had established under the provincial Acts development agencies in the urban areas which were responsible for preparation of master plan, site development plan, approval of site development scheme for housing schemes including monitoring of housing schemes under building bye laws.

The monitoring of the housing schemes is done under the new rules, bye laws and building regulations. The areas outside the jurisdiction of above authorities were regulated by cantonment boards or provincial line departments concerned in their respective provinces.

The Local Government Ordinance 2001 came into force on 14<sup>th</sup> August 2001 the structures and systems in place prior to this Ordinance were supplanted by new structures and systems as a result of it many departments of the provincial Governments were devolved from the provinces to local Governments. The devolved functions included, housing, urban and physical planning and public health engineering, local Government and rural development.<sup>32</sup>

After enforcement of Local Government Ordinance 2001, the control of the offices of the local Government and rural development department, and housing and physical planning department were transferred to local Governments. Earlier these departments were providing services at the regional, zonal, circle, divisional, district and tehsil levels were entrusted to respective tehsil municipal administrations with immediate effect.<sup>33</sup>

Devolution of above-mentioned offices including housing was a new concept in Pakistan and the local Governments due to lack of capacity were unable to handle

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<sup>32</sup> Local Government Ordinance 2001, 1st Schedule, 1st Edition, Mansoor Book House, 2007.

<sup>33</sup> Ibid, Section 15.

the subject of housing in a proper way. Due to lack of capacity and resources new local Governments could not regulate the housing industry. In contrast to Pakistan in America, the local Governments have been dealing the affairs of the housing industry in a very smooth and efficient manner.

During the Government of President Nixon, the foundation for decentralizing the control over the implementation of national housing policy to local Government was laid down. Since then, the affairs of the housing industry are being carried out in a well manner. After that Regan Bush administration further decentralized it by giving local Government more decision making power and greater fiscal control which resulted in more efficiency in the regulatory regime of housing industry.<sup>34</sup>

Still there are many problems in the regulatory mechanism and Legal Framework relating to housing industry of Pakistan, which have been discussed and critically evaluated in chapter four of this thesis.

## **1.8 IMPORTANCE OF HOUSING FOR HUMAN BEINGS IN GENERAL.**

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, then acquiring food and water is not a problem for him with little effort he can get these.<sup>35</sup> The triangle of necessities for spending a life includes food, clothing and shelter.<sup>36</sup>

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

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<sup>34</sup> Janet L. Smith, "The Space of Local Control in the Devolution of U.S Public Housing Policy", *Geografiska Annaler Series B, Human Geography*, 82, 2000, p 221-233.

<sup>35</sup> Jean Conway, *Housing Policy*, p. 1, 2.

<sup>36</sup> Rachel G. Bratt, Michael E. Stone and Chester Hartman, *A Right to Housing: Foundation for a New Social Agenda*, p. 2, 5.

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 neighbours and also avails the amenities provided by the Government in that locality for the household.<sup>37</sup>

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 (housing) also increases their productivity and it in turn leads to a better and manageable society.<sup>38</sup> 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.<sup>39</sup>

In Singapore the Government considers housing as contributing to political stability, because owning a house gives individuals a stake in the country.<sup>40</sup> The importance of proper housing can be assessed from the fact that nations have been egged on by the United Nations Organization (UNO) to provide proper housing facilities to their citizens. Right to housing has been included in the Universal

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<sup>37</sup> Duncan McLennan and Jon Bannister, *Housing Research: Making the Connections*, p.1, 1.

<sup>38</sup> Rachel G. Bratt, Michael E. Stone and Chester Hartman, *A Right to Housing: Foundation for a New Social Agenda*, p. 1, 2.

<sup>39</sup> Dickens, P, Duncan, S; Goodwin, M; and Gray, F, *Housing states and localities*, London, 1985.

<sup>40</sup> Ching and Tyabji, *Home ownership policy in Singapore: An assessment*, *Housing Studies*, 1991, Pages 15-28.

Declaration of Human Rights which emphasis the states members of the UNO to work on provision of adequate housing facilities to their citizens.<sup>41</sup>

## **1.9 IMPORTANCE OF HOUSING IN ISLAM.**

Islam has also acknowledged housing as an important right as Allah has declared in the Holy Quran that houses are a source of shelter for human beings.<sup>42</sup> There is a beautiful hadith of the Holy Prophet ﷺ that shelter along with a chaste life companion and a good conveyance are a source of pleasure for the son of Adam, i.e. mankind.<sup>43</sup>

## **1.10 IMPORTANCE OF HOUSING VIS-À-VIS LEGAM FRAMEWORK RELATING TO HOUSING INDUSTRY OF PAKISTAN AND CHALLENGES FACED.**

By realizing the importance of housing as an important need of the human beings, the Constitution of Islamic Republic of Pakistan, 1973 has included the right to proper housing in its Principles of Policy, so that, every new Government may formulate policies for the provision of housing.<sup>44</sup>

The Constitution of Islamic Republic of Pakistan 1973 also acknowledges the acquisition of property, in accordance with the provisions of law as a fundamental right and no person shall be deprived of his property save in accordance with law.<sup>45</sup>

To achieve the goal of housing for all the department of housing in Pakistan has been transferred to the provinces for proper provision of the right to housing to the citizens of Pakistan. Previously, before the 18th amendment in the constitution of

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<sup>41</sup> Universal Declaration of Human Rights, Article 25 (1), [www.google.com](http://www.google.com), Accessed on 12-6-2017.

<sup>42</sup> The Holy Quran, Surah An-Nahl, Verse 80, Dr. Tahir ul Qadri, Arfan ul Quran, Minhajul Quran, 2019, Lahore.

<sup>43</sup> Musnad Ahmed, 1368.

<sup>44</sup> The Constitution of the Islamic Republic of Pakistan, 1973, Article 38 (a)(d).

<sup>45</sup> Ibid, Article 23/24.

Islamic republic of Pakistan 1973 housing was a federal subject but now it is in the purview jurisdiction of provincial Governments. After 18<sup>th</sup> amendment to the Constitution of the Islamic Republic of Pakistan, 1973, has changed the scenario and now the responsibility of provision of the right of housing rests on the provinces.<sup>46</sup> It is also worth mentioning that the taxes on property and in matters of succession have been removed from Part I of the Federal Legislative List therefore allowing provinces to regulate the matters relating to housing.<sup>47</sup>

However, it is witnessed that private housing companies were incorporated under the Companies Ordinance, 1984 and now under Companies Act 2017, under a Federal level law, with the Securities and Exchange Commission of Pakistan which needs to be changed.<sup>48</sup> The Companies Ordinance as well as the Companies Act 2017 has explicitly excluded such institutions from its domain which are formed to carry out a non-trading activities and their activities are confined to a single province will be the exclusive domain of the provinces.<sup>49</sup>

It is pertinent to mention here the activities of the cooperative societies are being regulated by the respective provinces in their territorial jurisdictions. Whether housing is purely a business and profit-making activity or it is a poverty alleviation measure it shall be discussed in the coming chapters of this thesis along with suitable amendments which are required to be introduced in the legal framework.

Housing for all is possible when along with other factors; institutions like the House Building Finance Corporation and other housing finance companies provide

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<sup>46</sup> Attaur Rehman Sheikh et al., *Climate Resilient Housing: An Overview of the Policy Landscape in Pakistan*, p. 8,3.

<sup>47</sup> Impact of the Eighteenth Constitutional Amendment on Federation-Provinces Relations, PILDAT, Briefing Paper No.39, p. 12, 7.

<sup>48</sup> Incorporation of NBFC and Grant of License, <https://www.secp.gov.pk/licensing/nbfc/housing-finance-services/>

<sup>49</sup> Companies Ordinance, 1984, §§ 4/5.



loans for the construction of housing units but the situation of housing finance is not good because the house building finance corporation is of the view that financing the housing sector is itself risky and unpredictable due to the presence of discrepancies in the law and administration.<sup>50</sup>

Due to this reason the provision of housing is getting worse. Furthermore, housing is being carried out as purely a profit-making activity due to which the greedy property and land mafias are earning abnormal profits. Housing has turned out into a nasty trade as the fruits of the legislations are not reaching the people at large as the plots and houses are too expensive to be bought by an ordinary person.<sup>51</sup> The aim of housing for all is a target which has not been achieved because of two reasons. Firstly, there is a weak legal framework which needs to be strengthened. Secondly, there are weaknesses on the part of the regulatory authorities of the housing industry due to overlapping of jurisdictions.

In the backdrop of these points, subsequent chapters of the thesis will deal with the identification of the problems in the legal framework and to suggest suitable amendments in the legal framework to strengthen the legal framework of Pakistan relating to housing industry. Finally, my thesis will end with some recommendations and suggestions for the improvement of legal frame work and the ways and means for the realization of the right to housing in Pakistan as envisaged by the UN Habitat agenda.

## **1.11 UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE RIGHT TO HOUSING.**

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<sup>50</sup> State of Human Rights in 2014, Housing, p. 308, 5.

<sup>51</sup> Ibid, p. 305, 2.

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly meeting on December 10, 1948 in Paris.<sup>52</sup> The document was adopted as a consequence of the atrocities committed during World War II and is a declaration affirming the fundamental rights of human beings universally. Right to Housing has also been admitted as an inherent right of every human being. All the nations of the world have been stressed to provide their citizens with adequate shelter.<sup>53</sup> In the words of the declaration:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, [and] housing”.<sup>54</sup>

Although the declaration is not a treaty,<sup>55</sup> and many lawyers consider it a part of customary international law,<sup>56</sup> but it is morally binding on the member states who gave their assent. To add, Pakistan also ratified the Universal Declaration of Human Rights. 1988 was the year when 40<sup>th</sup> anniversary of Universal Declaration of Human Rights was celebrated, in that year adequate housing was recognized as a legal right and after it many International Conventions have adopted adequate housing as a legal right.<sup>57</sup>

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<sup>52</sup> "The Universal Declaration of Human Rights", *www.un.org.pk*. Accessed on 12-5-2018.

<sup>53</sup> "United Nations Charter, preamble and article 55". *United Nations*. Retrieved 4-10-2013.

<sup>54</sup> Article 25 (1), Universal Declaration of Human Rights, *www.un.org*, Accessed on 13-5-2018.

<sup>55</sup> Sohn I, "The Human Rights Law of the Charter" (1977) 12 *Texas Int LJ* 129, 133.

<sup>56</sup> *Office of the High Commissioner for Human Rights*. "Digital record of the UDHR". *United Nations*.

<sup>57</sup> The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach, Scott Leckie, *Human Rights Quarterly*, Volume.11, No4,1988, Pages 522-560.

### **1.12 RIGHT OF HOUSING VIS-À-VIS INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 1966.**

Ratified by Pakistan, the International Covenant on Economic, Social and Cultural Rights is another important convention which asks the parties who have ratified it to protect the economic, social and cultural rights of their subjects.<sup>58</sup>

It also discusses shelter in the following words:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>59</sup> About ninety-two states have ratified the Treaty on Economic Social and Cultural rights which has acknowledged adequate housing as a right.

### **1.13 HOUSING RECOGNIZED AS A RIGHT INTERNATIONALLY.**

The importance of housing can be assessed from this fact that the human right to an adequate housing is recognized in International human rights laws as component of the right to an adequate standard of living in many UN Charters and Treaties.<sup>60</sup> That how it plays an important part in the lives of people. From the day a person is born till his last day, the shelter in which he lives shapes his life in a number of ways. Starting from education and health, housing leaves its imprint on different fields of a person's life including his employment, self-esteem and social status. It is due to the significance of having an adequate dwelling that it has named as a right and all the

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<sup>58</sup> "UN Treaty Collection: International Covenant on Economic, Social and Cultural Rights". *UN. 3 January 1976*. Retrieved 21 November 2016.

<sup>59</sup> Article 11 (1), International Covenant on Economic, Social and Cultural Rights, [www.un.org](http://www.un.org), Accessed on 14-6-2018.

<sup>60</sup> Human Rights in Cities Handbook Series, The Human Rights-Based Approach to Housing and Slum Upgrading, UN Habitat for A Better Urban Future, Page 10.

nations of the world have vowed to give their citizens proper shelter. In the limelight of the same, 1987 was declared as an International Year for the Homeless.<sup>61</sup>

The aims and objects of UN Habitat are in accordance with the purposes of Charter of UN and the principles of International law are on the subject of Historical Perspective of Housing Industry. This Chapter evolves from the Pre UDHR state about housing and passing through the phases of chronological research study of Housing according to universal declaration of human rights 1948, Housing according to International Convention on economic, social and cultural rights 1966, and Housing according to International convention on the elimination of all forms of discrimination against women 1979.

Housing according to convention on the rights of the child 1989, Housing according to convention relating to the status of refugees 1959, Housing according to international convention on the protection of the rights of all migrant workers and member of their families 1990, Housing according to declaration of the rights of the child 1959.

Housing according to international labour organization recommendation No. 115 concerning worker's housing 1951, Housing according to declaration on social progress and development 1969, Housing according to declaration on the rights on disabled persons 1975, Housing according to Vancouver declaration on human settlements and action plans 1976, Housing according to NESCO declaration on race and racial prejudice 1978, Housing according to ILO recommendation No. 162 concerning older workers 1980, Housing according to the right to development 1986,

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<sup>61</sup> General Assembly Resolution Number 41/146 (4 December 1986) ESC Resolution 1987/37.

Housing according the global strategy for shelter to the year 2000 (1988) and Housing according to agenda 21 (1992).<sup>62</sup>

#### **1.14 UNITED NATIONS HABITAT AGENDA**

UN Habitat has been designed to enable member states to take responsibility of the people for the promotion and creation of sustainable human settlement.<sup>63</sup> UN Habitat agenda provides guidance to the states to take steps to turn the vision of housing for all into a reality. In order to promote International, regional, subregional, national and local cooperation and partnerships institutions like Commission on Human settlements and United Nations Centre for Human Settlements are playing a pivotal role to achieve the goal of housing for all.

##### **1.14.1 First UN Habitat Conference.**

The first UN Habitat conference was held at Vancouver British Columbia, Canada in 1976. The purpose of it was to discuss the issue of housing shortfall due to rapid urbanization. Sixty-four recommendations were proposed for future action. In 1977 after this conference a general assembly resolution 36/162 was passed to create a United Nations Centre for Human Settlements UNCHS (HABITAT). A functional commission of Economic and Social Council was established as a governing body.

It starts with the preamble unacceptable human settlements is an increasing threat due to inequality in the economic conditions and uncontrolled urbanization unless and until some protective measures are taken at national and international level. The first action suggested was to take a bold, meaningful and effective human settlement policy and human settlement should be considered as an instrument of development.

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<sup>62</sup> [www.un.org](http://www.un.org), Accessed on 27-2-2018.

<sup>63</sup> [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm) visited on 10-03-2020.

Adequate shelter was declared as a basic human right in the first conference and local Governments were encouraged to play an effective role for the provision of this basic right.<sup>64</sup>

#### **1.14.2 Second UN Habitat Conference.**

The United Nations Conference on Human Settlements (Habitat II) was held in Istanbul, Turkey in 1996. All nations present at the conference unanimously gave their assent to the “Habitat Agenda” which is a commendable effort for right to housing. The agenda focuses on two basic perspectives of dwelling, i.e. “adequate shelter for all” and “sustainable human settlements development in an urbanizing world”.<sup>65</sup> It has been universally agreed in the conference that Governments will work on the provision of suitable dwellings to their citizens and the construction of houses will be in accordance with the standards of health and hygiene.<sup>66</sup>

The agenda has reminded the member countries that provision of healthy housing is a responsibility and it's not that the population should be housed, but they must be provided the best housing which would enable them in further endeavors of their lives.<sup>67</sup>

All nations have affirmed that they shall commit to the cause of provision of suitable housing. It has been recognized that Governments' ability will be brought in use for provision of other amenities of life in relation to housing and steps will also be undertaken to help tenants secure their right of tenure. The recognized standards of human rights will at all times be kept in mind.<sup>68</sup> Other commitments were also made

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<sup>64</sup> The Vancouver Action Plan. Habitat.igc.org. Visited on 3-12-2017.

<sup>65</sup> The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm), Visited on 05-06-2020.

<sup>66</sup> The Habitat Agenda, Istanbul Declaration on Human Settlements, p. 1, 1.

<sup>67</sup> The Habitat Agenda, Goals and Principles, Commitments and the Global Plan of Action, 27.

<sup>68</sup> Ibid, 39.

which include the following; Policies will be made to include adequate housing in national development programmes to ward off social inadequacies. Safety of tenure will be guaranteed by legislation. There will be no discrimination in provision of proper housing to citizens.

Such modes of construction will be promoted which will ensure the protection of surrounding natural environment. Equitable housing will be supported which shall cater to the needs of women, children, elderly and people with inabilities. Land management will also be upheld.<sup>69</sup>

#### **1.14.3 Third UN-Habitat Conference.**

The third UN Conference on housing was held as a result of a UN General Assembly resolution number 66/207. The third conference is an important step towards a new urban agenda. This conference was held in Quito, Ecuador in 2016. It suggested various ways and means to achieve the goal number 11 of the sustainable development goals i.e. to make cities and human settlements inclusive, safe, resilient and sustainable.<sup>70</sup> The conference discussed the implementation of new urban agenda by emphasizing the role of the local Governments and non-Governmental organizations.<sup>71</sup>

#### **1.15 JUSTIFICATION TO SELECT THIS TOPIC FOR RESEARCH.**

The present topic has been selected after due consideration of various factors. In particular, the following reasons have compelled me to undertake research in this matter so as to identify the defects and deficiencies due to which in spite of an

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<sup>69</sup> Ibid, 40.

<sup>70</sup> Wolfgang Amann and Sandra Jurasszovich, Habitat 3-Action Review of the New Urban Agenda; Housing Finance International, Spring 2017.

<sup>71</sup> Initiative for Habitat 111 John Papagni, INTA 40 Focuses on Habitat 111, Journal of Housing and Community Development, 2017.

immense potential of investment in the housing industry, the private sector has not been able to perform an effective role. The following reasons convinced to undertake this research to find out the solutions of the main issues faced by the legal framework of housing industry in Pakistan:

1. There is a short fall of 4.3 million housing units in the country and there is an annual demand of 5, 70,000 housing units as against supply of 3, 00,000 units. There is recurring annual shortfall of 2, 70,000 housing units each year.
2. Housing is the mother of all industries because due to housing activity 40 allied industries can be engaged and jobs to skilled and unskilled persons can be provided at a large scale.
3. Housing is one of basic necessity of life and according to Constitution of Pakistan 1973 it is the responsibility of Government of Pakistan to provide this necessity but due to its financial constraints it cannot do so without the help of private sector. The private sector is unable to play an effective role because the regularity legal framework instead of encouraging it is undermining the investment in the housing by private sector.
4. Deficiently, there is quite absence of research work on this very subject of housing in Pakistan, so, it is a pioneer effort on this topic.

The secondary objects of the thesis are to explore these aspects of the topic.

#### **1.16 RESEARCH PROBLEMS**

The present thesis is an attempt to find out the answers of the following questions.

- 1 Whether right to adequate housing can be claimed by the citizens of Pakistan as a fundamental right from the state?
- 2 What is nature of right to housing and its significance in the Legal Framework of Pakistan?



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- 3 What is the current legal framework regulating housing industry in Pakistan?
- 4 Whether the present legal framework relating to housing in Pakistan is keeping pace with the international law (UN Habitat Agenda)?
- 5 Whether legal framework of Pakistan is capable enough that it can achieve the goal of housing for all in comparison to rapid increase in population?
- 6 Whether the existing legal framework relating to housing in Pakistan is capable to check mal practices or it is a cause for undermining the performance of housing industry?
- 7 What are the issues and problems faced by the law enforcement/regulatory bodies, housing developers, investors and other stakeholders?
- 8 Whether the present practice of acquisition of land for housing societies is in accordance with international and national legislations?
- 9 Whether the present laws relating to registration of private housing companies are in accordance with Constitution or it is an unconstitutional practice?
- 10 Whether housing should be a part of fundamental right under the Constitution of Islamic Republic of Pakistan 1973 instead of principles of policy?

### **1.17 RESEARCH METHODOLOGY**

This research work depends on the studies of laws, rules, regulations, standards and guidelines, books contemplates, manual reports of regulatory authorities of housing industry to discover where the deficiencies and violations of the laws exists.

The research strategy which the researcher has chosen for the postulation is Investigative examination of the legal framework. Essentially, it is a library ponder

but in addition to reading books and articles the research has been done by visiting the housing societies in various cities of Pakistan. The researcher approaches National Library of Pakistan, library of National Judicial Academy of Pakistan, library of International Islamic University and Supreme Court of Pakistan.

The researcher has used data and information from various sources like articles, books, case laws, papers, research papers and electronic media as auxiliary sources.

- 1- A critical analysis of Legal Framework relating to housing industry in Pakistan has been done and suitable amendments have been suggested in the present Legal Framework in the chapter five of the thesis.
- 2- Review of existing legal framework (Acts/Rules/Regulations) relating to housing industry has been done in this thesis and it has been analyzed in depth.
- 3- The international best practices have been identified from the study of relevant literature of other countries i.e India, Singapore and Malaysia.
- 4- A comparison of above mentioned two aspects has been carried out to find out the defects and deficiencies of Laws relating to housing industry in Pakistan.
- 5- Interviews and discussions with stake holders including housing developers, Human rights organizations, Officers of housing departments, Officers of SECP, Officers of corporations, Officers of cooperatives housing societies and officers of FDA, LDA, CDA, Advocates, President of housing societies, Advocates and human rights activist has been conducted.
- 6- Based on the analysis of national and foreign laws and information

collected from stake holders, the practical implications of legal framework relating to Pakistan has been outlined and discussed.

7- Modifications have been recommended/suggested in the legal frameworks and practical working of various entities of three layers of the Governments as well as private entities have been discussed under these laws.

8- In this manner I have tried to make contribution in the reformation of present legal framework relating to housing industry in Pakistan.

### **1.18 HYPOTHESES OF THE THESIS**

Before the start of critical study of Legal Framework relating to housing industry of Pakistan these two assumptions have been laid down after detailed study it shall be decided which one the below mentioned assumption is correct one.

H<sub>1</sub>        The present legal framework relating to housing industry in Pakistan is sufficient and efficient enough that it can protect the legal rights of all the stake holders and the aim of housing for all can be achieved by it.

H<sub>2</sub>        The present legal framework relating to housing industry in Pakistan is not sufficient and efficient enough so, it cannot protect the legal rights of all the stake holders and the aim of housing for all cannot be achieved by it, so it needs to be strengthened and modified.

## 1.19 OUTLINE OF THE THESIS

This research thesis is divided into ten sections of chapters. Henceforward the research thesis will take the shape in line with the succeeding chapter-wise configuration:

**Chapter 1** is covering introduction, thesis statement, significance of the research, literature review, issues of the research problems, research methodology Housing according to the Islamic law, Need for Housing, Housing as a Fundamental Right, and Housing being a basic necessity of life as a fundamental requirement. This Chapter also contains an outline of the thesis, chapter-wise structure of the research thesis on the basis of scope of the study and problem formulation. This Chapter watches over the current scenario of the position of legal frame work relating to housing before becoming member of UN Habitat with the following provisions:

- i. Position of housing industry after UN habitat-1 (1976)
- ii. Position of housing industry after UN habitat-2 (1996)
- iii. Position of housing industry after UN habitat-3 (2016)
- iv. Backlog of legislation in Pakistan in relation to UN Habitat agenda

**Chapter 2** is on introduction to housing industry in Pakistan. This chapter contains an overview about the basic legislations and Constitutional provisions about housing industry in Pakistan. Introduction to Legal Framework relating to major housing developers in Pakistan have been discussed in it. Complete details about the formation, operation and role of the developers of the housing industry in provision of housing units. Legal Framework relating to the co-operative housing societies, private housing companies, Defense Housing Authority, Bahria Town, Real Estate Investment Trusts (REITs) and privately working Town Planners and Developers are

under argumentative discussions in this Second Chapter. It is also comparatively analyzing the legal framework of DHA, Bahria Town with private housing societies.

**Chapter 3** outlines the legal framework relating to housing industry in Pakistan. This Chapter starts with the introduction to Domestic Legal Frame Work Relating to housing industry. This Chapter also argues and comments on the qualifications and requirements for becoming a housing developer in Pakistani and the legal and corporate requirements have been discussed. In that pursuit this chapter discusses the procedure for the formation of cooperative housing societies, Private housing companies, the working of regulatory authorities (CDA, RDA, LDA, MDA, PDA etc. Real Estate Investment Trust (REITs). Other regulating and monitoring agencies of housing industry along with the Legal Framework under which they operate has been discussed in detail. This chapter also highlights the legal procedure for the formation of private housing companies, cooperative housing societies and private housing societies. For legal and corporate affairs this very Chapter analyzes the working and status of Securities & Exchange Commission of Pakistan how it regulates the affairs and functions of private housing companies registered under Company's Act 2017. For analysis, this chapter highlights the procedure adopted by the development authorities like CDA, RDA, and LDA etc. to start a housing scheme along with all the legal requirements. Monitor its own housing schemes and also monitor the private housing societies within the controlled areas for scrutiny. This chapter critically examines the working status of the authorities like Tehsil Municipal Administration (TMA) that are coordinating and monitoring the housing activities of private sector outside the control area of development authorities.

**Chapter 4** critically analyzes the Legal Framework pertaining to housing industry of Pakistan. This chapter investigates the major problems faced by the

housing industry within the domestic legal frame work, the acquiring of land for housing against the intention of legislature of Land Acquisition Act 1894, ambiguity in the legal framework of housing industry in determining the market value of the land being acquired for housing scheme, non-adherence to laid down pre-requisites for acquiring 90% land in advance before launching a housing scheme, the requisite land that is not acquired initially for launching a scheme vis-a-viz a number of applications, land acquired for the scheme is not consolidated rather scattered over a large area. This Chapter points out that instead of acquiring of the land as per law from actual owners it is purchased through so-called land providers i.e. middlemen (Agents/Land Mafia) and all sorts of tactics and pressures are used to get land from poor land owners at cheaper rates. This Chapter elucidates that mostly *Shamalat* land is obtained instead of *Malakiyat* land as a result of which litigation problems arise at the later stage, whereas, the land owners are compelled to sell their land to the societies at their terms by exploiting the contents of Land Acquisition Act 1894.

This chapter argues on the limitations, shortcomings and uncertainties of housing matter such as the illegal encroachment upon Government lands by the societies, the ambiguous procedure to determent market value of the land acquired for housing society, need to change the definition of public purpose in Land Acquisition Act 1894 on the pattern of India to include acquisition of land for housing activity within the definition of public purpose it, need to provide remedy to housing societies by providing a right of appeal against the award of compensation as a result of land acquisition and the absence of a single office to monitor housing societies. This also gets on the Constitutional embargo on Securities and Exchange Commission of Pakistan to regulate private housing societies; housing being a provincial subject and shifting of responsibilities by various Government departments due to in-clarity of

legal frame work is also discussed in this chapter. The unauthorized use of the name of the Government's Ministries to gain credibility, the lacuna in the registration of housing societies, the absence of precondition of land for registration of cooperative housing societies and the schemes are announced through print and electronic media in advance before acquiring/purchasing of the land are the burning subjects under discussion in this very chapter.

This chapter criticizes the present-day problems of public at large that is the general public is asked to register themselves initially by paying registration fee to become eligible so as to apply later for allotment of plots then applications are invited in much high numbers against the limited number of plots available for allotments. After inviting applications in bulk balloting is not done in a fair manner. Out of the way, the applied plots are required to be allotted on first come and first serve basis but instead of it housing societies resort to favoritism/nepotism. This process is followed in the case of plots reserved for low-income groups. Allotment is made through a letter without declaring plot number, street number and phase number, and size of plot is either changed or reduced subsequently without any cogent reasons. Some other relevant issues like non-auctioning of residential, commercial plots in open bids, multiple allotments of the same plot, low standard of town planning are under the arguments in this chapter along with the legalities and constitutionality of registration of private housing companies with Securities and Exchange Commission of Pakistan. Short fall of housing units due to challenges of accelerated urbanization and rapid increase in population and incapacity of the Legal Framework to tackle it is also discussed. This chapter brings together the reasons for housing short fall in urban areas and incapability of the legal frame work in managing housing short fall due to rapid urbanization, meeting housing short fall by adopting urban policies and plans,

improving housing short fall by improving urban land management and addressing urban sprawl are also important topics discussed in this chapter. This Chapter seeks for addressing housing short fall due to urban mobility challenge and improvement in technical capacity to plan and manage cities to provide housing units, sees the challenges experienced and lesson learned in land and urban planning which resulted in housing short fall and forecasts the future challenges and issues in the housing industry under a new urban agenda. Legal perspectives on the improving urban legislation to provide housing units, de-centralization and strengthening of local authorities and improving municipal financing to provide housing units are discussed in this chapter. This chapter is proposing the new ways for strengthening and improving access to housing finance and slum upgrading and prevention of homelessness, with the improving access to low income and adequate housing for middleclass and lower middle class.

Last but not least, this chapter also discusses whether housing should be a fundamental right under the Constitution of Islamic Republic of Pakistan 1973 or not. The legal jurisprudence regarding housing as a basic need has been discussed.

For theoretical framework of the research the supporting theories regarding fundamental rights to property and right to housing vis-a-vis the Theory of John Rawls, the concept of distributive Justice and the collective Justice are of main concern in this Chapter.

Whether Government of Pakistan should directly provide housing units to homeless citizens or the Government should play the role of the facilitator only by encouraging and regulating the private sector.

**Chapter 5** contains an introduction to housing industry; historical perspective of housing; international legal regime regarding housing industry; Legal Framework



of Pakistan regarding housing industry; critical appreciation of existing Legal Framework and Conclusions and Recommendations to strengthen the existing Legal Framework relating to housing industry in Pakistan.

whole situation the general public is suffering. According to UN Habitat agenda housing for all is the goal of Pakistan but under this situation it has become a dream only.

It is however becoming an increasing source of concern that despite the presence of requisite rules and regulations, the monitoring and enforcement mechanism is somewhat not robust enough to curb the long list of irregularities being seen to be more and more frequent. Following are the major developers of the housing industry which are a means to provide housing units to the people of Pakistan under the Legal Framework relating to housing industry of Pakistan.

## **2.1 MAJOR HOUSING DEVELOPERS DOING HOUSING ACTIVITY IN PAKISTAN**

Housing activity is being performed mainly by these housing developers in Pakistan.

- i.** Cooperative Housing Societies.
- ii.** Private Housing Societies.
- iii.** Housing Societies of Private Sector Regulated by The Regulatory Authorities.
- iv.** Real Estate Investment Trusts (REITs).
- v.** Defense Housing Authority (DHA).
- vi.** Bahria Town Housing Society.
- vii.** Kachi Abbadis.
- viii.** Government Sector as Developers of Housing Industry.
- ix.** Government as Developer of Housing Societies.

## **2.2 THE CONCEPT AND ROLE OF COOPERATIVE HOUSING SOCIETIES TO ACHIEVE THE GOAL OF HOUSING FOR ALL.**

The cooperative movement is now considered as a best tool to eliminate poverty and to meet the basic needs like housing. Cooperative housing societies are very helpful to provide housing units to major population (middle class and lower middle class) on affordable prices. The affordable housing has been defined in these words by the Victorian enactment, affordable housing is housing including social housing that is appropriate for the housing needs of the following, very low-income households, low-income households and moderate-income households.<sup>74</sup>

It can help to mobilize the scattered human and financial resources to achieve the goal of housing for all. Cooperative housing societies have helped to promote the process of economic and social development through group action in a spirit of self-help and common good. The cooperative housing societies are working under Cooperative Societies Act, 1925. Their guiding principle is no profit no loss basis. It is a country wide huge sector and had been doing a good job.

But now some unscrupulous people have tried to use the same for illegal profiteering. It has been observed over a period of time that some of them have indulged in unhealthy activities and betrayed the confidence of their members. Whenever land is to be transferred in the name of cooperative housing society it should be done after proper identification of the land. Demarcation of land in the absence of survey and identification of land in the area is not valid if it is done on the basis of dasti sketch (handmade/manual) and after its possession of the land is handed over. Such dasti sketch without demarcation of land without measurement of land

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<sup>74</sup> Housing Affordability and other Matters Bill 2017, Section 3AA, [www.google.com](http://www.google.com). Visited on 1-12-2017.

could not indicate the location of the exact piece of land. Whenever land is to be transferred in the name of cooperative housing society it should be done after proper identification of land.<sup>75</sup>

Cooperative in the modern sense is since the people of Rockdale, England, founded their Cooperative Societies in 1844<sup>76</sup>. In the United States of America the affordable cooperative housing movement was started when funds were provided by the ethnic groups and then in the nineteen twenties when funds were provided by the union pension funds. In 1980's cooperative housing societies in USA also relied on public subsidy to providing basic necessity of housing.<sup>77</sup>

### **2.2.1 Principles of Cooperative Housing Societies.**

Following are the principles on the basis of which cooperative housing societies are working in Pakistan.

#### **2.2.1.1 Principle of Voluntary and Open Membership.**

Cooperative housing societies are the voluntary organizations which are open to all the persons who can use their resources and services and who are willing to accept the responsibilities of membership, without the difference of gender, social, racial, political or religious differences.<sup>78</sup>

#### **2.2.1.2 Principle of Democratic Member Control.**

All the members of the cooperative society have voting rights on the basis of their votes the people getting the highest votes get the mandate to run the affairs of the

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<sup>75</sup> Sindh Board of Revenue Employees Co-Operative Housing Society Vs. Government of 2016, YLR Sindh 1699.

<sup>76</sup> www.google.com visited on 1, 3, 2017.

<sup>77</sup> Lessons from the history of affordable housing cooperatives in the United States: A case study in American affordable housing policy, Gerald W. Sazama, The American journal of economics and sociology, Volume 59, No4, 2000, Pages 573-608.

<sup>78</sup> www.punjab.gov.pk, visited on 10-07-2017.

cooperative housing society. The management of the cooperative housing society is answerable to the members of the society.

#### **2.2.1.3 Principle of Member Economic Participation.**

Each and every member of the cooperative housing society contributes for the cooperative housing society. The society earns profit and some portion of the profit is retained in the shape of reserves and the remaining portion of the profit is used for the promotion of purposes of the cooperative society.

#### **2.2.1.4 Principle of Autonomy and Independence.**

The members of the cooperative societies run all the affairs of the society themselves within the limits set by the relevant laws and rules of the cooperative housing society.

#### **2.2.1.5 Cooperative housing societies are autonomous institutions.**

Cooperative housing societies enter into agreements with other organizations and Government on its own. If these housing societies raise capital from the external resources it is done so on the basis of democratic principle.

#### **2.2.1.6 Principle of Education, Training and Information.**

Cooperative societies provide education and training for their members and elected representatives, managers and employers so that they can work efficiently for the cooperative housing societies.

#### **2.2.1.7 Principle of Cooperation among Cooperatives.**

These societies help the members of the community by providing help to each other at various levels to resolve the social issues faced by the members of these societies including right to have housing units for the members.<sup>79</sup>

#### **2.2.1.8 Principle of Concern for The Community.**

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<sup>79</sup> Dr. Muhammad Naseem Javed Vs Lahore Cantonment Housing Society, Through Secretary Fortress Stadium, Lahore, PLD 1983 Lahore 552.

These societies work on the basis of the principle of self help to resolve the issues faced by the society to alleviate their problems.<sup>80</sup>

### **2.2.2 Origin of Cooperative Societies.**

These societies were started in the 1850 in the Western countries. In India this concept was introduced after the enforcement of the Cooperative Credit Societies Act, 1904 the basic purpose of this enactment was to enable the agriculturist to raise funds from their own resources by forming various societies. In the start the scope of the societies was very limited and the purpose was to save the agriculturist from the exploitation of the money lenders and to raise funds from their joint efforts. Due to limited scope these societies could not play an effective role so a need was felt to widen the scope of these societies. To widen the activities and to make more effective the device of societies another enactment was introduced under the name and style of Cooperative Societies Act, 1912 was introduced. This new enactment proved catalyst for the cooperative societies to help the people in other areas as well.

After that came Government of India Act 1919, due to this enactment a system of decentralized powers was introduced to transfer powers to the provincial governments including the system of management of the cooperative societies. Various provincial Governments decided to enact their own provincial cooperative legislations. Bombay Cooperative Societies Act of 1925, is notable to mention here which was introduced and applied by the provincial Government of Bombay, which continued to remain enforced in the province under the Provincial Autonomy. After 1947 this Act was continued to be enforced in Pakistan and after that when one unit was created by the Government of President Ayub Khan this Act was

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<sup>80</sup> WWW.ICA.COOP visited on 6, 5, 2018.

applied throughout the province of West Pakistan. As compared to the Act of 1912 this piece of legislation contained many modifications to regulate the affairs of the cooperative societies in a better way.<sup>81</sup>

### **2.2.3 Basis of Cooperative Housing Societies.**

Human beings are social by nature so this necessity them to collectively resolve collective issues. The resolution of many major crisis faced by the human beings indicates that in the past human beings used to resolve major problems by joint efforts. Teachings of all religions including Islam also mentions about Cooperation most vividly. "O People of earth cooperate and be helpful to each other for good cause". History has proved that cooperation in the shape of cooperative societies has proved very helpful to resolve all issues faced by the human beings including food, shelter and clothing.<sup>82</sup>

Human beings can sit together in the form of a Cooperative Society to pool their efforts and resources to resolve collective problems which is not possible by individual efforts. Collectively by working in the shape of cooperative housing societies they can achieve the common goals and they can resolve other social issues faced by the society. The institution of cooperative housing societies has helped the members of the society to undertake such projects which can not be undertaken by the individuals due to lack of economic resources and lack of vision on the part of a single person. The very nature of human beings being a social animal demands them to work together in the form of cooperative housing societies. The best example of this

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<sup>81</sup> Punjablaws.gov.pk, Visited on 12-07-2016.

<sup>82</sup> Manzoor Ahmed, Cooperative Housing Problems, The Nation 28-4-2016.

cooperation and collectivism can be seen at the time of construction of housing society for the members of the cooperative housing society. In which human beings pool their resources to purchase the raw material of construction of housing units at a cheap rate and then perform housing activity by purchasing site for the housing society below the market value by taking advantage of economies of scale.

#### **2.2.4 Management of The Cooperative Housing Societies.**

All the affairs of the cooperative housing society are run by the management committee of the cooperative housing society. The members of the management committee are elected by the members of the housing society. This is a perfect example of democracy in which the person getting the highest votes get a right to work and represent the members of the housing society and take decisions on behalf of the members and for the welfare of the housing society. The fate of the housing society depends on the performance of the management of the housing society.<sup>83</sup>

In the shape of an external check and balance there is a cooperative department at each provincial level to look after the affairs of the cooperative housing societies in all the provinces. These departments keep an eye on the matters from the election of the management of the housing societies till the working and liquidation of the housing societies. Cooperative societies are formed for various purposes to resolve the various social issues faced by the society. In Pakistan today the cooperative societies are registered under the Cooperative Societies Act 1925 and Cooperative Societies Rules, 1927. These enactments are applicable to the cooperative housing societies.

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<sup>83</sup> Cooperative Societies Act 1925, Section 47, Cooperative Societies Laws in Pakistan, Fifth Edition, PLD Publishers, Lahore, 2015.



### **2.2.5 Functions of Cooperatives Department.**

Following important functions are performed by the Cooperative department for the development of the Housing industry of Pakistan.

#### **2.2.5.1 Administrative Functions Performed by the Cooperative Department.**

Following functions are performed by the cooperative department in its administrative domain:

#### **2.2.5.2 General Administration over Cooperative Housing Societies.**

Just like other cooperative societies, cooperative housing societies are also registered and regulated under Cooperative Societies Act 1925 and Cooperative Societies Rules 1927. Cooperative housing sector has played a dynamic role in providing the basic necessity of housing for all in Pakistan. To register, regulate and ensure working of the cooperative housing societies is the main responsibility of the cooperative department.<sup>84</sup>

#### **2.2.5.3 Policy Formulation to Achieve the Goal of Housing for All.**

Introduction of new policies in the light of UN Habitat agenda and to overview and monitor the policies framed from time to time is also done by the Cooperative department.

#### **2.2.5.4 Implementation of Cooperative Laws on Housing Societies.**

In order to ensure the implementation of the Cooperative Societies Act 1925 and Cooperative Societies Rules 1927, each provincial Government has appointed one person as registrar of cooperative societies including housing societies and he is assisted by various other officials who are also appointed by the Government to

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<sup>84</sup> [www.punjab.gov.pk](http://www.punjab.gov.pk), visited on 12-05-2017.

perform the work assigned to them by the registrar from time to time.<sup>85</sup> Although the registrar and under him some officials have been appointed to decide the matters of the housing societies by following the special law in the shape of Cooperative Societies Act 1925 and Cooperative Societies Rules 1927.

The powers exercised by the Registrar under the above said enactments are not unlimited as higher judiciary keeps a check and balance on the powers of the Registrar in the shape of Article 199 and Article 184(3) of the Constitution of Islamic Republic of Pakistan 1973. It was held by the court that when no specific power has been given to the assistant registrar, the orders passed by the assistant registrar for the attachment and sale of the property of the housing society are of no legal effect.<sup>86</sup>

#### **2.2.5.5 Formulation of Rules & Byelaws to Regulate Affairs of the Cooperative Housing Societies.**

Although liberty has been provided to the cooperative housing societies to frame their bye laws to run day to day affairs of the cooperative housing societies but where the bye laws of any cooperative housing society are against any law or against the interest of the cooperative housing society the registrar of the cooperative societies after giving an opportunity of hearing to the society concerned can amend the bye laws.<sup>87</sup>

It shows that Government has put a constant check and balance on the activities and bye laws of the housing societies and these societies do not enjoy unbridled powers.

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<sup>85</sup> Cooperative Societies Act 1925, Section 4, 1<sup>st</sup> Edition, Imran Law Book House, Lahore, 2015.

<sup>86</sup> Muhammad Talat Ali Vs Registrar Cooperative Housing Societies, 1991 CLC 173.

<sup>87</sup> Ibid, Section 16-A.

If any cooperative housing society considers itself as an aggrieved from the order passed by the registrar about the bye laws of the cooperative housing society it can file an appeal against the order of the registrar to provincial Government within two months.<sup>88</sup>

In order to supplement the Cooperative Societies Act 1925 the provincial Government has powers to formulate rules which would deal with these matters, the limit of maximum numbers of shares which can be held by a member of a society,<sup>89</sup> form and conditions for the registration of a cooperative housing society,<sup>90</sup> the matters of the housing society about which bye laws should be formulated and the manner of making, altering and abrogating the bye laws,<sup>91</sup> bye laws to conduct election and conditions to become member and precondition for becoming a member,<sup>92</sup> matters regarding meeting,<sup>93</sup> standards regarding land use and environment related issues<sup>94</sup> and other such matters which are necessary to run day to day affairs of the cooperative housing society.

Section 71 of the Act empowers the Government with the powers to frame rules which may authorize the supersession of a committee of a housing society as a whole.<sup>95</sup> These rules provide very wide powers to the provincial Government to get rid from the whole committee if the committee is working against of the cooperative housing society.

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<sup>88</sup> Ibid, Section16-A (3).

<sup>89</sup> Ibid, Section71 (a).

<sup>90</sup> Ibid, Section71 (b).

<sup>91</sup> Ibid, Section71 (c).

<sup>92</sup> Ibid, Section71 (d).

<sup>93</sup> Ibid, Section71 (f).

<sup>94</sup> Ibid, Section71 (hh).

<sup>95</sup> Muzaffar Ali Shah Vs Registrar Cooperative Housing Societies, PLD 1968 Karachi 422.

As these rules have been framed to achieve the objects of the Cooperative Societies Act 1925 so these rules are in the nature of delegated legislation or subordinate legislation so these cannot be against the Cooperative Societies Act 1925.<sup>96</sup> As these rules are of general in nature meant to deal the affairs of all kinds of cooperative societies including cooperative housing societies. There is a need to introduce some provisions of the specific nature to deal and regulate the raising of construction by the members of the cooperative housing societies after allotment of plots. The best solution is to enact a new self-contained law to regulate the all the affairs of the cooperative housing societies at each provincial level. It was held by the apex court of Pakistan when house constructed in the Railway Employees Housing Society was demolished by Municipal Corporation Faisalabad that the approval of the Housing society as well as the construction plan is vested in the Municipal Corporation and if this approval is granted. After the grant of approval, the members are bound to follow the land building rules. So, it was rightly demolished by the Faisalabad Corporation.<sup>97</sup>

There is a need to add some specific provisions in the rules to regulate the raising of construction in all the cooperative housing societies of Pakistan by all the Provinces. In the present condition the rules are just silent on this point, so, inspiration can be taken from the rules of DHA which provides guidance on each and every step of the construction in DHA.

#### **2.2.5.6 Education and Training of the Members of The Cooperative Housing Societies.**

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<sup>96</sup> Federal Mutual Cooperative Housing Society Vs Shamin Afza, 1987 CLC 1235.

<sup>97</sup> Bashir Ahmad Shaik Vs Municipal Corporation Faisalabad, 2016 SCMR 1134.

As the members of the cooperative housing societies work on the basis of voluntary self-help so in order to perform the functions of the society training is provided by the Punjab cooperative department as well as by the members to their fellow members.

#### **2.2.5.7 Judicial Functions of The Cooperative Department.**

Following are the judicial functions of the cooperative department.

##### **2.2.5.7.1 Settlement of Disputes through Arbitration.**

If any dispute about the business of a society arises between present members or past members of the cooperative housing society or between housing society and past and present members instead of referring the matter to the civil court a special forum i.e. arbitration has been provided which shall be consisted of registrar or his nominee and two arbitrators (one from each side).<sup>98</sup>

Provisions of section 54 of the Cooperative Societies Act 1925 does not speak of any dispute between cooperative housing society on the one hand and an outsider on the other hand.<sup>99</sup> Award by the arbitrator and not the nominee of the registrar for arbitration could be questioned under section 56 of the Cooperative Societies Act 1925.<sup>100</sup> In order to refer the dispute to the arbitration the business which a particular society does is to be ascertained with reference to the object of the society as mentioned in the objects of the society.<sup>101</sup>

When the housing society refused to accept the delayed last installment of the plot and refused to execute the sale deed. High court directed the housing society to

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<sup>98</sup> Ibid, Section 54.

<sup>99</sup> Mst. Aisha and others Vs K.M.C, seceded by City District Govt. Karachi, 2005 YLR 175(A).

<sup>100</sup> Muhammad Jamil Vs Chief Settlement Commissioner, Lahore, 2005 YLR 252.

<sup>101</sup> Muhammad Hamidullah Ansari Vs Zubaida Sharif, PLD 2002 Karachi 414.

accept the last installment and execute sale deed.<sup>102</sup> Jurisdiction of the civil court is excluded in the matters which are to be decided by the arbitrators as prescribed by the Act or cooperative rules or by the bye laws of the cooperative housing society.<sup>103</sup>

Whenever there is a dispute regarding any housing society and one party has failed to appoint his arbitrator then the registrar shall appoint arbitrator on behalf of that party and registrar or his nominee shall act as chairman of the committee of arbitrators who are required to decide the matter in two months.<sup>104</sup> The award of the arbitration being an appealable order under section 64 of the Cooperative Societies Act 1925 is not liable to constitutional petition directly with few exceptions.<sup>105</sup>

When there is dispute among the parties i.e. the present and former parties of the cooperative housing societies regarding the ownership of the plot, the matter comes under the purview of section 54 of the Cooperative Societies Act 1925; rejection of the plaint by the civil court is in accordance with law. Suit in such cases is barred by section 54 and section 70-A of the Act.<sup>106</sup> Respondents allotted plots prior in time in accordance with evidence on record but kept out of the possession for a period of thirty years. High court after examining the whole record held the entitlement of plot on merits, the petition was dismissed.<sup>107</sup> Cancellation of plot in the society on failure of the owner to construct the plot within stipulated time period and

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<sup>102</sup> Shahzad Riaz Vs Federation of Pakistan ,2006 YLR 236.

<sup>103</sup> Muhammad Azim Vs Pakistan Cooperative Housing Society Ltd, PLD 1985 Karachi 481.

<sup>104</sup> Haji Gul Vs Registrar Cooperative Societies, Karachi, PLD 1985 Karachi 348.

<sup>105</sup> Government of West Pakistan Vs Wali Muhammad Habib, PLD 1961 SC 215.

<sup>106</sup> Abdul Khaliq Doosani Vs Mst. Farida Saba, 2003YLR 2216.

<sup>107</sup> Ali Seleman Jafri Vs Secretary Government of Wes Pakistan Cooperative Department, PLD 1983 Karachi 315.

fresh allotment of the plot to a new person without giving an opportunity of hearing to the original owner is liable to be set aside.<sup>108</sup>

Contention that Government had already executed lease in favor of some of the respondents could not be decided in constitutional petition as respondents whose interest was involved had not cared to challenge the award.<sup>109</sup> The order of the registrar for the cancellation of the plot allotted by the ex-registrar in clear violation of the bye laws of the cooperative housing society was challenged in the High Court. The plot was allotted at the rate of rupees 8 per square fit on the land reserved for the amenities of the society. The order of the ex-registrar was confirmed by the minister. In the constitutional petition the orders of the two authorities were set aside by the High Court.<sup>110</sup>

Plot in question having been allotted to respondent on 10.1.1960, could not be cancelled on 18.6.1972 on the plea that he could not raise construction on it. Allotment in favor of respondent having been restored allotment to restoration of same was of no legal effect. The plot was to be allotted to the original owner.<sup>111</sup> Suit for restraining defendants from changing nature of plot in question from residential to commercial plot and after that from raising construction of marriage hall thereon was filed. Provisions of the sections 54, 70 and 70-A of the Act relates to dispute touching the business of the society. Suit of the plaintiff as well as injunction application is not bar and maintainable in these circumstances.<sup>112</sup>

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<sup>108</sup> Sh. M Sharif Vs Lahore Improvement Trust, PLD 1959 Lahore1, Sheikh Yousaf Vs District Judge Rawalpindi, 1987 SCMR 305.

<sup>109</sup> Firdus Cooperative Housing Society Ltd Vs Secretary Labour and Cooperative Dept. Govt. of Sindh, 1987 CLC 1457.

<sup>110</sup> Messers. Bahadur Yar Jang Vs Malik Muhammad Salim, 2005 YLR 2423.

<sup>111</sup> Ali Imran Vs Multan Development Authority, 1997 CLC 85.

<sup>112</sup> Ardshir Cowasjee Vs M. Naqi, PLD 1993 Karachi 631, Multiline Associates Vs Ardeshir Cowasjee, 1995 SCMR 362.

Suit against the cooperative housing society was filed by the plaintiffs for restraining the housing society to hold elections of the society. Statutory notice was served to the society but the suit was filed before the expiry of two months after service of the notice which is a mandatory requirement under section 70 of the Act. The suit filed and injunction application by the plaintiffs/members of the society was not maintainable. The parties were referred to settle the dispute through arbitration.<sup>113</sup> Petitioners not being members of the cooperative housing society were joined as a party to arbitration proceedings in a reference initiated by the registrar. Provision of section 5(a), Cooperative Societies Act 1925 clearly showed that any member or past member of the society could be joined as a party to arbitration proceedings.

Petitioner being successors of the founder of the cooperative housing society and claiming through him were rightly joined as a party to arbitration proceedings.<sup>114</sup> Plaintiff/member in the present case had claimed that he had purchased the flat in dispute through a benami transaction. Determination of a transaction as benami was not within the scope of the business of the society but rested squarely within the domain and jurisdiction of a civil court.<sup>115</sup> Stay of arbitration proceedings through temporary injunction without first determining competency of suit in view of bar against suit in section 70(A). High court by disposing off the revision petition against

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<sup>113</sup> Jamila B. Naimat Vs Abdul Waheed, PLD1981 Karachi 138, Sindh Balochistan Provincial Cooperative Bank, Karachi Vs Dilawar Khan, PLD 1970 Karachi 200, Lahore Cantt Cooperative Housing Society Ltd Vs Messers Builders and Developers Pvt Ltd, PLD 2002 SC 660.

<sup>114</sup> Karashiddayya Shiddayya Bennur Vs Shree Gajanan Urban Cooperative Bank Ltd and others, AIR 1943 Bom 288, Syed Zainuddin Qadri Vs Registrar Cooperative Societies Hyderabad Sindh, 1995 MLD 280(a).

<sup>115</sup> Amir Ali Hussain Shalwani Vs Ismaili Masulwal and others, 2001 YLR 2537.



stay directed the trial court to treat the competency of the suit as a preliminary issue and then proceed further.<sup>116</sup>

Petitioner and her husband applied for the allotment of plots in the cooperative housing society. Both of them were entitle to get plot in the cooperative housing society. Cooperative housing society refused to make allotment of plot to both. Writ petition was filed against the housing society. It was directed by High Court to join arbitration proceedings to resolve the matter as per law. No writ could lie in the presence of an alternative and efficacious remedy like arbitration.<sup>117</sup> In order to decide the cases speedily and to avoid the costs of the members of the housing societies a special procedure has been introduced in the Cooperative Societies Act 1925.

#### **2.2.5.8 The Concept of Appeals and Revisions.**

In order to speedily decide the cases of the cooperative housing societies following remedies are available.

##### **2.2.5.8.1 Appeal Against Award of The Arbitrator.**

In order to protect the valuable rights of the members of the cooperative housing societies a remedy in the nature of appeal has been provided which is filed against the decision of the registrar under section 54 or sub-section (3) of section 54-A or an order passed under section 55 by the nominee of the registrar within a time period of 30 days from the date of order to the registrar of the province.<sup>118</sup> High court

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<sup>116</sup> M/S National Industries Ccooperation Finance Corporation Vs Soofi Fazal Deen, NLR 1992 CLJ 230.

<sup>117</sup> Mst. Khadija Qurtain Vs Federal Govt. Employees Housing Foundation, 2015 MLD 1447.

<sup>118</sup> Ibid, Section 56.

dismissed Constitutional petition being incompetent with observation that petitioner could file appeal before appellate forum under relevant law i.e. section 56 of the Act along with application under section 5 of the Limitation Act for condonation of delay and the appellate forum should take into consideration the explanation in the matter and would hear appeal on merits.<sup>119</sup> The ancestral land of the petitioner was ordered to be sold for the satisfaction of award against his brother, without any notice. Order affecting rights and interest of the petitioner was passed without hearing him. Such order was a nullity in the eyes of law.<sup>120</sup>

#### **2.2.5.8.2 Appeals Against the Orders of The Registrar.**

The decision of the registrar is not final in relation to decision of the valuable rights of the members of the cooperative housing societies can file an appeal to provincial Government within a time period of 60 days.<sup>121</sup> This appeal has been provided in matters of registration, amendment of the bye laws of the society, order passed regarding costs of the inquiry, recovery of costs, powers of a liquidator, order passed by the registrar to assess damage against delinquent promoters, and orders passed under section 5 or sub section (3) of section 54A of the Act. On behalf of the provincial Government the jurisdiction of secretary Cooperative to hear appeals against the orders passed by the registrar has been provided.<sup>122</sup>

For admission of the appeal a tentative assessment shall be made whether the appellate party has a prima facie case or not.<sup>123</sup> Grievance arising out of the exercise of powers by the departmental authorities under Cooperative Societies Act 1925 must

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<sup>119</sup> Sultan Mahmood and Others Vs Registrar Cooperative Societies, 1988 CLC 2177.

<sup>120</sup> Ghulam Nabi Vs Secretary Cooperative Housing Societies, 1989 MLD 4732.

<sup>121</sup> Ibid, Section 64.

<sup>122</sup> Punjab Cooperative Board of Liquidation Lahore Vs Messers Avanti Ltd through D.G, 2005 CLC 943(d).

<sup>123</sup> Managing Committee Revenue Employees Cooperative Housing Society Rawalpindi Vs Govt. of Punjab through Secretary Cooperative Department, 2001 CLC838.

be brought under challenge before appellate/provisional authorities provided under the Act. The parties should not move directly to High Court in the Constitutional jurisdiction and Constitutional jurisdiction in such situation is not maintainable.<sup>124</sup>

Where petitioner was acting as an agent of the cooperative housing society the matter squarely fell within the provisions of section 54 of the Act and orders passed under section 54 of the Act are liable to appeal under section 64 of the Act. Constitutional petition in these circumstances is not maintainable.<sup>125</sup>

#### **2.2.5.8.3 Revision Against the Orders Passed by The Officers of The Cooperative Department.**

In order to put a constant check and balance on the administration of the Cooperative department, each provincial Government as well as the registrar of the province may call the record of the decision or an order passed by any officer or authority subordinate to registrar to modify, annul or reverse the order or decision passed by any officer of the cooperative department.<sup>126</sup>

This provision is very useful to check the corrupt and malpractices within the cooperative department. In those cases where no right of appeal is available or right of appeal is available but no appeal has been filed, in all such cases the Government can put check and balance on the staff of the cooperative department.

The powers available to the provincial Government and to the registrar of the cooperative department are in the nature of suo moto powers of the superior judiciary. This section contemplates the scrutiny or proceedings pending before the subordinate or departmental enquiry or proceedings pending before the subordinate officer. It has

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<sup>124</sup> M Younas Vs Registrar Cooperative Housing Society Lahore, 1999 YLR 2637.

<sup>125</sup> Muhammad Azim Vs Employees Cooperative Housing Society Ltd, PLD 1985 Karachi 481.

<sup>126</sup> Ibid, Section 64-A.

no application to cases in which arbitration proceedings are going on. Under the Act the procedure to challenge the arbitration proceedings has been provided.<sup>127</sup>

Order of refusal to register society passed by the registrar in spite of order of secretary cooperative department in appeal was challenged in High Court. Refusal was held to be without jurisdiction. High court issued direction for the registration of society in accordance with law.<sup>128</sup>

Arbitrators giving award under section 54 of the cooperative society were not officers subordinate to the provincial Government or to the registrar of cooperative department.<sup>129</sup>

Contention was that secretary cooperative should have treated the appeal as revision under section 6-A, if the appeal was not maintainable. High Court has interpreted that a statutory authority was not bound to convert a proceeding incompetently filed before him so as to bring the same within his competence by giving recourse to all the powers that may be available to the cooperative authority.<sup>130</sup>

Registrar of the cooperative department had passed an order qua the election process of the cooperative housing society. Registrar of the cooperative department being a subordinate officer to Secretary of the cooperative department revision was validly filed and there was no illegality in the exercise of the powers. Petitioners were well within their limits to avail their rights.<sup>131</sup>

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<sup>127</sup> Sheikh Hyder Vs Registrar Cooperative Housing Society Karachi, PLD 1966 (w.p) Karachi 177.

<sup>128</sup> M/S Kisaf Cooperative Credit Corporation Ltd Vs Govt. of Punjab, Law Notes 1988 Lahore 1014.

<sup>129</sup> Defence Housing Authority, Lahore Vs Secretary to Government of Punjab, PLD 2006 Lahore 443.

<sup>130</sup> Syed Nadeem Kazmi Vs National Accountability Bureau, Islamabad, PLD 2008 Lahore 105.

<sup>131</sup> Messers. Kisan Cooperative Credit Corporation Vs Govt. of Punjab, 1988 CLC 744.

Jurisdiction under section 64-A is provisional as well as supervisory and superintending in its nature vis -a- vis any proceedings.<sup>132</sup> Order passed on application under section 54 cancelling allotment of plot. It is open to interference and it can be challenged under section 64-A of the Act.<sup>133</sup> Power under rule 6-A is not exclusively judicial or quasi-judicial power but it is also executive supervisory power. It can be assigned by the provincial Government to any officer.<sup>134</sup> Decision in appeal by the Secretary on behalf of provincial Government is not open to review.<sup>135</sup>

Lease of housing colony was cancelled but no opportunity of hearing was granted to the lessee/allottee. It was against the principle of natural justice. Section 64-A is not applicable in such a situation, this provision could not be extended or made applicable to the cases of arbitration proceedings in which award had already been made and upheld in appeal. Cooperative housing society had already accepted the award in appeal. Earlier award given by the registrar of cooperative housing society was restored.<sup>136</sup>

#### **2.2.5.9 Regulatory Framework Relating to Cooperative Housing Societies.**

Legal & Administrative framework as prescribed in Cooperative Societies Act, 1925 and Cooperative Societies Rules 1927 which governs the conduct and operation of Cooperative Housing Societies is as follows.

##### **2.2.5.9.1 Cooperative Societies Act 1925.**

Organize Cooperative Movement under Cooperative Societies, Act, 1925 under this Act the provincial Government appoints registrar to regulate the working of

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<sup>132</sup> Subshine Biscuits Pvt Ltd Vs Secretary to Govt. of Punjab Cooperative Dept. 1987 CLC 1659.

<sup>133</sup> Ahmad Addus Salam Vs Anwar Elahi Etc, NLR 1983 CLJ 203.

<sup>134</sup> Karachi Cooperative Housing Societies Union Ltd Vs Govt. of Sindh, NLR 1990 Kar. 639.

<sup>135</sup> Quetta Cooperative Housing Society Vs Province of Balochistan, PLD 1978 Quetta 174.

<sup>136</sup> Abdul Haq Vs Thakumal and 4 others, 2017 YLR 1816.

the cooperative societies including cooperative housing societies and to assist the registrar to regulate the working of the cooperative housing societies a team is also appointed by the respective provincial Governments for smooth working. Registrar and lower staff of the registrar performs following powers:<sup>137</sup>

These functions are performed by the registration office; registration of all types of Cooperative Societies including Housing Societies, monitoring of all affairs of Cooperative Housing Societies, to conduct Audit, inspection and enquiry in to the affairs of the housing authorities, adjudication of judicial matters as a civil court, fixation of liabilities in case of irregularities and recovery of amount for which decree has been passed and to grant approval of the budget of Society.

Registrar can seek any information about the working of the housing society from time to time to check the working of the cooperative housing society. Registrar can issue notice to get any document relating to the working of the cooperative housing society the registrar may issue search warrant to search the premises of the cooperative housing society. This step is taken after issuance of a show cause notice and on receiving of a non satisfactory reply this extreme step can be taken by the registrar of the province under the code of criminal procedure.

#### **2.2.5.9.2 Cooperative Societies, Rules, 1927.**

Under these rules Registrar/Circle Registrar cooperative departments process and approve registration of a society under some of its byelaws. The major/important rules with regard to processing and approving are as under: Application for registration under the Cooperative Societies Act, 1925. Formulation of byelaws for

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<sup>137</sup> Complete manual of the cooperative society's laws in Pakistan, section 4, 1<sup>st</sup> Edition, Imran Law Book House, Lahore, 2015.

the following, the name, address and area for which society is to be registered, the object of society, the mode of holding meetings, the mode appointment and removal of members of the committee, the duties and powers of the committee and officers, the manner in which capital may be raised, the mode of custody, investment of funds and keeping accounts, Period of election of the society.<sup>138</sup>

#### **2.2.5.10 Registration of Cooperative Housing Societies.**

Cooperative housing societies are registered under Section 10 of the Cooperative Societies Act 1925 read with rule 2 of the Cooperative Societies, Rules 1927. After receiving the application under the above said two enactments, the registrar cooperative department examines the application for formation and approves or disapproves the application for the registration of the cooperative housing society.

#### **2.2.5.11 Holding of Annual General Meeting of The Cooperative Housing Societies.**

Every cooperative society should hold a meeting within a period of three months from the date of making up of the accounts shall call a meeting of its members.<sup>139</sup>

#### **2.2.5.12 Holding of Special General Meeting of The Cooperative Housing Societies.**

Special general meeting may be called on the resolution of twenty percent members of the society or by the registrar of the cooperative societies within one month of the requisition.<sup>140</sup>

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<sup>138</sup> Ibid, Section 9(1).

<sup>139</sup> Cooperative Societies Act 1925, Section 12, 1<sup>st</sup> Edition, Imran Law Book House, Lahore, 2012.

<sup>140</sup> Ibid, Section 13.

### **2.2.5.13 Constitution of Managing Committee and Powers of the Committee.**

All the members of the housing society are members of the general body and there is a managing committee which is constituted in accordance with the rules and byelaws to perform the functions delegated to it by the general assembly.<sup>141</sup> The powers of the cooperative society are exercised by the managing committee and the whole business of the society is also conducted by the committee in accordance with the Act, Rules and bye laws of the cooperative housing society.<sup>142</sup>

### **2.2.5.14 Restrictions on transfer of shares or interest in the Cooperative Society.**

There are some conditions for transferring the share in the society by the member of the society that he should hold it for a period of one year and the person who wants to get the share should not exceed the maximum limit of share fixed by the Act, Rules and bye laws.<sup>143</sup>

Suit for specific performance of agreement to sell plot to defendant in cooperative Housing Society was filed. Suit was decreed by the courts below. Contention of defendant was that such agreement was void and unenforceable due to restriction placed by section 19(2) of the cooperative Societies Act 1925 and bye law 17(3) of bye laws of Lahore Cantonment Cooperative Housing Society. Defendant in preliminary objections had only asserted that agreement was void and unenforceable but had not even indirectly pleaded such bar. Supreme Court did not allow the

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<sup>141</sup> Ibid, Section 18-A.

<sup>142</sup> Ibid, Section 52.

<sup>143</sup> Ibid, Section 19.



defendant to raise this objection for the first time in appeal and disallowed the appeal.<sup>144</sup>

Bar placed on transfer of plot to nonmember would not be applicable to a person whose application for membership had been accepted by the society.<sup>145</sup>

Where a person is a member of a cooperative housing society and such person is a tenant of premises allotted to him, he has no saleable interest or any disposing power within the meaning of section 60 of code of civil procedure. Any attachment or sale of his interest in execution of a decree obtained against him by a third person is illegal.<sup>146</sup>

#### **2.2.5.15 Audit of Cooperative Housing Societies.**

In order to put a check, the fairness of the accounts prepared by the cooperative housing societies, Registrar shall check the books of accounts of the housing society once in a financial year to check the fairness of the accounts the registrar may do it personally or through another person. In order to check the fairness of the accounts the registrar may check any record of the housing society and he may also summon any person to give answers to the questions regarding books of accounts.<sup>147</sup>

#### **2.2.5.16 Inquiry by Registrar into Books of Accounts of Cooperative Housing Societies.**

The registrar may himself or through any other person conduct an inquiry into the constitution, working and financial conditions of Cooperative Housing Societies on the request of one third of the members of the society or on the application of a

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<sup>144</sup> Mst. Amina Bibi Vs Mudassar Aziz, PLD 2003 SC 430.

<sup>145</sup> Zahid Imran Vs State, PLD 2006 SC 130.

<sup>146</sup> Ram Lal Vs Registrar Cooperative Housing Societies, AIR 1974 Bom 87.

<sup>147</sup> Ibid, Section 22.

majority of the society or on the requisition of the society. After holding an inquiry, the registrar shall convey the result of the inquiry to the housing society concerned.<sup>148</sup> In conducting the inquiry by the registrar into the affairs of the housing society it is right of the society to be heard before passing any order by the registrar. Such an inquiry should not be illusory or an eyewash or just to fulfill the requirements of the law but it should be purposeful and should satisfy criteria on the touchstone of principles of justice.<sup>149</sup>

In case of contravention of the provisions of Cooperative Societies Act 1925 the power to inquire into matters of housing societies, Federal Investigation Agency (FIA) authorities have neither function nor duty to inquire into matters of the housing societies.

Such power of inquiry has been exclusively given to the registrar of the housing societies.<sup>150</sup> Registrar either himself or at request of persons mentioned in section 43(2) of the cooperative Housing Societies can hold such an inquiry. Exercise of such powers in absence of any reason or material warranting would be an action in excess of jurisdiction and liable to be struck down.<sup>151</sup>

As contrast to the inquiry into the affairs of the cooperative housing society when there is a complaint against the managing committee of the housing society the registrar should issue a show cause notice first and then would proceed further. Personal hearing of the person against whom the complaint has been lodged is not

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<sup>148</sup> Ibid, Section 43.

<sup>149</sup> Haji Khuda Buksh Vs Deputy Registrar Cooperative Societies Punjab, PLD 2007 341(a).

<sup>150</sup> Mst. Shaista Vs Sheikh Liaqat Sathi, PLD 2006 Lahore 158.

<sup>151</sup> Pir Illahi Buksh Cooperative Housing Society Ltd Vs Registrar Cooperative Dept. Karachi, 1968 SCMR 423.

necessary only the issuance of the show-cause notice is sufficient to meet the requirements of natural justice.<sup>152</sup>

Allegations of corruption and mismanagement made to Registrar against certain members of the managing committee with a prayer to hold an inquiry and punish them suitably. Registrar in the inquiry ordered to hold fresh elections of the housing society. It was held by the High Court that the order to hold fresh elections was without jurisdiction and in excess of the powers given under this section of the Act. Election could only be held in accordance with the provisions of the bye laws of the cooperative housing society. The order passed by the Registrar was set aside by the court.<sup>153</sup>

#### **2.2.5.17 Inspection of Books and properties of Cooperative Housing Societies by The Registrar.**

In order to put a check and balance on the financial matters of the cooperative housing societies any creditor of the housing society may file an application to the Registrar that any amount is outstanding and has not been paid then after submission of some amount as a security (costs) of the inspection the Registrar shall hold an inspection into the accounts of the cooperative housing society. The result of the inspection would be communicated to the creditor by the Registrar.<sup>154</sup> When an inspection of books was done by the Registrar on the application of the creditor without following the principles of natural justice, the order after inspection was liable to be set-aside.<sup>155</sup>

#### **2.2.6 Powers of Registrar of Cooperative Housing Societies.**

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<sup>152</sup> Muzaffar Ali Shah Vs Registrar Cooperative Karachi, PLD 1968 Karachi 422.

<sup>153</sup> Abdul Karim Vs Nadir Khan, 1989 CLC 390.

<sup>154</sup> Ibid, Section 43.

<sup>155</sup> Sanman Vs Member Board of Revenue Punjab, 1985 CLC 1469.

Following are the powers of the cooperative department to deal with the problems of cooperative housing societies.

#### **2.2.6.1 Power of Registrar to remove officers of Cooperative Housing Societies**

Registrar of the Cooperative Housing Societies may remove any officer of the housing society if the officer had done any act against the interest of the housing society or he ceases to possess the qualifications for being an officer or he has committed any offence under section 50-A of the Act. Registrar may also suspend such an officer of the housing society for a period of three months. On being removed by the Registrar the aggrieved officer of the housing society may prefer an appeal to the appellate authority constituted by the provincial Government within a period of seven days from the date of order.<sup>156</sup>

Removal of office bearer of the housing society through non speaking order passed upon the direction of the Deputy Commissioner who does not figure anywhere in the Act, such order was not warranted on speaking order passed upon the direction.<sup>157</sup>

Petitioner was dismissed from the cooperative housing society on the charges of absence from duty and misappropriation of funds without issuance of show cause notice and without affording him an opportunity of being heard to explain his position and to prove his innocence before the competent authority. Dismissal from service was a stigma on his career which required thorough inquiry. The statement of charges

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<sup>156</sup> Ibid, Section 44-C.

<sup>157</sup> Muhammad Ibrahim and others Vs Insanul Haq, 1992 MLD 164, Pak Vs Public at Large, PLD 1986 SC 240.

was also not supplied to the petitioner. The order of dismissal passed against the officer of the cooperative housing society was set aside.<sup>158</sup>

#### **2.2.6.2 Power of Registrar to give directions in public interest to regulate the affairs of Cooperative Housing Societies.**

In order to protect the interest of the members of the housing society and for the prevention of frauds in the housing societies the Registrar of the Cooperative Department may give general or special directions from time to time to prevent the affairs of the society being conducted detrimental to the interests of the members or in the interest of the general public. The registrar may cancel or modify the directions.<sup>159</sup>

#### **2.2.6.3 Special Measures to Regulate Cooperative Housing Societies.**

In the interest of the members of the society the Registrar can enter and search any premises of the housing society, take custody of monies, cash, securities and properties, direct any financial institution to freeze the accounts, to restrain any housing society to transfer or alienate any movable or immovable society and to pass any order for the protection of the assets of the housing society, maximum time period of an order passed under this section is one year.<sup>160</sup> Writ petition was filed by the

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<sup>158</sup> Ghulam Hadi Baloch Vs Land Acquisition Collector, 1987 SCMR 602.

<sup>159</sup> Ibid, Section 44-D.

<sup>160</sup> Ibid, Section 44-E.

members of the cooperative housing society against the massive corruption alleged to have been committed by the management of the cooperative housing society.

As High Court could not determine intricate, contested and complicated questions of facts the parties were referred to the Registrar office to decide the matter after determination of all questions of law and facts and then take appropriate action against the wrong doers.<sup>161</sup>

#### **2.2.6.4 Power of Registrar to windup or liquidate the Cooperative Housing Society.**

If the cooperative housing society is unable to complete the development work and allotment of plots within schedule the Registrar may order winding up of the housing society after giving it an opportunity of hearing.<sup>162</sup>

#### **2.2.6.5 Power of Registrar to assess damages against delinquent promoters of The Cooperative Housing Societies.**

If during the course of winding up of the cooperative housing society it is known to the Registrar on the notice of liquidator or creditor of the society that any member of the housing society has misapplied or retained any asset or cash of the housing society the Registrar can pass an order to compensate in regard to misapplication, retainer, misfeasance or breach of trust of the property of the housing society. The remedy provided by this section is in addition to the criminal action

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<sup>161</sup> Muhammad Usman and other Vs Muhammad Naseem and 7 others, PLD 2014 Sindh 302.

<sup>162</sup> Ibid, Section 48-A.

which may be taken under the law.<sup>163</sup> Appeal of the petitioner against notice of recovery dismissed. Petitioner challenged such decision in further appeal which was still pending adjudication. No stay order was granted to petitioner against recovery of specified amount. He challenged the notice of recovery of amount in Constitutional petition. Constitutional petition being premature was dismissed with the direction to the authority to proceed with the matter in accordance with law.<sup>164</sup>

Petitioner was president of the housing society and after audit of the accounts of the housing society he was directed to pay two lakh rupees. An appeal was filed by the petitioner against this order under section 64 of the Act. During the pendency of the appeal an interlocutory order was passed by the authority against which Constitutional petition was filed. The petitioner failed to point out any illegality in the order the Constitutional Petition is liable to be dismissed.<sup>165</sup>

During audit of the accounts of the Cooperative Housing Society, auditor found the petitioner responsible for the loss and recommendation was made to recover the loss under section 22-A and section 50-A of the Cooperative Societies Act 1925, from the petitioner. Appeal against the order was dismissed being time barred. By filing a time barred appeal, the petitioner cannot be called to have availed the appeal. Order of recovery had got finality so petitioner had lost locus standi to file Constitutional Petition in these circumstances.<sup>166</sup>

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<sup>163</sup> Ibid, Section 50-A.

<sup>164</sup> M.A. Faiz Baloch Vs Chief Commissioner Islamabad, 1998 CLC 687.

<sup>165</sup> Managing Committee Board of Revenue Employees Cooperative Housing Society Rawalpindi Vs Secretary Cooperative Societies Govt. of Punjab, 2001 CLC 838, M.A. Faiz Baloch Vs Chief Commissioner Islamabad, 1998 CLC 687.

<sup>166</sup> M. Deen Vs Secretary Cooperative Govt. of Punjab, 2004 YLR 519.

#### **2.2.6.6 The Concept and Role of Arbitration in Settlement of Disputes in Cooperative Housing Societies.**

A special mechanism for the settlement of the disputes has been provided in case of cooperative housing societies; whenever a dispute arises between present and past members or between society and committee between society and the committee or between any past or present member of the society it shall be referred to the arbitration. The arbitration proceedings shall be conducted by the Registrar itself or by any nominee of the Registrar along with two members one from each side.<sup>167</sup> When a matter has been referred to arbitration notices shall be issued to all the parties and within fifteen days the parties shall appoint their arbitrators. The Registrar or his nominee shall act as chairman of the committee of arbitration.<sup>168</sup>

As a special forum has been created for the settlement of disputes so the parties are encouraged to resolve the controversies about the cooperative housing societies by resorting to the special procedure provided under the law. Suit against the cooperative housing society or its officers in respect of any act touching the business of the cooperative housing society is not competent under Section 70 of the Cooperative Societies Act 1925 without giving a two months prior notice.<sup>169</sup>

#### **2.2.6.7 Appeals Against the Order of The Registrar of Cooperative Housing Societies to the Provincial Government.**

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<sup>167</sup> Ibid, Section 54.

<sup>168</sup> Ibid, Section 32.

<sup>169</sup> Lahore Cantt. Cooperative Housing Society Ltd Vs Messers. Builders and Developers, PLD 2002 SC 660.



Whenever an order or decision is passed by the Registrar under section 10, 16, 45, 47, 50, 50-A, 54 or sub-section 3 of section 54-A of the Act an appeal shall lie to provincial Government within a time period of two months of the date of communication of the order.<sup>170</sup>

Member of the cooperative housing society applied for the allotment of plot in the housing society to Assistant Registrar after hearing the opinion of cooperative housing society. The applicant was the senior most member of the cooperative housing society and he was not granted plot in the society but many juniors were allotted plots in the society. As per law all citizens were equal before law and entitle to equal protection of law so order for the allotment of plot was passed by the Assistant Registrar. No appeal was filed against the order by the Cooperative housing society and the order obtained finality after the expiration of limitation period. Writ petition of the cooperative housing society filed after expiry of four years was dismissed as equity aids the vigilant not the indolent.<sup>171</sup>

Petitioner was a cooperative Housing Society (Saadabad Co-operative Housing Society) and respondent was one of the members and allottee of the residential plot. The dispute between the above-mentioned parties was referred to arbitration and the arbitrator made decision in favor of the member. The award of the arbitrator was not challenged by the cooperative housing society. Due to not filing of

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<sup>170</sup> Ibid, Section 64.

<sup>171</sup> Govt. Employees Cooperative Housing Society Ltd and others Vs Secretary Cooperative Societies and others, 2015 MLD 280.

appeal against the award of the arbitrator it attained finality. The cooperative housing society lost its locus standi.<sup>172</sup>

#### **2.2.6.8 Remedy of Writ Petition Under the Constitution of Islamic Republic of Pakistan 1973.**

Remedies have been provided under the Cooperative Societies Act 1925 to resolve the controversies of the cooperative housing societies. If after exhausting all the remedies provided under the Act still there is a grievance and no other efficacious remedy is available then Writ Petition can be filed under Article 199 and Article 184 (30) of the Constitution of Islamic Republic of Pakistan 1973. Writ petition is filed by the member of the cooperative housing society when after exhausting all the remedies available the grievance is not redressed.

Petitioner was allotted a plot in the cooperative housing society after making all the installments of the residential plot by the society. After that cooperative housing society made allotment of the same plot to another person without providing an opportunity of hearing to the petitioner. The cooperative housing society could not pass an adverse order without providing an opportunity of hearing. Constitutional petition was allowed by the Lahore High Court.<sup>173</sup>

#### **2.2.7 Important Concepts Relating to Cooperative Housing Societies.**

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<sup>172</sup> Saadabad Cooperative Housing Society Ltd Through Secretary Vs Ghulam Raul Bhatti and others, 2018 CLC 1972.

<sup>173</sup> Professor Perveen Awan Vs Syed Muzammal Hussain and others, 2014 CLC 868.

Following are the important concepts relating to the cooperative housing societies.

#### **2.2.7.1 The Concept and Role of General Meeting in The Cooperative Housing Societies.**

The supreme authority in a cooperative society is the General Meeting, which is like a living body; bound to observe the law and the rules and its own byelaws. The General Meeting has complete power over the society's affairs. General Meeting can discuss conduct of the Managing Committee members, ask questions and demand explanation.

Every member is there on equal terms with his fellows, having equal rights, liabilities and opportunity to protect him from perspective loss. Being the supreme authority of the society, General Meeting can delegate its powers (except those which must be decided by it) to Managing Committee or Secretary or other officer; but it cannot empower any of these to delegate their powers to anyone else.

All powers come from the General Meeting and if the Managing Committee for instance, wishes to hand over some work to the secretary, they should get the permission of the General Meeting. It (usually the annual general meeting) deals with the election of the office bearers of the society.

General meeting is required to be held within a period of three months from the date of final preparation of the accounts of the cooperative housing society.<sup>174</sup>

When it was decided by two resolutions of the board of directors in the general meeting that voting shall not be by show of hands but by secret ballot but

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<sup>174</sup> Ibid, Section 12.

these resolutions were not implemented. The matter was taken to the arbitration which was decided in the favor of the petitioner. The award of the arbitration was not implemented as stay was issued by the Registrar in appeal and the appeal was still pending.

High Court disposed of the petition ordering that it would be open to the petitioner to move disputed resolutions in general meeting of members of the society and that pendency of appeal or operation of stay order would not affect right of the petitioner to get resolutions passed in the general meeting of the housing society.<sup>175</sup>

Registrar of the cooperative department or 1/5<sup>th</sup> members of the cooperative housing society may call special general meeting of the cooperative housing society within a time span of 30 days.<sup>176</sup>

#### **2.2.7.2 Role of The Managing Committee of Cooperative Housing Societies.**

The business of a Cooperative Society shall be carried out, subject to the provisions of the Act, rules and its by-laws, by a committee consisting of 09 to 13 members above the age of 21 years. It is elected for a term of three years. In case of not conducting of fresh election within a time span of 90 days the previous managing committee shall dissolve and the decisions taken by the former committee would be considered as invalid and against law.

As a stop gap arrangement, the registrar of the province may appoint a committee of 3 persons to look after the affairs of the cooperative housing society as

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<sup>175</sup> Haji Noor M Jamot Vs Messers. Fisheries Cooperative Society Ltd and 2 others, 1990 ALD 377(1).

<sup>176</sup> Ibid, Section 13.

an interim measure. Managing Committee of a cooperative society exercises such powers and functions delegated to it by its general body. Registrar can appoint two experienced person in the managing committee to run the affairs of the housing society in a proper manner. Managing committee can be ordered by the registrar take an approval of the general body of the housing society on a particular matter which is considered as an important matter by the registrar.

The Administrator and Care Taker Committee shall arrange the creation of election sub-committee by the Registrar through proposing two non-consisting members of the society to act as members of election sub-committee. The convener of election sub-committee will be an officer of the Department appointed by the Registrar and this election sub-committee shall hold the election of managing committee of the society within 90 days of its creation.<sup>177</sup>

This rule requires that a show-cause notice be issued so that the effected person should know the nature of allegations against him. It could not be pleaded that because the society was not superseded but committee was hence show-cause notice was not necessary.<sup>178</sup>

Dispute was between rival groups about the election of the cooperative housing society and Administrator was appointed by registrar cooperative in order to conduct elections. Order of the Registrar was challenged. Orders of Registrar appointing administrator and election committee for conducting election of cooperative housing society was valid and would entail legal consequences until the same were set aside by forum of competent jurisdiction.<sup>179</sup>

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<sup>177</sup> Ibid, Section 48.

<sup>178</sup> Mst. Rehmat Bi Vs Muhammad Rashid Etc, 1998 Law Notes Karachi 98.

<sup>179</sup> Ch. Khalid Mehmood Vs Ch. Said Muhammad, PLJ 2005 Lahore 734 (DB).

**2.2.8 Mechanism Provided in Bye-Laws to Check Malpractices in Cooperative Housing Societies.**

Following is the mechanism to check the malpractices being committed in the cooperative housing societies.

**2.2.8.1 Business is run with the consent of majority of the members of the Cooperative Housing Societies.**

All the affairs of the cooperative housing society are run by all the members of the society from the formation and administration all the members take part directly or indirectly.

**2.2.8.2 All Decisions of The Cooperative Housing Societies are taken with Collective Wisdom.**

No single person can take decision in cooperative housing society. All the decisions are made in General members' meeting or by the management committee.

**2.2.8.3 Management Committee is accountable to the General Body & Registrar Cooperatives Housing Societies.**

A system of check and balance has been introduced in running the affairs of the cooperative housing society. The elected members of the Management committee are answerable to the members of the housing society.

**2.2.8.4 Management Committee of The Cooperative Housing Societies is elected through a Democratic Process.**

Each member of the cooperative housing society has one vote on the principle of one member one vote. Members getting the highest number of votes get a right to run the affairs of the cooperative housing society on behalf of all the members.

**2.2.8.5 No Monopolistic Association of Persons is allowed in Cooperative Housing Societies.**

In cooperative housing societies the affairs of the society are run by the elected managing committee of the cooperative housing society which is elected for a period of three years. The management of the housing society is answerable to the members of the housing society. The majority of the members cannot form a monopoly due to the concept of accountability on the one hand and due to the audit of the accounts on the other hand. The voice of each and every member of the housing society is heard and given weightage.

**2.2.9 Duties of the Cooperative Department under Cooperative Societies Act 1925**

The cooperatives department is responsible for the following actions:

**2.2.9.1 To keep an Effective Legal Framework to Regulate Working of The Cooperative Housing Societies.**

In order to regulate the affairs of the cooperative housing societies the legal framework includes The Cooperative Housing Act 1925, The Cooperative Housing Societies Rules 1927 and the byelaws prepared by each and every cooperative housing society in view the peculiar circumstances of the housing society.

**2.2.9.2 Approval & Amendments in Byelaws of The Housing Societies.**

Although powers have been given to the members of the society to formulate their own byelaws but these powers are subject to a condition that these byelaws should not be against any enactment of the parliament. In order to protect the interest of the housing society and members of the housing society, the Registrar of the cooperative housing societies has been given an authority to amend the byelaws of the housing society to save the interest of the members of the housing society as well the interest of the general public.<sup>180</sup>

### **2.2.9.3 Audit of Accounts of Cooperative Housing Societies.**

If during the audit of the books of the cooperative housing society under section 22 of the Act if it appears to the Registrar that there exists any such ground as is mentioned in section 50A, the Registrar may exercise the powers mentioned in section 50A to ensure transparency and fair play in the affairs of the housing society.<sup>181</sup>

During audit of the accounts of the cooperative housing the auditor found the petitioner responsible for the loss and recommendation was made to recover the loss under section 22-A, 50-A of Cooperative Societies Act 1925 from the petitioner. Appeal against the order was filed which was dismissed by the appellate authority being time bar. The remedy in the shape of appeal was provided which was not availed by the petitioner; the order passed against the petitioner had got finality. The constitutional petition was dismissed.<sup>182</sup> In order to place an internal check and balance on the affairs of the housing society the registrar may require the accounts of the committee to be audited by a committee consisting of three members other than

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<sup>180</sup> Ibid, Section 16-A.

<sup>181</sup> Ibid, Section 22-A.

<sup>182</sup> Ch. Muhammad Deen Vs Secretary Cooperative Department, Govt. of Punjab, 2004 YLR 519.



the members of the managing committee of the cooperative housing society. The report of the internal audit is required to be sent to the registrar of the cooperative department within a period of 30 days.<sup>183</sup>

#### **2.2.9.4 Conduct of Inquiries against Cooperative Housing Societies.**

The Registrar himself or any person authorized by him may hold an inquiry into the matters and affairs of the cooperative housing society to check the fairness regarding constitution, working and financial condition of the housing society. All the officers in charge are bound to furnish the information required by the Registrar or any other person authorized by the Registrar to hold inquiry. The report of the inquiry shall be communicated to the members of the housing society.<sup>184</sup>

#### **2.2.9.5 Whether Inquiry can be Conducted about Housing Society by any other Agency?**

Another aspect of the discussion is whether there is an exclusive jurisdiction available to Registrar Cooperative Department to deal with the affairs of the cooperative housing societies or all other law enforcement agencies have a concurrent jurisdiction to deal with the matters of cooperative housing societies? The answer to this question has been answered by Islamabad High Court in the case of Federal Government Employees Cooperative Housing Societies Vs Director General, Federal Investigation Agency, Islamabad. The view point of Cooperative Housing Society was that only Registrar of cooperative department could deal with it and restriction

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<sup>183</sup> Ibid, Section 22-B.

<sup>184</sup> Ibid, Section 43.

was placed in Section 63 of the Cooperative Societies Act 1925 only to the extent of offences committed under Section 61, 62 and 63 of the Act.

The view point of Federal Investigation Agency was that that it had jurisdiction and could investigate the matter. Two enactments are of different in nature and do not exclude each other and were not in conflict with each other and are supplementary to each other and same is the position vis-à-vis other law enforcement agencies like National Accountability Bureau (NAB), Anti-Corruption and police. Registrar Cooperative department, Islamabad and Director General Federal Investigation Agency both of them were directed by Islamabad High Court to conclude the inquiry into the financial corruption of the cooperative housing society and submit report in one month.<sup>185</sup>

#### **2.2.9.6 Inspection of Record of Housing Societies.**

The financing bank of the cooperative housing society can inspect the books of accounts of the debtor housing society. The report of the inspection team shall be communicated to the Registrar and members of the housing society concerned.<sup>186</sup>

#### **2.2.9.7 Suspension of Officers of The Housing Societies.**

The Registrar may remove any officer of the cooperative housing society who acts against the interests of the housing society or who is no more qualified to be an officer of the housing society or who commits any offence by which he can be removed by the Registrar. The aggrieved officer of the housing society may file an appeal to the Provincial Government within a period of seven days.<sup>187</sup>

#### **2.2.9.8 Directions to the Societies by the Registrar Concerned.**

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<sup>185</sup> Federal Employees Cooperative Housing Society through its President Vs D.G FIA, Islamabad and others, 2019 CLC 347.

<sup>186</sup> Ibid, Section 44-A.

<sup>187</sup> Ibid, Section 44-C.

In order to check the malpractices in the cooperative housing societies the Registrar may give directions to the cooperative housing society to protect the interests of the members of the cooperative housing societies.<sup>188</sup>

#### **2.2.10 Powers of The Registrar of Cooperative Housing Societies Under Cooperative Societies Rules 1927**

The Cooperative Societies Rules 1927 empowers the registrar cooperatives to take following measures:

##### **2.2.10.1 Summoning of Special General Meeting of The Cooperative Housing Societies.**

A special general meeting can be conducted by the Registrar or any person authorized by the Registrar. This special general meeting can transact any business which the cooperative housing society may perform during the annual general meeting of the cooperative housing society. This power can be exercised by the Registrar of the cooperative housing society to perform any urgency. This power can be exercised even if it is not mentioned in the rules or byelaws of the housing society.<sup>189</sup>

##### **2.2.10.2 Restriction on Borrowing from Non-Members by The Housing Societies.**

No society with limited liability shall incur liabilities from persons who are not members. Maximum amount of borrowing, exceeding in total 15 times of the total amount of its paid-up share capital. Accumulated reserve fund and building funds

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<sup>188</sup> Ibid, Section 44-D.

<sup>189</sup> Ibid, Rule 6-A.

minus accumulated losses.<sup>190</sup>

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<sup>190</sup> Ibid, Rule 7.

#### **2.2.10.3      Periodical Financial Statement to be Furnished by Each Housing Society.**

In order to keep a check and balance on the financial affairs of the cooperative housing societies, these societies are bound to submit a quarterly report to the Registrar of the cooperative society. This requirement is very helpful to keep a constant check and balance on the financial affairs of the housing societies and to eliminate financial frauds in the housing industry.<sup>191</sup>

#### **2.2.10.4      Restriction on Distribution of Dividend.**

No dividend or bonus can be given by any cooperative housing society to any member unless all the amounts incurred as expenditure has been debited in the profit and loss account and no amount can be right off as a bad debts unless it is allowed by the Registrar of the Cooperative department.<sup>192</sup>

#### **2.2.10.5      Removal of Managing Committees of The Housing Society by The Registrar.**

In cases of bad management or corrupt practices the Registrar may pass an order to supersede the committee of the housing society. In order to run the day-to-day affairs of the housing society a committee consisting of not more than nine persons shall be appointed by the Registrar. The committee appointed by the Registrar shall work for a period of two years unless this time period is further extended.

This order to appoint the committee shall be passed by the Registrar after issuance of a show cause notice to the housing society concerned. Whenever an

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<sup>191</sup>      Ibid, Rule 18.

<sup>192</sup>      Ibid, Rule 26.

inquiry is made into the affairs of the housing society an opportunity of being heard should be provided to the housing society on the touchstone of principles of natural justice.<sup>193</sup> Notice of show cause under rule 48(6) of Cooperative societies Rules 1927 would be mandatory even for supersession of the Managing Committee as it would also be dealing with the working and conduct of the affairs of the housing and it cannot be pleaded that because the society was not superseded but committee was superseded hence show cause notice was not necessary.<sup>194</sup> Order of supersession of committee of cooperative housing society would be void and of no legal effect when no opportunity of hearing was afforded and no show cause notice was issued.<sup>195</sup>

**2.2.10.6 Prior Sanction of Registrar is Mandatory before Investing Money by Cooperative Housing Societies.**

Whenever any housing society wants to invest cash to purchase the shares of the State Bank of Pakistan or to purchase or leasing of land or in the construction of any building the sanction of the Registrar of the housing society is compulsory for it.<sup>196</sup> No society can invest its funds or any portion of it in the purchase or lease of any land or building without getting the sanction of the Registrar of the Cooperative Housing Department.<sup>197</sup>

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<sup>193</sup> Haji khuda Buksh Vs Deputy Registrar Cooperative Punjab, Lahore, PLD 2007 Lahore 341(a).

<sup>194</sup> Mst. Rehmat Bi Vs Muhammad Rashid Etc 1998 Law Notes Karachi 98.

<sup>195</sup> Zafar Ali Vs Islamic Republic of Pakistan, NLR 1998 Civil Karachi 528.

<sup>196</sup> Ibid, Rule 27.

<sup>197</sup> Ibid, Rule 54.

## **2.3 PRIVATE HOUSING COMPANIES AS DEVELOPER OF HOUSING INDUSTRY.**

Private housing companies are formed by the private sector the primary task of private housing companies is to earn profit by providing housing units to the rich (elite class). Private housing companies are formed and registered under the Companies Act 1917, Companies Ordinance 1984 and Companies Rules 1985.

### **2.3.1 Private Housing Companies working under Companies Act 2017.**

Private housing companies are formed and registered under Companies Act 2017 and Companies Ordinance 1984. The private housing companies have not been able to provide housing units to lower and middle class rather; there have been massive housing frauds and illegalities which have been committed by the private housing companies. The reason is that there is overlapping of jurisdiction and shifting of responsibilities by the various regulatory authorities of housing industry at Federal, Provincial and Local level.

According to Companies Act 2017, the mode of forming a company has been prescribed, three or more persons by subscribing their names to the memorandum of association can form a public limited company, two or more persons by subscribing their names to the memorandum of association can form a private limited company including a private housing company and a single member by signing memorandum of association can form a single member company including a housing company.<sup>198</sup>

A careful reading suggests that under the above-mentioned provisions of law which deals with the registration of all companies including housing companies, there is no precondition of ownership of land for the registration of housing companies and

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<sup>198</sup> The companies Act 2017, section 14, 1<sup>st</sup> Edition, Key Law Reports Publication, Lahore, 2018.

in the past this deficiency in the law has been exploited by the housing developers when without having an inch of piece of land the housing societies were registered and plots were sold out. When a proof was demanded from these housing companies the investors were shown registration certificate issued by the securities and exchange commission of Pakistan. Registration certificates were shown to them and in this way the general public was deprived of the hard-earned income.

In order to bridge this gap in the law a special provision has been introduced in the Companies Act 2017 for housing companies which has been given an overriding effect. According to this section no company doing any housing or real estate company can advertise any project unless it has got all approvals and NOCs from the relevant authorities of the provincial and local Governments, no housing company can proceed to sale any plot in the housing scheme unless approval and NOC has been obtained under all the relevant general, special and local laws, the housing company cannot sale any plot unless it maintains proper accounts of all the transactions in the end of the section a penalty of level 3 has been provided for that person who does any housing activity and violates this section.<sup>199</sup>

The insertion of this section is a welcome step but the problem is that housing is a subject which falls in the provincial legislative list so provinces enjoy complete authority with respect to this subject, so, this provision is in contradiction to the Constitution of Islamic Republic of Pakistan 1973.<sup>200</sup> This issue shall be discussed in the chapter four of critical analysis of the legal framework relating to housing industry in Pakistan in detail. Before the introduction of Companies Act 2017 the regulatory

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<sup>199</sup> Ibid, Section 456.

<sup>200</sup> The Constitution of Islamic Republic of Pakistan, 1973, The Schedule, 2<sup>nd</sup> Edition, Irfan Law Book House, Lahore, 2016.



law relating to housing companies was Companies Ordinance 1984. As most of the housing companies operating in the housing industry of Pakistan have been registered under this Ordinance so it is important to discuss this law for complete understanding of the regulatory legal framework

### **2.3.2 Housing Companies Registered under Companies Ordinance, 1984.**

Most of the housing companies working in the housing industry have been formed and registered under the Companies Ordinance 1984. The private companies in the field of housing sector are registered with the Securities and Exchange Commission of Pakistan under the Companies Ordinance 1984 and still doing housing activity in the housing industry of Pakistan. Housing companies were registered under section 30 of the companies Ordinance 1984 and under section 4 of the Companies (General provisions and forms) Rules 1985 and in these provisions, there was no pre condition of possession of land for registration of housing companies. The subject of housing falls in the provincial legislative list, of the Constitution of Islamic Republic of Pakistan, as per 4<sup>th</sup> Schedule of the Constitution of Islamic Republic of Pakistan 1973.

Housing being a provincial subject the provinces should exercise complete authority on all housing developers without any interference by the Federal Government. Provincial Governments should regulate this subject of housing through provincial laws and rules. After the promulgation of the Local Government Ordinance 2001 the old structures and systems were supplanted by new structures and systems with simultaneous devolution of functions from the provinces to Local Governments.

The devolved functions include housing, urban and physical planning shall stand entrusted to local Governments.<sup>201</sup> But contrary to this law private housing companies continued to be registered under the Companies Ordinance 1984 with the Securities and Exchange Commission of Pakistan. After incorporation of a private housing company all the affairs ranging from grant of sanction, launching a housing scheme, monitoring of the housing companies are handled by the development authority or by the Tehsil Municipal administration of the area concerned.<sup>202</sup>

As per Companies Ordinance 1984, nothing in this Ordinance shall apply to a trading corporation owned or controlled by a province and carrying on business only within that province. As Companies Ordinance 1984 does not apply to a cooperative society, a university, on the same pattern Companies Ordinance does not apply to provincial housing companies operating to the extent of territorial jurisdiction of one province.<sup>203</sup>

The powers conferred by this ordinance on the Federal Government, or commission (SECP) shall in relation to those companies which are not trading corporations and **the objects of which are confined to a single province be the powers of the provincial Government.**<sup>204</sup>

After combine study of these three provisions i.e., fourth schedule of the Constitution and Section 4 and Section 5 of the Companies Ordinance 1984, there is a question mark on the registration of housing companies with Securities and Exchange Commission of Pakistan (SECP). Whether the registration of private housing

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<sup>201</sup> Local Government Ordinance 2001, Section (15), 3<sup>rd</sup> Edition, Irfan Law Book House, Lahore, 2017.

<sup>202</sup> Ibid, Section (8).

<sup>203</sup> Ibid, Section (4).

<sup>204</sup> Ibid, Section (5).

companies with Securities and Exchange Commission of Pakistan (SECP) is valid or it is against the 4<sup>th</sup> Schedule of the Constitution of Islamic Republic of Pakistan?

A closer examination of the above three provisions reveals that one point is common i.e. companies with objects confined to a single province is the exclusive jurisdiction of the provincial Government. After promulgation of the local Government Ordinance 2001, housing industry and related areas are these exclusive jurisdictions of local Governments.

It is beyond any doubt that private housing companies with housing activities confined and situated to a single province comes under the exclusive jurisdiction of the local Government concerned. Due to registration of the private housing companies with the Securities and Exchange Commission of Pakistan the local Governments leave the regulatory affairs of the housing companies to the discretion of the Federal Government. The Federal Government (the relevant department of federal Government SECP) after registration of the housing companies does not regulate the affairs of the housing companies and leave it to be regulated by the respective local Governments and provincial Governments.

The point which needs little clarification is whether private housing scheme is a trading activities or non-trading activity. Housing and construction industry has been notified as a priority industry in “C” Category by the Federal Government.<sup>205</sup> By treating housing activity confined to a single Province/District the case falls under section 4 of the companies’ Ordinance 1984. The registration of the private housing companies with SECP is not valid under this section. Looking at the ground realities of Pakistan in the housing industry it is evident that there is backlog of 2, 70,000

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<sup>205</sup> [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk), Visited on 01-03-2020.

housing units each year which is accumulating year by year. Housing is the basic and fundamental human need. The details of allocation of funds for physical planning and housing in the public sectors development program (PSDP) in the previous years is as under:

<b>Years</b>	<b>Amount Allocated (Million)</b>
2004-05	9
2005-06	7.5
2006-07	7.9
2007-08	8.5
2008-09	9.7
2009-10	10.5
<b>Total</b>	44.1

(Source: [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk)) Accessed on 1-9-2016.

If the total amount allocated for all sectors is used only for housing activity by leaving no money for any other development work at all even then it is not possible for the Government of Pakistan to achieve the goal of housing for all as envisaged by <sup>206</sup> the UN Habitat agenda without support and help of private sector.

It is beyond the financial resources of the Government to cater the housing back log and to provide the basic necessity of house to all homeless people in Pakistan. Meeting the housing back log is beyond the financial resources of the

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<sup>206</sup> Pakistan Economic Survey 2008-2009, By Planning Commission of Pakistan, Page 43.

Government.<sup>207</sup> The Government should encourage the private sector to play an active role and the role of Government should be of a facilitator instead of a developer.

It is an item of the manifesto of the present Government to provide houses units to homeless so the present Government by declaring housing activity as a non-trading activity must encourage private housing companies. It is need of the hour to declare housing as a poverty alleviation measure and a non-trading activity done for public purpose. The legislature of Land Acquisition Act 1894, in order to encourage the private sector has included the land acquisition by the companies for the public purpose in the preamble.

During a case the court declared that acquisition of land by a private company, the primary object of which is to earn profit for the company but the effect of which will be on the national economy in a positive manner would be an acquisition of land for a public purpose.<sup>208</sup> Furthermore, the land Acquisition Act 1894, has empowered the Government to determine the question whether land is needed for public purpose or not. So, the Provincial Government of each province is the sole judge to determine the need of a land for a public purpose or for a company.<sup>209</sup> In 2015 the members of UN adopted Transforming Our World: The 2030 Agenda for Sustainable Development, with 17 global sustainable Development Goals and 169 corresponding targets.<sup>210</sup> Sustainable Development Goal number 11 relates to making cities and human settlements inclusive, safe, resilient and sustainable

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<sup>207</sup>

Ibid,

<sup>208</sup>

Ram Narain Singh and others Vs State of Bihar and others, AIR 1978 PAT 136.

<sup>209</sup>

Sardar Mohammad Iqbal Khan Mokhal, The Land Acquisition Act 1894, PLD Publishers, Lahore, 1990.

<sup>210</sup>

Transforming Our World: The 2030 Agenda for Sustainable Development (2015), Para 4.

including slums up gradation.<sup>211</sup> So, the Government must encourage housing companies to share the burden of the Government by declaring housing activity as non-trading activity. Cooperative housing societies are already doing the same practice on no profit no loss basis because it is also mandated by Millennium Development Goals.

<b>Indicators (Million)</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2005-06</b>	<b>2011</b>	<b>2015</b>
Population of Kachi Abadi to be regularized in percentage	50%	55%	60%	75%	95%

(Source: [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk)), Accessed on 1-9-2016.

The Government of Pakistan has not succeeded to bring improvement in the lives of hundred million slum dwellers in 2020. As meeting the back log in housing industry is beyond the financial resources of the Government.<sup>212</sup> But unfortunately the above mentioned have not been achieved to a satisfactory level till 2020 so a lot of work is yet to be done by the Government of Pakistan to achieve the goals set by UN Habitat agenda. This necessitates the declaration of housing activity performed by housing companies as a non-trading activity.

So, if we assume the housing activity as a poverty alleviation measure and a non-trading activity (keeping in view the ground realities of Pakistan it is not a wrong assumption) the for registration purposes the case falls under section 5 of the Companies Ordinance 1984 which clearly says, the incorporation, regulation and winding up affairs of the housing companies should be dealt by the respective

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<sup>211</sup> United Nations (2015), Transforming Our World: The 2030 Agenda for Sustainable Development.

<sup>212</sup> National Housing Policy 2001, P 26.

Provinces/Local Governments. As housing is a developed function of the Local Government and whenever there is a conflict in any other law and the local Government ordinance 2001, the later shall always has an overriding effect over the former law.

The problem on the regulatory side is, once the private housing company is registered with the Securities and Exchange Commission of Pakistan (SECP) there is no regulatory mechanism in the Companies Ordinance 1984, to monitor and regulate the activities of the private housing company. Housing is a devolved subject of Local Government so the Local Government of the respective area in whose territorial jurisdiction the housing scheme is situated can deal its affairs in a better manner.

If the housing activities conducted by the private housing companies is treated as trading activity or non-trading activity the case of registration falls either under section 4 or section 5, of the Companies Ordinance 1984. In both of the probabilities one point is common the companies the objects of which are confined single province is an exclusive jurisdiction of the relevant province. Constitution of Islamic Republic of Pakistan 1973, being the supreme Law of the land, it is also the scheme of the Constitution that the subject of the housing should be handled exclusively by the provinces being an exclusive subject or domain of the provinces.

It is better to encourage public limited housing companies to conduct housing activities. As contrast to private companies public limited companies are required to conduct audit of accounts, publish profit and loss account, balance sheet and more disclosure requirements so, the Government has more check and balance on its activities. This development will help a lot to stop embezzlement of public funds committed by the private housing companies. But; it does not mean that private companies should not be allowed to conduct housing activity.

Registration of housing companies must be done by the respective provinces on the pattern of registration of Cooperative housing societies. Separate company law of each province will enable each Provincial Government to enact the registration law according to its own development's priority. Each province has its own development priority due to its peculiar economic, geographic, and social differences as compared to other provinces. Separate law for housing companies at provincial level would result in a better check and balance system by each Provincial Government as the subject of housing is the exclusive domain of the provinces.

The present law of registration is not going to work; there is a need for a new self-contained law for regulating the affairs of the housing companies. An amendment has been introduced in the Companies Act 2017 and a new section 456 has been introduced to maintain the control of the Federal Government through Securities and Exchange Commission of Pakistan on the affairs of the housing companies. This new section is against the letter and spirit of the Constitution of Islamic Republic of Pakistan 1973. Durable solution is to follow the Constitution of Islamic Republic of Pakistan 1973 and let this subject of housing to be dealt by the Provincial Governments. So, the ideal solution lies in the enactment of new registration law for housing companies at provincial level as it is also in line with the intention of the constitution makers.



## **2.4 HOUSING AUTHORITIES LAUNCHED BY PRIVATE SECTOR UNDER REGULATORY AUTHORITIES**

Many housing societies are launched to provide housing units to the general public.

### **2.4.1 Introduction to Private Housing Sector.**

Municipal Administration is the regulatory body to deal with the affairs of these companies. This sector comprises of the Private Housing Schemes launched by Private land owners, builders and developers. A very large number of general publics rely on this sector for their accommodation needs. This sector is highly prone to fraud and corruption. In Punjab the Private Housing Schemes are regulated by the development authorities. All these development authorities are working under the Housing and Urban Development & Public Health Engineering Department. The Private Housing Schemes that are launched in the areas that do not fall within the jurisdiction of any of these development authorities are regulated by the Local Government and Community Development Department through Tehsil Municipal Administration.

### **2.4.3 CHALLENGES AND GREY AREAS OF PRIVATE HOUSING SECTOR.**

Following are the areas which need to be improved.

#### **2.4.3.1 Overlapping Jurisdictions of Regulators of the Housing Societies.**

There are more than one regulatory authorities looking over the affairs of the Private Housing Societies in Punjab. In certain areas these authorities have

overlapping functions. Overlapping jurisdictions of Regulatory Bodies create numerous problems in the smooth disposal of the responsibilities of any of these Regulators. It also makes it difficult to fix the responsibility on a specific Regulator in case of any criminal negligence. These challenges indicate that there is a need for the establishment of a single Regulatory Authority for the effective regulation of the housing sector in general and Private Housing Schemes in particular.

#### **2.4.3.2 Monitoring of Property Dealers to control Frauds in Housing Industry.**

There are certain examples where a person sets up a marketing office and starts luring the general public into investing their hard-earned money into housing projects which do not exist on ground. These agents and dealers go unchecked as they do not approach any Regulatory Authority for any approvals. The Regulators need to develop a mechanism to identify such cases and take appropriate and timely action against them. There is a strong need for proper registration and scrutiny of the conduct and affairs of property dealers and estate agents to minimize the chances of frauds in the housing industry.

#### **2.4.3.3 Delay in Timely Development of the Private Housing Schemes.**

The reasons and conditions which cause delay in the timely development of housing schemes include lapse on the part of the members to pay dues on time. Apart from the default by the developer or sponsor of a private housing scheme which remains the main reason of such delay there are some other factors which can be responsible for the failure of a private housing scheme to complete the development work on time. Departments responsible for providing these services i.e. LESCO,

FESCO, GEPCO, SNGPL, PTCL are also responsible for not completing the housing scheme within time.

#### **2.4.3.4 Limited Capacity of Tehsil Municipal Administrations to regulate the Housing Schemes.**

In the areas where the Private Housing Schemes are being regulated by Tehsil Municipal Administrations (TMAs) there is a need for training and hiring of technical experts and surveyors. It is difficult for the TMAs to perform the regulatory functions efficiently with the existing technical and human resource. A lot of problems arise due to the delegation of approving authority to the Town Committees as there are increased chances of maneuverability at the Town Committee's level. Although it will be beneficial to build the capacity of TMAs but the approvals should be kept centralized at the district or division level. Composition of the committee and the authority competent for granting approvals needs to be defined clearly for all kind of approvals. Tehsil Municipal Administrations are now defunct and are currently working under the office of deputy director.

#### **2.4.3.5 Administration of Private Housing Schemes.**

Once the sponsor or developer has sold the plots the disposal of ongoing administrative function of the Private Housing Schemes becomes an issue. Once the sponsor disposes off the land the concept of management committees may be introduced in the private housing scheme for its complete operation and maintenance. The concept of management committees already prevails in the Cooperative Housing Sector but this concept does not exist in the private housing schemes.

### **2.5 REAL ESTATE INVESTMENT TRUSTS (REITs).**

A new corporate product under the name and style of Real Estate Investment Trust (REITs) has been introduced in Pakistan which can prove effective for the

provision of housing units and to achieve the goal of housing for all. This corporate product was introduced in United States of America on 14-09-1960 the bill was signed by President Eisenhower for the introduction of Real Estate Investment Trusts (REITs) and initially tax-free treatment was given to it.<sup>213</sup>

### **2.5.1 Introduction of Real Estate Investment Trusts (REITs) In Pakistan**

A taskforce consisting of fourteen members was constituted in 2004. This taskforce was divided into two committees. One committee was headed by Jahangir Siddique and he worked on the product development. The other committee was headed by Shahid Karder, an economist, his task was to review and develop a regulatory framework.<sup>214</sup> The first draft of REITs was prepared in 2004. The second draft was prepared in 2006. The final draft was prepared by Dr. Salman Shah and his team.<sup>215</sup> The process of the preparation of regulatory framework relating to REITs was a bit slow as housing is a provincial subject and SECP is a federal institution so as per Constitution of Islamic Republic of Pakistan 1973 so a time was consumed to convince the provincial Governments. By introducing the amendment in the Finance Act 2007 the powers of the SECP were enhanced. In exercise of powers conferred under subsection (2) of section 282 of the Companies Ordinance 1984, SECP issued REITs regulation on 31-1-2008.

### **2.5.2 Importance of Real Estate Investment Trusts Vis- A- Vis Housing Industry of Pakistan.**

Real Estate Investment Trusts (REITs) is a mutual fund that invests in properties and in this way, income is generated for the unit holders (shareholders).

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<sup>213</sup> [www.yahoo.com](http://www.yahoo.com), visited on 12-04-2016.

<sup>214</sup> [www.secp.gov.pk](http://www.secp.gov.pk) visited on 1-3-2017.

<sup>215</sup> [www.google.com](http://www.google.com) visited on 3-5-2017.

REITs are formed under three kinds, for housing purpose, for rental purpose and hybrid REITs. The present concept of REITs is very close to the concept of modarabah which is formed for a specific purpose. A corporate product of the developed countries has been introduced in Pakistan which can be beneficial to meet housing demands.<sup>216</sup>

Initially a closed form of REITs has been introduced the reason behind closed end REITs is to avoid a comprehensive regulatory and legal requirement. It is closed because the investors (unit holders) are not allowed to transfer their shares for a fixed period of time. In the beginning of this corporate product a tax-free treatment has been provided to attract the investors. Initially REITs can be formed in the capital city and four capitals of the provinces. Initially REITs could be formed with a capital of 5 billion rupees and ninety percent profit of it was mandatory to be distributed among the shareholders (unit holders).<sup>217</sup> This corporate product is very important for Pakistan as it is beneficial for people from all income groups. Investment can be made in REITs by purchasing shares of it.

### **2.5.3 Formation of Real Estate Investment Trusts in Pakistan.**

A company shall be registered just like a public limited company and this company would manage all the affairs of the REITs scheme. After registration this company would file an application for the formation of REITs.<sup>218</sup>

Real Estate Investment Trust shall be formed when the application for the formation along with approvals from the departments concerned, registered trust deed, list of directors, names of the shareholders, consent of the valuer, valuation report of

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<sup>216</sup> [www.secp.gov.pk](http://www.secp.gov.pk), visited on 13-06-2017.

<sup>217</sup> Ibid.

<sup>218</sup> Real Estate Investment Trust Regulations, 2008, Section 6, 1 St Edition, Eastern Law Book House, Lahore 2009.

the proposed land, names and addresses of the valuers, auditors, legal advisors and an affidavit by the chief executive of the company that all the legal requirements have been fulfilled.<sup>219</sup> When all the cordial formalities have been fulfilled Real Estate Investment Trust shall be formed.

#### **2.5.4 Benefits of Real Estate Investment Trusts (REITs) for the Investors Unit Holders.**

It is for the first time that developing economy like Pakistan has launched a corporate product of developed economy. REITs provides a lot of benefits to the investors including diversification through pooling of funds, access to the professional investment advisors and the ability to finance large scale properties.<sup>220</sup> Diversification and better protection against inflation are the two advantages which attract the investors to invest capital in REITs, other benefits includes higher yields and better liquidity.<sup>221</sup> REITs can provide an opportunity to the lower and middle class to invest money in the real estate of Pakistan.

#### **2.6 DEFENSE HOUSING AUTHORITY (DHA).**

DHA is a big housing developer which is working in various cities of Pakistan. It is playing its role in meeting the goal of housing for all. It shall be disused to what extent and to whom (class of people social and economic class) it is providing housing units. Before discussing Defense Housing Authority in detail let's have a look how it was originated in Lahore.

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<sup>219</sup> Section 8, Ibid.

<sup>220</sup> Scott Gibson and John Corgel, Real Estate Private Equity: the case of US unlisted REITs, *Journal of property investment and finance*, 2008, p132-150.

<sup>221</sup> Mathiston and Scherrer Authorized property units Trusts, *Journal of Property Finance*, 1991, p107-108.

Firstly, it was Lahore Cantt Cooperative Housing Society, Lahore and it was developed after acquisition of land under Section 4 of Land Acquisition Act 1894. Land measuring 12283,2732, and 3651 kanals in villages Charrar, Keer Khurd and Chund Khurd in the Tehsil and District Lahore was acquired to start phase one of Defense Housing Authority.<sup>222</sup>

#### **2.6.1 Origin and Development of Defense Housing Authority (DHA) Lahore.**

Under Article 128 of the Constitution the governor of the Punjab issued Defense Housing Authority Lahore, Ordinance 1999.

By the above-mentioned enactment, a new corporate entity in the name of Defense Housing Authority (DHA), Lahore was formed which had a perpetual succession and common seal and it could purchase and sale out land in its own name.<sup>223</sup> Defence Housing Authority was formed to provide relief to the families of shuhada (martyred for homeland) and Ghazis (those who are able to survive after war) of Pakistan Army. DHA enjoys some special privileges in terms of taxes and other Government dues which are enjoyed by Capital Development Authority and other Governmental agencies.

The Defence Housing Authority has replaced the Lahore Cantt Cooperative Housing Society Limited, Lahore which was formed and registered under the Cooperative Societies Act 1927. All the assets, liabilities, officers and bye laws were transferred and attributed to the DHA, Lahore.<sup>224</sup> The acquisition of land by DHA is considered as land acquired under land acquisition Act for public purpose.<sup>225</sup> The

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<sup>222</sup> Dr. Muhammad Naseem Javaid Vs Lahore Cantonment Housing Society Ltd Through Secretary Fortress Stadium Lahore Cantt, PLD 1983 Lahore 552.

<sup>223</sup> The Defence Housing Authority Lahore, Ordinance, 1999, Section 2, 1<sup>st</sup> Edition, Irfan Law Book House, Lahore, 2018.

<sup>224</sup> Ibid, Section 18.

<sup>225</sup> Ibid, Section 11.

management of it was run by the Governing Body consisting of Corps Commander Lahore, as president of executive board the other members of the governing board includes the representatives of the law, finance and housing departments of the provincial Government concerned.

The governing body shall be assisted by the executive board consisting of the administrator, one member nominated by the governing board and the secretary of the authority shall be the members of the executive board.<sup>226</sup> For the purpose of reconstruction of Defence Housing Authority an order was issued in 2002 by the Chief Executive (General Pervaiz Mushrraf) of Pakistan under the name and style of Defence Housing Authority, Lahore Order 2002.<sup>227</sup> By this new order an amendment has been introduced in the composition of the management of DHA by declaring the secretary, ministry of defence as chairman, the corps commander, Lahore as vice chairman, administrator as a member, two co-opted civilians and secretary of the authority as member of the management.<sup>228</sup>

In order to promote DHA to perform housing activity an exemption from income tax has been provided by law. The Lahore High Court held that DHA being a local authority was exempt from income tax. High court set aside impugned notice for being illegal and without lawful authority.<sup>229</sup> Executive board may perform all the necessary acts on behalf of DHA including acquisition of land under Land Acquisition Act 1894.<sup>230</sup>

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<sup>226</sup> Ibid, Section 3.

<sup>227</sup> Notification F.NO.2(4)/2002-Published on 19-09-2002.

<sup>228</sup> The Defence Housing Authority Lahore Order, 2002, Section 4, 1<sup>st</sup> Edition, Mansoor Law Book House, Lahore, 2007.

<sup>229</sup> DHA Lahore Through Secretary Vs D.C Income Tax, 2010 PTD (LAHORE) 2552.

<sup>230</sup> Ibid, Section 8.



There is a gap between theory and practice instead of following the procedure laid down under land acquisition Act a novel procedure has been followed by DHA by getting the help of a middlemen. DHA does not pay even a single rupee to purchase the land for DHA.

The land is purchased by the middle men from the land owners and after that this piece of land is transferred in the name of DHA and as a consideration of this land some portion of land in the shape of developed land is returned to the middleman. In order to raise funds for running the day-to-day affairs of DHA the executive board can raise funds through loans and by imposing charges on the members of DHA.<sup>231</sup> This provision has made the day to day working of DHA on smooth basis. Wide powers have been given to the executive board and governing body to cancel the allotment of the plot after serving a show cause notice to the members of DHA in case of failure to pay installment or development charges.<sup>232</sup>

On the other hand, there is a check and balance on DHA as well that in case of cancellation of plot without providing an opportunity DHA was directed to pay damages plus special damages. The facts of the case are that petitioner purchased a plot in DHA and paid all the dues on time and went abroad for nineteen years. In the mean while the allotment of plot was cancelled by DHA and was issued to another person that other person further alienated to another person. After filing of petition DHA neither pointed out any lapse on the part of the petitioner nor was it able to

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<sup>231</sup> Ibid, Section 8.

<sup>232</sup> Ibid, Section 17.

show any opportunity of hearing being provided before cancellation of plot. The court awarded damages and special damages for mental pain suffered.<sup>233</sup>

The above-mentioned penal provision for failure to pay dues is proving very helpful to save DHA from becoming a failure housing developer as we can see many precedents in case of cooperative housing societies. This provision is a kind of internal check and balance on the members of DHA to follow the rules and regulations of DHA in letter and spirit.

Another issue faced by the housing societies is that after becoming the member of a housing society the members use the plot for some other purposes other than residence which causes nuisance to the adjoining members of the housing societies in order to control this mal practice a fine at the rate of fine of rupees two thousand rupees per day or an imprisonment up to six months or both punishments can be granted to the member concerned.<sup>234</sup>

In order to stop the members of the housing DHA to deviate from the master plan and raising building in contravention of the DHA laws very wide powers in the shape of removal of the building have been provided which shall be exercised after giving an opportunity of being heard.<sup>235</sup> DHA is also bound to follow the master plan which has been approved; a petition was filed by the petitioners when the petitioners were aggrieved of conversion of roads of their residential area into single carriage road for playing commercial vehicles.

In order to change the master plan public hearing is a must thing in terms of Article 9(2) of Pakistan Defence Officers Housing Authority Order 1980. It was only

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<sup>233</sup> Mirza Manzoor Hussain Qazalbash Vs Syed Muhammad Faheem, 2016 YLR 748.

<sup>234</sup> Ibid, Section 18.

<sup>235</sup> Ibid, Section 19.

executive board which could do so after hearing objections from the general public. No master plan, planning or development scheme under Article 9(3) of Pakistan Defence Officers Housing Authority Order 1980 can be planned by any local authority or other agency of like nature can do so without consent of the executive board. High Court issued an order to DHA to restore the previous position of master plan and if any change was needed it could be done after following the procedure prescribed by law.<sup>236</sup>

In order to protect the authority, the governing board, the executive board, the administrator from any suit or proceedings for any action taken in respect of affairs of DHA an indemnity clause has been provided.<sup>237</sup>

This provision seems to be in conflict with the Constitutional guarantee provided under the Constitution of Islamic Republic of Pakistan 1973 that nobody shall be deprived of life or property save in accordance with the procedure of law. A special forum has been provided to decide all pending cases in relation to plots of DHA. All the pending cases shall be transferred to the Administrator of DHA, Lahore and an appeal against the decision of administrator can be filed to the executive board of DHA.<sup>238</sup>

There are two aspects of the above-mentioned provisions of law firstly, positive one that by providing this special remedy in case of any dispute regarding the plot an expeditious remedy has been provided which can be helpful to save the time and money of the aggrieved member of the society, secondly, this provision has a

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<sup>236</sup> Irfan Merchant and others Vs Federation of Pakistan and others, 2013 CLC 853.

<sup>237</sup> Ibid, Section 21.

<sup>238</sup> Ibid, Section 25.

negative aspect i.e. that DHA is itself a judge in its own case and it is violation of the general principle of law that nobody can be judge in his own case.

### **2.6.2 Defense Housing Authority (DHA) Construction and Development Regulations-2014**

The executive board of Defence Housing Authority (DHA) was empowered to make regulations under Article 23 of Chief Executive Order No.26 of 2002. In exercise of the powers conferred upon under Article 23 and Article 4 of the Order these regulations have been prepared for regulating all the affairs of the DHA from beginning till end.

Every person who is able to get a plot in DHA is bound to raise construction in accordance with these regulations. These regulations are mandatory to be followed by every plot holder in DHA in whatever way he has got the plot i.e. by making payment or by way of gift or inheritance or any other legal way.<sup>239</sup> The maximum size of a plot in DHA is of 2 kanals and minimum size of plot is 5 marlas it also offers plots of 1 kanal, 10 marlas, 8marlas, 7marlas. The measurement of 1 Marla is equal to 225 square fit.<sup>240</sup>

DHA does not acquire land as per Land Acquisition Act. DHA gets land from the middlemen who purchased land from the land owners and then transfer the land in the name of DHA. The middlemen take the responsibility of any defect in the title of land in this way DHA gets land free from all encumbrances. Middlemen purchase lands by paying handsome amounts to the land owners. As a consideration of

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<sup>239</sup> Defence Housing Authority Construction and Development Regulations 2014, Section 3, 1<sup>st</sup> Edition, Kausar Law Book House, Lahore, 2015.

<sup>240</sup> Ibid, Section 4.

providing land the middlemen are provided developed plots in DHA housing scheme. In this way DHA without paying a single rupee becomes the owner of the whole land consisting of all the DHA housing schemes in all the cities where the DHA schemes are operating in all over Pakistan.

When a DHA housing scheme is launched in a city, applications are invited from the general public through electronic and print media. It is a common practice that applications are received in bulk and many times more than the plots available in the housing schemes of DHA. Each application is accompanied with a fee. The allotment of plots is done on the basis of balloting. No fee is refunded to the unsuccessful applicants.

In this way billions of rupees are earned by DHA housing schemes in each housing scheme. After getting the land with the help of middlemen the land of DHA is developed by collecting development charges from the members (allottees).<sup>241</sup> Most of the housing schemes launched by the civilians results into failure when no utility services are provided to the housing schemes either due to the lapse on the part of members to pay the development charges or due to lapse on the part of the management of the housing schemes.

Application on the prescribe form is made to the building control branch for supply of water. The charges are paid by the allottees for the connection as well as for monthly consumption.<sup>242</sup> The water and sewerage facilities are both the responsibilities of DHA administration so as contrast to civilian housing schemes time and money is saved. Every allottee (plot holder/member) of plot is bound to construct the plot within a maximum time period of three years from the date of allotment of

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<sup>241</sup> Ibid, Section 5.

<sup>242</sup> Ibid, Section 11.

plot. Construction, addition and alteration can be done only after getting an approval from DHA on a prescribed form.

A new and innovative concept of non-construction penalty has been prescribed by the rules if the plot is not constructed within three years.<sup>243</sup> This is a welcome step as it enables to allottees members to take interest in the development of the scheme and to put a check to leave the plot as an idle and dead investment. The administration of Defence Housing Authority is not above law, so no plot can be cancelled without providing an opportunity of hearing. Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan 1973 provide protection to the citizens with respect to acquiring, using and holding any property.

DHA is not an exception to it, non-fulfillment of contractual obligations on the part of the plot holder does not entitle the administration to cancel the plot without providing an opportunity of hearing to the plot holder. Principle of Audi Alteram Partem is applicable to all the transactions of DHA.<sup>244</sup>

Application for construction should be accompanied by one original tracing cloth and seven copies of ammonia print of drawing, copy of allotment/transfer letter, site plan (prepared by an engineer containing each and every detail of construction) and computerized identity card, paid challan for dues, architect stability certificate along with form A and B, and undertaking by the allottee that no rule or regulation of DHA has been violated during the construction of the plot.<sup>245</sup>

This provision is a kind of an internal check and balance on the allottees to follow the rules and regulations of DHA. But the matter of construction is not left to

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<sup>243</sup> Ibid, Section 13.

<sup>244</sup> Raja Haroon Rashid Vs Defence Housing Authority, 2017 CLC 342.

<sup>245</sup> Ibid, Section 14.

the sweet will and discretion of the member/allottee. A complete scrutiny of the drawing and documents is done by the administration of DHA within thirty days. After scrutiny the application can be rejected completely or some modification can be suggested and if some suggestions are recommended the application can be resubmitted after incorporating the suggestions and once again a positive or negative reply on this application shall be given by the administration of DHA within thirty days.

In spite of this exhaustive exercise of scrutiny if some deficiency is not pointed out at the time of scrutiny it does not mean that a permission to construct the plot by violating the rules has been granted. An oversight at the time of scrutiny is necessarily to be corrected when pointed out by the administration of DHA.<sup>246</sup>

A complete system of internal check and balance has been devised to stop any violation of any kind in the construction of plots in each and every housing scheme launched by DHA. Due to this system of check and balance a systematic and uniformity in the construction of housing schemes of DHA is found. A time period of two years is granted by DHA to complete the construction work from the date of approval of the scheme.

Penalty is imposed under DHA regulations on the member who has failed to construct his plot. It is a very good step to put a check and balance on the practice of purchasing of plots for speculation purposes. Check and balance during the construction work each and every member of DHA is bound to get his construction work verified when the layout has been completed, on completion of boundary wall,

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<sup>246</sup> Ibid, Section 16.

on construction of main building up to DPC level, before pouring roof of first floor and on final completion and before occupation.

After completion and during construction work a surprise visit can be done by any officer of DHA.<sup>247</sup> Maximum height of a building in phase one to four can be 30 feet and 35 feet in phase five. In short, all the possible situations have been answered by DHA Regulations 2014.

Any act on the part of the members (plot holders) of Defence Housing Authority which is based upon forgery, fraud and which is in contravention of the regulations of DHA would lose its validity and fall to the ground.<sup>248</sup> After completion of construction work by the member (plot holder) DHA would issue completion certificate which is a proof that house has been constructed by the plot holder as per rules and regulations of DHA.

If there is no lapse on the part of the plot holder (member) and he has constructed the development work as per rules, then it is the right of member and duty of DHA to issue completion certificate. If there is a refusal on the part of DHA to issue completion certificate it would be not only unreasonable but in violation of Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan 1973.<sup>249</sup>

A plot was owned by the petitioner in a housing scheme in Karachi under the authority of Karachi Development Authority. Later on, the territory of the housing scheme was taken over and included in Cantonment Board in 1997. In 2004 petitioner applied for approval of building plan for construction of house on the plot. Cantonment board demanded fee plus TIR Tax from the petitioner. Petitioner

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<sup>247</sup> Ibid, Section 18.

<sup>248</sup> Mustafa Lakhani Vs Pak Defence Officers Housing Authority, Karachi, 2008 SCMR 611.

<sup>249</sup> Syed Dost Ali Vs Federation of Pakistan through Secretary Defence and 3 others, 2016 CLC 367.



challenged the imposition of TIR Tax on the ground that Statutory Regulatory Order (SRO) on the basis of which this tax was being imposed was issued after he has purchased that piece of land in a housing society which was on that time not part of Cantonment Board so it was not applicable.

This plea was rejected by the Sindh High Court and it concluded that this tax was to be paid by all the members of Karachi Cantonment Board cross the board without any discrimination.<sup>250</sup> Due to these complete and compact rules and regulations the DHA housing projects are considered as very successful in Pakistan. Legal framework of DHA is so complete and compact that it contains the answers of almost all questions of law from the start till end for example even if the plot holder or his family member of the plot holder in DHA dies it provides the eligibility for burial in the graveyard of DHA.

As per DHA rules the facility is available for the parents, spouse, dependent children of the registered members. High Court dismissed intra court appeal and declared that DHA regulations were made to maintain structural harmony, privacy, security and tranquility for its residents so it was confined to the extent of members and close relatives of DHA only.<sup>251</sup>

### **2.6.3 Defence Housing Schemes Vis-A-Vis Goal of Housing for All Challenges and Grey Areas.**

What is the role of DHA housing schemes in achieving the goal of housing for all? Whether these schemes have proven helpful to achieve the goal of housing for all

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<sup>250</sup> Khawaja Muhammad Asghar Vs Govt. of Pakistan through Secretary Ministry of Defence Islamabad and 30 others, 2012 MLD 415.

<sup>251</sup> Asghar Bin Shahid Jafri Vs Defence Housing Authority, 2017, Lahore 347.

as envisaged by the UN Habitat agenda or due to DHA housing schemes the situation has further worse?

#### **2.6.3.1 Land Acquisition Procedure of DHA.**

The first step to launch a housing scheme is to acquire land for it and as per DHA Ordinance the pattern to be followed for acquisition of land is to acquire the land as per Land Acquisition Act 1894 but there is a gap between theory and practice and contrast to theory the land is acquired with the help middle men who purchased lands from the landowners at a high rate and sometimes by using coercing measures to sell their lands. The lands so purchased or acquired are sold to DHA housing schemes by these middlemen (contractors). These middlemen take full responsibility to transfer the lands to DHA housing schemes free from all encumbrances. In return of these lands the middlemen get a share from DHA in the shape of developed plots. DHA by spending not a single rupee acquire lands for their housing schemes.

In a similar situation Supreme Court of Pakistan declared that middlemen who had entered into agreements with the Police Foundation to arrange land for establishment of residential housing colony were not entitled to plots without paying the development charges. Furthermore, such middlemen were not entitled to more than their due share of plots.

All such allotments to middlemen were declared to be null and void.<sup>252</sup> In another case Supreme Court of Pakistan has raised very serious concerns and raised a big question mark on the mode of land acquisition mechanism adopted by DHA Lahore. DHA Lahore acquired land from Evacuee Trust Property Board for establishment of phase six and seven of DHA Lahore.

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<sup>252</sup> Suo Motu Case No. 11 of 2011, PLD 2014 SC 389.

Initially it was decided that DHA would pay an area of 33 percent to Evacuee Trust Property Board as a consideration of land acquired by DHA Lahore. Later on, DHA violated the first agreement and promised to pay 25 percent area in the shape of developed plots to Evacuee Trust Property Board. Supreme Court took a suo motu action and directed DHA to abide by with its previous commitment of providing 33 percent of land to Evacuee Trust Property Board as a consideration otherwise the court would declare the whole deal as null and void.<sup>253</sup>

In short from time to time the courts have been raising questions on the transparency of the mode of acquisition of lands by DHAs for its housing projects. The positive aspect of DHA housing projects is that rich men (elite class) can get plots in these schemes with all the luxuries at very high prices. A small segment of the society can get housing units at high prices. There is another aspect of this land acquisition process that is negative one.

Due to acquisition of lands in this manner the prices of the lands and subsequently plots become so high that a major portion of the society cannot afford to have housing unit in these schemes. The problem of housing for all has become worse and an artificial inflation is created. So, DHA has proved helpful to provide housing units to only elite class and housing has become out of reach for a major portion of the society.

#### **2.6.3.2 Issuance of Possession of Plots only without Ownership (File System).**

There is no concept of registry in DHA, the plots are sold on the basis of file system (the ownership remains with DHA) only the possession of the plots is transferred to the members of DHA. This file system has promoted the dealer mafia in

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<sup>253</sup> Suo Motu Action Regarding Illegal Selling Out of Auqaf Properties by Chairman Evacuee Trust Property Board, PLD 2014 SC 100.

the real estate. A plot is sold many a times due to which the prices of the plots increase many folds. It results into an artificial inflation. Selling of files of the plots has become a nasty business.

#### **2.6.3.3 Tax Evasion and Deprivation of State from Revenue.**

When of the record buying and selling of plots is done by the file mafia and property dealers and no registry of plots is done by filing the procedure of Registration Act it results into tax evasion and deprivation of state from revenue.

#### **2.6.3.4 DHA Itself Judge in Matters of Dispute between DHA and Members of DHA.**

It is a settled principle of law that nobody can be judge in his own case but this principle is not followed in case of DHA. Whenever there is a controversy of any allottee / member of DHA with DHA administration, the Administrator of DHA would decide that dispute and an appeal would lie to the executive body of DHA. Under this situation the right of fair trial has been denied.

Due to this reason many cases of violation of legal rights have arisen. It was held by Sindh High Court that even Executive board of Defence Officers Housing Authority could not cancel the allotment of plot without providing an opportunity of hearing.

There was no evidence on record which could show that prior to cancellation of plot a show-cause notice was issued to the plot holder or an opportunity of being heard was provided to the plot holder.<sup>254</sup> Appellant was an employee of Pakistan Army, he filed a case against the cancellation of plot situated in Pakistan Defence Officers Housing Authority. The plot was cancelled because the said employee got

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<sup>254</sup> Nizam Ahmed Chaudhary through Attorney Vs Defence Officers Housing Authority, 2018 CLC 1009.

allotment of plot by suppression of facts that he had already got a plot and he could not get double plot.

The said allotment was in violation of byelaws of the housing authority. Plaintiff was afforded an opportunity of hearing by the scrutiny committee of the housing society but he deliberately did not appear after proper service of notice. The order of cancellation of allotment of plot was upheld.<sup>255</sup>

Another example in which a dispute between a plot holder/member of DHA and DHA was decided by DHA itself in clear violation of DHA Regulation was the case of Mst Zahida Sultana. In this case petitioner was a plot holder and at the time of purchasing plot in DHA Lahore the petitioner (Mst. Zahida Sultana) purchased the plot which was adjacent to parking area as per master plan and layout plan of the DHA Lahore. When the petitioner constructed her house on her plot DHA converted the parking area into a commercial area by taking decision unilaterally.

The member filed an application to relevant authorities of DHA against this decision which was rejected by DHA administration being a judge in their own cause. It was held by Lahore High Court the DHA could not decide the matter in an unjust way and DHA was bound to develop the site as per master plan and layout plan. The power of the executive board could not be exercised in violation of DHA Regulations.<sup>256</sup>

#### **2.6.3.5 Whether Defence Housing Authority (DHA) can sale plots to general public?**

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<sup>255</sup> Major(R) Sheikh Abdul Naseem Vs Pakistan Defence Officers Housing Authority through Secretary and others, 2018 YLR 2210.

<sup>256</sup> Mst. Zahid Sultan Vs DHA Lahore and others, PLD 2013 Lahore 663.

It is another relevant question that whether DHAs in various cities of Pakistan, which are the creation of cantonments boards which are formed for the defense of the country and the people of the country. Whether the land allocated to these cants for purely military purposes can be sold to civilian people to earn money (it is purely a business activity) is allowed by law? The answer to this question was provided by the Present Chief Justice of Pakistan (Justice Gulzar Ahmad) in the case of encroachment in the shape of marriage halls constructed in the cantonment of Karachi that such kind of commercial activity was not allowed by law. A similar kind of case was decided by former Chief Justice of Pakistan Justice Iftikhar Muhammad Chaudhary when it was held that Police Foundation was a charitable foundation was a charitable foundation meant to serve the needs of poor and needy officials of the Police Foundation so it could not form a private housing society to do a business as land was not given to it for this purpose.<sup>257</sup>

#### **2.6.3.6 Elimination of one-sided agreements to make allotment of plots and apartments.**

There is a need to eliminate one sided agreements in the housing industry of Pakistan in which buyers/ investors are required to sign the application form by putting signatures in the dotted lines. An apartment was given to the petitioner in 2003 by Defence Housing Authority as a result of balloting. It was settled that the payment shall be made up to 95 percent and remaining 5 percent payment for the apartment was to be made at the time of delivery of residential apartment. DHA committed to hand over the apartments in 2006 but due to increase in the prices of the construction materials it could not be possible. DHA handed over apartments in 2009

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<sup>257</sup> Suo Motu Case No. 11 of 2011, PLD 2014 SC 389.

and demanded extra price for it. It was declared by Sindh High Court that DHA could not unilaterally increase the prices of the apartments and it was bound as per terms and conditions of the agreement.<sup>258</sup>

#### **2.6.3.7 Whether the Current Practice is a Deviation from Main Purpose of DHA.**

Defence Housing Authority was formed to provide relief to the families of the Shuhada (martyred for mother land) and Ghazis (those who fought for country and survived) in the shape of plots. But under the present conditions it has become a corporate body the main aim of which is to generate profits by doing housing activity as a pure business activity. DHA Rawat scam is important to mention here, it was a joint project of DHA and Bahria Town. The project was launched in 2008 and amounts were submitted by the investors in 2011 and still people are looking for the allotment of plots. Supreme Court of Pakistan is looking into the matter to provide relief to the victim investors in this case.

### **2.7 BAHRIA TOWN AS A DEVELOPER OF HOUSING INDUSTRY OF PAKISTAN.**

Bahria Town is another major housing developer in the housing industry of Pakistan along with Defence Housing Authority. It has various projects in major cities of Pakistan. Primarily it is meant to meet the housing needs of the elite class of Pakistan due to very high prices of plots.

#### **2.7.1 The procedure of land acquisition of Bahria Town to establish a housing society.**

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Asrar Alam Sheikh Vs Administrator DHA and others, 2011 YLR 2873.

Following procedure is adopted by Bahria Town to establish housing projects in various cities of Pakistan.

### **2.7.2 Acquisition of Land for Bahria Golf City Murree**

Request was made by Bahria Town to Deputy District Officer (Revenue) on 12-2-2006 for acquiring 20% land in Mouza Salkhaiteer (Murree). Bahria Town had already purchased some area to meet the condition of 80% area of land to get sanction of the housing society and to get the remaining area i.e. 20 % land under Land Acquisition Act 1894. The Board of Revenue after scrutiny of application to acquire 20% area of land under Land Acquisition Act 1894 allowed publication of notification under Section 4 of the Act. Bahria own was directed to get No Objection Certificate from Tehsil Municipal Administration Murree.

Public notice was given in Nawa-e-Waqt to invite objections from the general public. Public objections were filed after that it was known that there were many bogus mutations in the name of Bahria Town and actual land owned by Bahria Town was less than 80% land of the housing scheme which was a precondition to acquire remaining 20% land as per provisions of Land Acquisition Act 1894.<sup>259</sup>

The developer may earn money but not at the cost of public interest. Payment of value of land at a rate which is less than market value cannot entitle to a plot. When the Government land is allotted the process of allotment of land should not start from making application but from the advertisement to invite the general public to make offers.<sup>260</sup> Lease is a kind of contract and the lessee does not become the owner of the land. The lessee is bound to use the land as per terms and conditions of the lease

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<sup>259</sup> Suo Motu Case No. 13 of 2007, PLD 2009 SC 217.

<sup>260</sup> Jaffar Ali Vs Station House Officer Air Port Police Latifabad, Hyderabad, PLD 2016 Sindh 31.



agreement. Government being custodian of public interest and rights cannot sit as a silent spectator. Sindh Urban Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001. The purpose of this Ordinance was to cancel allotments of lands for residential, commercial or industrial purposes at lower than market rates.

Government and other departments of the Government had not discretion to distribute the state property as a charity. Government cannot transfer or exchange land without introducing a law for this purpose.<sup>261</sup>

### **2.7.3 Acquisition of Land for Bahria Town Karachi.**

The unique quality of this housing is that land was offered to sale first and the land on which housing scheme is constructed was purchased after it so it is a unique housing project in its nature. Bahria Town is the largest housing developer of Pakistan. A meeting was held by Malir Development Authority (MDA) on 30-01-2013 in which a decision was taken to provide 2500 low-cost housing units in all Malir Development Authority's schemes in accordance with Prime Minister's housing programme. Thirty-seven Dehs were declared as notified areas of Malir Development Authority. This area was enlarged up to forty-three in 2013. A summary was sent to the Chief Minister for the start of housing schemes.

On 20-1-2014 Malir Development Authority granted approval to establish housing schemes on nine Dehs out of forty-three. On 25-9-2013 Bahria Town through advertisement invited general public to become member of the Bahria Town housing society.

In 2014 an oversees block was established. No approval was granted to establish Bahria Town Housing Project situated in the territorial jurisdiction of Malir

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<sup>261</sup> M Azam Khan Ghulam Rasul Vs Said Ahmed, 2012 CLC 1655.

Development Authority as per record of meetings of Malir Development Authority of 2013 and 2014. Bahria town was being established on the land on which Malir Development Authority was also working on papers to establish a scheme of Malir Development Authority. In January 2014 Bahria Town invited the general public to purchase plots of Bahria Town much earlier than the agents of Bahria Town purchased land for Bahria Town. Later on, after establishing the housing scheme Bahria Town in order to give legal cover to the housing scheme entered into an exchange agreement with Malir Development Authority to exchange portion of land purchase by Bahria Town with the state land owned by Malir Development Authority. The exchange of land is not only causing financial loss to the Government but also a violation of Section 17 of the Colonization of Government Lands Act 1912.

This is the way how the largest housing developer managed to acquire land for the largest housing scheme of Pakistan.<sup>262</sup> Three different figures of the land under the possession of Bahria Town Karachi were presented in the Supreme Court of Pakistan due to which the head of the full bench of Supreme Court of Pakistan had to say it is biggest mystery to know the actual area of land under the possession of Bahria Town Karachi. From this statement (very responsible person of the apex court of Pakistan) the level of transparency of land acquisition process can be imagined. With the muscle power of the police land was acquired by Bahria Town Karachi. Supreme Court of Pakistan held that to enable the consolidation of land for Bahria Town Karachi, Malir Development Authority and Bahria Town have twisted the concept of consolidation of land by framing regulations which instead of furthering the purposes of legislation are in conflict with Section 2, clause (ff) of the Malir

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<sup>262</sup> Civil Miscellaneous Application No. 376-K of 2014 in S.M.C of 2011.

Development Authority Act 1993 as amended on 19-12-2013 and Malir Development Rules 2006. Furthermore agricultural lands have been consolidated for commercial purposes during acquisition of land for Bahria Town, which is a clear violation of Section 17 of the Colonization Act 1912.<sup>263</sup>

#### **2.7.4 Bahria Enclave Islamabad Scam.**

It is another scam of one of the biggest housing developers of Pakistan. Land reserved for a park was occupied by Bahria Town. Notice was taken by Supreme Court of Pakistan and owner of Bahria Town was ordered to pay one trillion rupees for illegal encroachment of land reserved for a park. This is the land acquisition process of Bahria Town. In this scenario to expect housing for all including poor class of the society does not seem to be an attainable target.

### **2.8 ROLE OF KACHI ABBADIS (SLUMS) IN ACHIEVING THE GOAL OF HOUSING FOR ALL.**

Slums are a mode to accommodate very poor segments of the society. In the process of rapid urbanization when people move from rural areas to urban areas these slums are a major accommodating source to adjust such people.

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<sup>263</sup> Civil Miscellaneous Application Number 376-K of 2014 in Suo Motu Case of 2011.

### **2.8.1 Introduction to Kachi Abbadis (Slums).**

Adequate housing is one of the basic necessities that are vital for human subsistence. Developing countries face a number of problems in providing sufficient housing facilities to a rapidly growing population.

The gap between the demand and supply in the housing industry compounded with the low purchasing power of the population continuously moving to the cities in search of a living creates a difficult situation for the Government, Policy makers and Regulators.

According to UN Habitat statistics sixty eight percent population of the world lives in non-slums areas and thirty two percent of the population lives in slums.<sup>264</sup> The housing facilities are limited and if available are usually not affordable for a large number of people who move to the cities with very little resources. As per United Nations report about one billion people in the world's population who live in urban population live in slums (kachi abbadis).<sup>265</sup> When people find it difficult to avail affordable housing facilities through formal and legal channels it results in the mushroom growth of slum areas on the state lands owned by various Government Departments. The residents of kachi abbadis suffer from various difficulties such like no certainty of living there, polluted water and haphazard growth of katchi abbadi.<sup>266</sup>

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<sup>264</sup> Executive Summary, Human Rights in Cities Handbook Series, Volume 1, The Human Rights Based Approach to Housing and Slums Upgrading, UN Habitat, Kenya. Page 21.

<sup>265</sup> Executive Summary, Human Rights in Cities Handbook Series, Volume 1, The Human Rights Based Approach to Housing and Slums Upgrading, UN HABITAT, Kenya.

<sup>266</sup> UN-Habitat (2015), Slum Almanac 2015/2016-Tracking Improvement in the Lives of Slums Dwellers, Page 2.

From time-to-time Government takes initiatives to regularize these housing units and notify them as Katchi Abadis so that the dwellers may have a legal entitlement to municipal and utility services.

The problem of slum dwellers (kachi abbadis) cannot be understood without going into the root causes of the problem. There are two causes of this issue immediate one, immediate one is those kinds of problems which are short term and catalyze the slums up gradation problems and underlying causes are the consequences of housing policies, laws, capacities and availability of resources. Root causes are usually found in the complex and structural processes related to culture, society, beliefs, microeconomics and Government.

These indicate a situation that needs to be changed at family, community and higher decision-making levels.<sup>267</sup> After its regularization by the concerned Provincial or Federal Government the development of the Katchi Abadi is the major challenge faced by the Development Authorities concerned. Even if not recognized the residents of the kachi abbadis enjoy Constitutional rights when notices were issued by the authority constituted under section 38 of the Punjab Development of Cities Act 1976 for vacation of lands. The notices issued by the authority were set aside It was held by the court that the residents of the kachi abbadi were entitle to get equal land for their houses and costs of their existing structure. The action of getting the land of the kachi abbadi without providing an alternative land was also declared as discriminatory.<sup>268</sup>

In addition to private and cooperative housing schemes a large number of people are residing in Katchi Abadis and in addition to the genuinely deserving low

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<sup>267</sup> UNFPA (2014), A Human Rights Approach to Programming-Practical Implementation Manual and Training Materials, Page 97.

<sup>268</sup> Muhammad Ramzan Vs Multan Development Authority, 2007 CLC 746.

income class which has settled on state land due to their lack of affordability of housing facilities through any formal or legal channel there is land mafia (Illegal grabbers of lands) which exploits these needy people.

Once the katchi abadi is regularized and the land is registered in the name of the dwellers this mafia gets the land by paying them a meager (small) amount of money and the katchi abadi which is regularized by the Government to accommodate the poor people turns into a posh commercial and residential area. This kind of transformation displaces the people and they again settle on state land somewhere else causing emergence of another katchi abadi and the process keeps going on without the actual purpose being fulfilled i.e. accommodation of the genuinely deserving low income group. Katchi abadis have existed since Pakistan came into being in 1947, when about six lakh people came from India to Pakistan.

### **2.8.2 Initiatives taken by the Government to tackle Katchi Abbadis (Slums) in Pakistan.**

At international level UN Habitat has taken an initiative under the name and style of UN-Habitat's Participatory Slum Upgrading Programme is working towards the progressive realization of human rights for slum dwellers and Sustainable Development Goal number 11 by way of slum up gradation. Participatory Slum Up gradation Programme also aims to improve the standard of living of slum dwellers through incremental, climate compatible, human rights based, city wide and participatory slum up gradation and prevention of slums in future.<sup>269</sup>

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<sup>269</sup> UN-Habitat(draft), PSUP, Participatory Slum Upgrading Programme Phase 1: Participatory Urban Profiling Implementation Guidelines, Page12.

The International Institute for Environment and Development, London has suggested to recognize the legal right of those living in slums and provision of basic services of life to provide better standard of life to the residents of these abbadis.<sup>270</sup>

The formal initiatives taken by the Government in this regard came in 1973 under the Awami Rehaishi Tanzeem when people planning project was launched. In 1978 a policy was devised and through this policy Katchi Abadis which were established on state land before 01.01.1978 with a minimum of 100 dwelling units were regularized. Another policy was introduced in 1986. Through this policy the katchi abadis established on state land before 23.03.1985 with a minimum of 40 dwelling units were regularized. The main difference in the policies of 1978 and 1986 was that the requirement of minimum number of dwelling units was reduced from 100 units to 40 units.<sup>271</sup>

This reduction in the minimum number of dwelling units rendered a large number of katchi abadis eligible for regularization which earlier didn't meet the criterion for regularization. This reduction also shows the intention of the Government to bring more of the katchi abadis into the regular net. Until 1986 the regularization and management of the affairs of katchi abadis remained directly the function of local Government and community development department. In 1986 the directorate of katchi abadis was established under the local Government and community development department. Since 2012 the directorate of katchi abadis has been attached to the Board of Revenue.<sup>272</sup>

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<sup>270</sup> Shelter, Infrastructure and Services in the Third World Cities, J. Hardoy & D. Sattertwate, The International Institute for Environment and Development, London, 1986, Pages 245-275.

<sup>271</sup> [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk), Accessed on 4-5-2018.

<sup>272</sup> Ibid.

Another policy came in 2006 through which the Katchi Abadis established on the state land before 31.12.2006 with a minimum of 40 dwelling units were regularized. Then in 2012 a policy was introduced through which the minimum number of dwelling units required for a katchi abadi to be regularized were reduced from 40 to 10 for the urban areas and the cutoff date was extended to 31.12.2011. katchi abadis also existed in rural areas which have not been regularized and through this policy the katchi abadis established on state land in rural area with a minimum of 04 dwelling units were also regularized. Before doing all the above-mentioned reforms it is necessary to achieve the goal of housing for all that a correct date may be collected to enable the policy makers to devise policies in the light of available date. Under 2030 Agenda for Sustainable Development emphasizes the importance of the continuous process of monitoring and data collection. Monitoring enables right holders to hold the duty bearers responsible for not performing the duties which they ought to perform.<sup>273</sup>

### **2.8.3 Regularization process of the Katchi Abadis.**

Housing and slum up gradation actors should address and give preference to the rights and welfare of those people who live in slums as a matter of priority and urgency.<sup>274</sup> Regularization process of the Katchi Abadis consists of the following steps. Policy Notification is issued by the provincial Government concerned. Survey of Katchi Abadis is conducted by the field staff. Survey List of dwelling units is prepared. Land Measurement is conducted.

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<sup>273</sup> OHCHR (2003), Draft Guidelines: A Human Rights Based Approach to Poverty Reduction Strategies, Page 57.

<sup>274</sup> Special Rapporteur on the Right to Adequate Housing (2015), Report the Special Rapporteur on Adequate Housing A Component of Right to An Adequate Standard of Living and On the Right to Non-Discrimination in This Context, Leilani Farha, A/70/270, Para, 52.



Revenue Record is obtained (Fard Jamabandi, Aks Shajra, NEC, Certificates). NOC is obtained from the Land-Ownning Department. Notification is issued by Director General, Katchi Abadis. Entitlement Certificates are issued. Demand Notices for cost of land & development charges are issued. Sale Deed is issued in favor of the dwelling units.

According to the Regularization Scheme 2012 the Proprietary rights are to be granted jointly to both husband and wife/wives with equal rights in rural and urban areas and there will be no charges on account of cost of land for widows & orphans up to 5-Marla in urban areas and up to 1-Kanal in rural areas.<sup>275</sup> Before the regularization process of slums there is a need to do a causality analysis which consists of identification of immediate causes, underlying causes and root causes of slums up gradation challenge, to find out the relationship between various causes and effects and analysis of power relations and the human rights implication of this process.<sup>276</sup> After going through this process the regularization process of slums should be designed.

With respect to Provision of civic amenities in Katchi Abadis Regularization Scheme 2012 has a provision through which the land required for widening of the roads/streets in Katchi Abadies and provision of civic amenities, will be got vacated from the dwellers and alternate land will be provided to them subject to availability.

With respect to the matter of preventing further encroachment, the Assistant Commissioners are competent to get the encroached state land vacated from the illegal encroachers/occupants under Section 32 and 34 of the Colonization of

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<sup>275</sup> [www.punjab-zameen.gov.pk](http://www.punjab-zameen.gov.pk), Visited on 1-3-2020.

<sup>276</sup> Human Rights in Cities Handbook Series the Human Rights-Based Approach to Housing and Slum Upgrading, UN Habitat for Better Urban Future, Page 33.

Government Land Act, 1912. It is the responsibility of concerned Assistant Commissioner to ensure that the status of land is in accordance with the physical survey and no further encroachment is allowed after the cut-off date announced in the Regularization Scheme 2012. All encroachers/illegal occupants after 31.12.2011 are ejected and dealt with in according with law.

#### **SUMMARY OF KATCHI ABADIS UNDER ALL SCHEMES OF PUNJAB**

<b>Sr.</b>	<b>Subscription</b>	<b>No. of Katchi Abadis</b>
<b>A)</b>	<b>KAs UNDER SCHEME 1978, 1985 &amp;</b>	
<b>1</b>	Notified / Transferred Katchi Abadis	900
<b>2</b>	Pending Katchi Abadis	354
	<b><i>Sub-Total (A)</i></b>	<b>1,254</b>
<b>B)</b>	<b>KAs UNDER SCHEME 2012</b>	
<b>1</b>	Notified/Transferred Katchi Abadis	3,438
<b>2</b>	Pending Katchi Abadis	654
	<b><i>Sub-Total (B)</i></b>	<b>4,092</b>
	<b>G. TOTAL (A+B)</b>	<b>5,346</b>

Source: [www.cooperative.gov.pk](http://www.cooperative.gov.pk), Visited on 12-05-2017.

At international level human rights analysis check list includes identification of human Rights relevant to the housing or slum up gradation and the sources of human rights law where they were found, Assessment of the level of enjoyment of identified rights by all urban residents including slum dwellers and evaluation

whether slum dwellers and other groups in vulnerable situations are enjoying these rights or not.<sup>277</sup>

#### **2.8.4 Challenges and Grey Areas of Slums**

Following areas need special attention and remedial measures need to be taken.

##### **2.8.4.1 Regularization of Existing Katchi Abadis**

Regularization of Katchi Abadis established before 31.12.2011 that is yet pending and the regularization of Katchi Abadis established after the cut-off date is one of the major issues at the hands of the directorate of Katchi Abadis.

##### **2.8.4.2 Prevention of Further Encroachment**

The ongoing encroachment on state land and emergence of new Katchi Abadis is one of the main concerns before the regulators. It is imperative that measures may be devised to prevent further encroachment on state land.

##### **2.8.4.3 Resettlement Schemes.**

There are some Katchi Abadis which meet the requirement of minimum dwelling units but they cannot be regularized due to some other reasons e.g. they are either established on hazardous areas or amenity plots or the land-owning department refuses to provide NOC for any reason. Resettlement of people occupying such land is a challenge.

##### **2.8.4.4 Mushroom Growth of Katchi Abadis.**

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<sup>277</sup> Human Rights in Cities Handbook Series the Human Rights-Based Approach to Housing and Slum Upgrading, UN Habitat for Better Urban Future, Page 33.

Another issue is that people have occupied land wherever it was available which has led to the mushroom growth of Katchi Abadis. These scattered settlements need to be integrated in order to appropriately merge them in the existing city infrastructure.

#### **2.8.4.5 Development of Regularized Katchi Abadis.**

Infrastructure development and provision of civic amenities through formal procedure is only possible when the Katchi Abadi is regularized. Katchi Abadis are usually regularized when the occupants are already living there. There is no prior planning of roads streets and open spaces. The development authorities face the challenge of ensuring the development of these slum areas.

#### **2.8.4.6 Summary Ejection of Unauthorized Occupants.**

Special power has been given to the authority that it can itself or any person authorized by it may eject the residents of katchi abbadis from the state owned land by following a summary procedure.<sup>278</sup> Land of kachi abbadi (slums) in question having been acquired for the purpose of establishing a housing colony. The petitioners who are resident of kachi abadis (slums) were given notice under section 38 of the Punjab development of cities Act 1976 to vacate the premises within 24 hours otherwise the houses of the petitioners would be demolished by the authority. Petitioners have prayed for setting aside of the notices. The occupants of the kachi abbaddis (slums)

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<sup>278</sup> The Punjab Development of Cities Act 1976, Section 38L, The Manual of Development Authorities Laws by Ch. H. Arshad Mahmood Jhandyana, 1<sup>st</sup> Edition, Manzoor Law Book House, Lahore.

were entitle to compensation or a plot in the place of their land. Constitutional petition was allowed.<sup>279</sup>

The position on this point is different in Malaysia under National Land Code 1965; mere occupation of land without proper registration would not be recognized even though such occupation is since time immemorial. The code does not prescribe the condition of prior notice before vacation of premises.<sup>280</sup>

As per Section 426(1)(c) of the National Land Code 1965 the person squatting on the state land can be arrested without warrant. The enactment to regulate the slums in Kuala Lumpur is Federal Capital Act 1960 and Federal Capital (Squatters Clearance) By Laws 1963. As per these enactments an authority has been provided to the Commissioner to clear the slums by giving a prior notice of seven days.<sup>281</sup>

## **2.9 GOVERNMENT SECTOR AS DEVELOPER OF HOUSING INDUSTRY**

Article 9 of the Constitution of Islamic Republic of Pakistan 1973, which guarantees life and liberty, has a wider scope of the word life by including all those accessories which are necessary to spent a respectful life. In this scenario the claim of employees of law commission to be provided accommodation during their service was covered under Article 9 of the Constitution of Islamic Republic of Pakistan 1973.

There was no reason to deprive them of this relief.<sup>282</sup> Life under the Constitution of Islamic Republic of Pakistan 1973 has not been used in a limited

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<sup>279</sup> Muhammad Ramzan Vs Multan Development Authority, 2007 CLC (Lah) 746.

<sup>280</sup> Sidek Bin Hj Mohamad & 461 other Vs the Government of the State of Perak & Ors [1982] 1 MLJ Page 313.

<sup>281</sup> Squatters and Affordable Houses in Urban Areas: Law and Policy in Malaysia, Azlinor Sufian and Nor Asiah Mohammad, Theoretical and Empirical Researchers in Urban Management, Volume 4, No.4 2009, Pages 108-124.

<sup>282</sup> The Employees of Pakistan Law Commission Islamabad Vs Ministry of Works and others, 1994 SCMR 1548.

meaning. Wide meaning to the word life should be given to it to enable the citizens of Pakistan not only to sustain their lives but to enjoy their lives.<sup>283</sup> In order to protect the rights of the Kachi Abbadis(slums) and to provide them housing units the city district of Karachi has planned to bulldoze existing kachi abbadis and replace them with six story apartments blocks.<sup>284</sup>

### **2.9.1 Allotment Policy for Residential Plots Dated 23-12-1986**

Whenever land is to be acquired under Land Acquisition Act 1894 it should be either subject to payment of compensation or subject to supply of plot in the proposed housing authority. A similar kind of effort was made to provide housing units to the people by the Government of Punjab. Land was acquired by Government developer i.e. Lahore Development Authority for the establishment of Mohalanwal Housing Scheme through an award dated 15-06-1885.

As per allotment policy for residential and non-residential plots in Punjab dated 23-12-1986, plot was to be given to the respondent from land acquired from her and the acquired land was included in the Block-D of the housing scheme launched by Lahore Development Authority (LDA) but the lady whose land was being acquired was offered a plot in block-E of the housing society.

The plot allotted was at a considerable distance from the land acquired. Lahore development authority was unable to point out that Development Authority could adjust the persons whose land was being acquired according to the availability of the plot. High Court has declared that the development authority of the housing scheme is bound to accommodate the effected persons whose land is being acquired

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<sup>283</sup> Shehla Zia Vs WAPDA, PLD 1994SC 693.

<sup>284</sup> Karachi Strategic Development Plan 2020, CDGK 2007.

near to original land and if not possible then it should pay compensation in addition to a plot of her entitlement in available block.<sup>285</sup>

### **2.9.2 Protection of Right to Housing No. cancellation of Plot without affording an opportunity of Hearing**

Another aspect of housing for all is that those who have got a house or a plot for residential purpose should not be deprived of it without providing an opportunity of hearing. This protection is provided by the Constitution of Islamic Republic of Pakistan 1973. Right accrued to an employee cannot be denied. Denial of right of accommodation to employee under Rule six of the Accommodation Allocation Rules 2002 is equal to denial of fundamental right of life which includes house/shelter as guaranteed under Article 9 of the Constitution of Islamic Republic of Pakistan 1973.<sup>286</sup> Subsequent to allotment of accommodation, change in policy could never affect rights of old allottees (accommodation holders).

New policy of accommodation cannot take away vested right.<sup>287</sup> Federal Government Employees Housing Federation introduced a policy for the allotment of plots to officers of BPS 20 to 22. The petitioner was an employee in grade 20 in WAPDA and was serving as a project manager.

The petitioner applied for a category-1 plot in a housing scheme launched by Federal Government Employees Housing Federation in G-13. The application was accepted the whole payment was paid. After it, it came to the knowledge of Housing Federation that he was in grade BPS 20 but on the basis of move over he was in that pay scale and not because of regular pay scale 20. The housing Foundation cancelled

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<sup>285</sup> Lahore Development Authority vs. Sahiba Khanam, 2016 SCMR 2143.

<sup>286</sup> Muhammad Afsar Vs. Malik Muhammad Farooq, 2012 SCMR 274.

<sup>287</sup> Dr. Syed Sharaf Ali Shah and Others Vs Province of Sindh and others, 2009 SCMR 249.

the plot without hearing. Islamabad High Court set aside the order on the ground of principle of natural justice that nobody should be condemned unheard.<sup>288</sup>

## **2.10 CONCLUDING REMARKS OF THE CHAPTER.**

Housing is a basic right and government alone without the help of the private sector is unable to provide this basic necessity to all the citizens of the country without the help of private sector. Private sector is doing housing activity to serve the needs of the majority of the population but the primary task of the private sector is money making without taking into consideration the element of welfare of the people. The role of the private developers of the housing industry needs to be modified to provide relief to the middle and lower middle class of Pakistan. Unbridled housing activity by the private sector as per sweet will of the private sector should not be allowed the purpose of which is only to earn more and more money.

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<sup>288</sup> Ch. Muhammad Nawaz Vs Federal Government Employees Housing Foundation, 2018 PLC 325.



## **CHAPTER 3**

### **3. LEGAL FRAMEWORK APPLIED BY THE REGULATORY AUTHORITIES TO REGULATE HOUSING DEVELOPERS.**

The legal framework according to which the working of the developers of the housing industry is regulated by the regulatory authorities in the provinces and federal capital has been discussed in this chapter.

#### **3.1 Introduction to the regulatory regime of housing industry in Pakistan.**

To achieve the goal of housing for all is the responsibility of each member state of UN Habitat agenda by introducing suitable amendments in the national laws and by introducing new laws and policies which are in conformity with human rights.<sup>289</sup>

To achieve the goal of housing for all as envisaged by UN Habitat agenda a legal framework has been designed in Pakistan. This chapter consists of an introduction as well as an analysis of legal framework relating to housing industry in Pakistan. The working of the housing developers is regulated by the regulatory bodies at Federal, Provincial and at a Local level.

The Legal Framework is applied by the regulatory bodies to grant an approval for the housing schemes and to regulate the day to day working of the housing developers. Some developers of the housing authorities induce general public to part with their hard-earned income on the strength of the sanctions procured for their housing societies from the concerned regulatory authorities of the housing industry.

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[www.unhabitat.org/declarations/habitat-agenda..htm](http://www.unhabitat.org/declarations/habitat-agenda..htm) Visited on 10-10-2020.

Some frauds have been committed due to weaknesses in the legal framework relating to housing industry or due to weaknesses on the part of the regulatory authorities in the implementation of the legal framework relating to housing industry.

Developers of the housing industry in Pakistan have committed frauds by making allotments of plots without having any piece of land or making allotment of plots in excess of available and sectioned plots. Some developers have cheated the people by using the names of the Government departments some have cheated the general public by not providing the basic utilities of life to the members of the housing societies.

Whenever and wherever such like frauds are committed it is not just developers of the housing societies who are liable for it but the regulatory authorities i.e. Lahore Development Authority, Capital Development Authority, Faisalabad Development Authority, Cantonment Boards etc. are equally liable and responsible for it.<sup>290</sup> The UN Commission on Human Settlements (UNCHS) and Committee on Economic, Social and Cultural Rights have been emphasizing the importance of developing universally applicable criteria. A strategy for achieving the goal of housing for all is common for all states.

No one state can claim to have achieved the goal of housing for all till this date. There is a global responsibility and global commitment to handle the issue of housing for all being a common issue. Lessons learnt in achieving the goal of housing

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<sup>290</sup> Human Rights Case No. 5687 of 2010 of 2010, PLD2011 SC 163.

for all are of common nature. There is a need for a common set of principles, criteria and approaches applicable to all states to achieve the goal of housing for all.<sup>291</sup>

The details requirements for the grant of approval for the formation of housing schemes are discussed below along with a brief introduction (As it is not an encyclopedia about housing laws but a thesis so it not possible to discuss all the laws so only few important have been discussed) to important laws relating to housing industry of Pakistan.

### **3.2 PUNJAB DEVELOPMENT OF CITIES ACT 1976.**

Under this Act, the Government may, by notification declare area of any city as authority. The Government may at any time change limits of a city. The Governor of Punjab has reconstituted Rawalpindi as development authority under Punjab development Cities Act, 1976 on 29 August 2001 with the following members which have been discussed in the next heading.

#### **3.2.1 Composition of the authority to regulate housing industry.**

An authority shall be formed to regulate the affairs of the housing industry in the province of Punjab. It shall regulate all the functions of the developers from the sanction of the housing industry till day-to-day affairs of the housing developers.

The authority shall include the following members i.e., Chief Minister of the province or any person nominated by him, three members of the provincial assembly, mayor of the area concerned, chairman planning and development board or his nominee, finance secretary or his nominee, secretary housing and urban department, secretary local Government, commissioner of the area concerned, District

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<sup>291</sup> The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach, Scott Leckie, Human Rights Quarterly, Volume11, NO.4, 1989, Pages 522-560.

Coordination Officer (DCO) ,Director General (DG), all managing directors and 2 experts, who are nominees of the provincial Government.<sup>292</sup>

It was held by the apex court of Pakistan that when cancellation of original allotment for non-fulfillment of terms of the plot was made by the chief minister. The only authority that could pass any order regarding allotment or cancellation of the plot was the authority constituted under section 4(4) of the Punjab Development of Cities Act 1976.<sup>293</sup>

The apex court of Pakistan declared that such objectives of this law can only be achieved if public functionaries entrusted with job implement this law in letter and spirit in an even-handed manner.<sup>294</sup>

Furthermore, to protect public safety and to ensure compliance with the Development Plan after its preparation of building control mechanism. Discretion under section 13 of the Act has been provided to stop the housing societies to violate master plan and if there arises a situation for which no explicit provision has been provided, the authority by exercising the discretionary powers can cater with such kind of situation. The discretionary powers of the authority are not unbridled powers. Objectives of the Act can be achieved if the powers entrusted to the authority are exercised in letter and spirit to achieve the objectives of the Act.<sup>295</sup>

No statutory or regulatory provision exists which authorized Parks and Horticulture Authority to confer a permanent right on an outdoor advertiser. No

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<sup>292</sup> Ch. H.A.M. Jhandyana, The Punjab Development of Cities Act, 1976, Section 4, The Manual of Development Authorities Laws, First Edition, Manzoor Law Book House, Lahore, 2019.

<sup>293</sup> Faiz Karim Vs Multan Development Authority, 1996 SCMR 755.

<sup>294</sup> Haji Allah Rakha Vs Faisalabad Development Authority, 2003 SCMR 1756(a).

<sup>295</sup> Haji Allah Rakha Vs Faisalabad Development Authority, 2003 SCMR 1756(b).

objection certificate granted under such kind of situation is not of permanent nature and subject to cancellation by the authority as per rules.<sup>296</sup>

A housing society could develop the area within the territory of housing society for face lifting and beautification of the society but not outside it. Public street was neither own nor vested in the authority. This area vested under the authority created under Local Government Ordinance 2001. As per this enactment the authority has been given power to acquire property, both movable and immovable as per needs of the authority, to further deal with the property as per law according to the needs of the authority from time to times.<sup>297</sup>

To undertake any works and incur any expenditure for the authority, to procure machinery, instruments or any other material required by the authority from time to time, to enter into contracts to meet the day-to-day requirements of the authority. Cause studies, surveys experiments, technical researches or contribute towards the cost of any such studies, surveys, experiments or technical researches made by any other Agency to achieve the objectives of the Act, to issue interim development order for the area for which a scheme is under preparation and restrict or regulate by general or special order, any change in the use of land and alteration in building structure and installation for better housing services.

The authority under this enactment may seek input from other departments to perform its duties under this Act. The authority may establish other institutions to assist it in the performance of its functions.<sup>298</sup>

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<sup>296</sup> Mehran Advertisers and others Vs Govt. of Punjab, PLD2011(Lah)61(a)  
<sup>297</sup> Muhammad Munir Vs LDA, PLD 2000(Lah) 744(b).  
<sup>298</sup> Ibid, Section 7.

Authority is an engineering organization which is required not only to carry out functions of professional engineers but also to provide engineering services whenever regulating the affairs of a housing society or other work of such nature.<sup>299</sup>

### **3.2.2 Preparation and execution of Housing Scheme.**

The housing plans prepared by the authority shall be submitted to Government for approval, except those housing societies for which no loan is required from the Government.

Notification shall be issued by the authority for every housing society sanctioned by the Government.<sup>300</sup>

When land is required for a housing scheme, Government is a sole judge to decide whether land is required for a public purpose or not. The owners of the land cannot raise the plea that another piece of land owned by the Government is available which can be acquired by the Government for the establishment of a housing scheme. Any person from the entire general public can purchase house in the housing scheme. Individual interest must be given way to the interest of the general public.<sup>301</sup>

Whether acquisition of individual land under the Land Acquisition Act 1894 is against Shariah is a question which is in the purview jurisdiction of Shariat court and it is beyond the jurisdiction of High Court.<sup>302</sup> Approval under sub-section (3) shall be conclusive proof of the fact that the scheme has been duly framed and sanctioned.

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<sup>299</sup> Khurram Nawaz Siddiqui Vs Deputy Director Faisalabad Development Authority, 2014 PLC (C.S) 900(c).

<sup>300</sup> Ibid, Section 12.

<sup>301</sup> Muhammad Shafi Vs Multan Development Authority through its D.G, 2010 YLR 1161(c).

<sup>302</sup> Ghulam Murtaza Vs Multan Development Authority through its D.G, 1986 MLD (lah) 670(a).

Acquisition of land for a project in which limited and specified segment of the society was beneficiary was declared to be a public purpose.<sup>303</sup>

Planning or development scheme can be prepared with the concurrence of the Authority. Sanction of Government for housing schemes prepared by authority was necessary in respect for which loan or grant was required or provisional estimated cost exceeded 20 lakhs of rupees.

There is no need to meet such kind of requirement if the housing scheme is being launched on the basis of self-finance for such housing scheme only sanction of the authority is required.<sup>304</sup>

### **3.2.3 Acquisition of Land for the Housing Society.**

The authority may acquire any land or property within the area in accordance with law.<sup>305</sup> Whether land has been acquired with malafide object and ulterior motives, High Court could check whether land was being acquired in a malafide, unjust unfair, oppressive and illegal manner so it could grant relief to the owners of the land if the peculiar circumstances of the case so required.<sup>306</sup>

Powers under the law available to the authority should be exercised without any malafide on the part of authority. Land for the establishment of private housing society was purchased by the developer. An application was filed to Lahore Development Authority for the grant of approval (sanction) to start a housing society. The authority kept the application pending and then issued a notification under Section 4 of Land Acquisition Act 1894 for acquisition of same land to develop a housing society of the authority (LDA). The notification was challenged in the court it

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<sup>303</sup> Ibid, 1986 MLD (Lah) 670(b).

<sup>304</sup> Abdullah Vs Multan Development Authority through its D.G, 1986 CLC (LAH) 2073 (a).

<sup>305</sup> Ibid, Section 24.

<sup>306</sup> Naseem Zahra Vs Multan Development Authority, 1991 CLC (Lahore) 1001(b).

was held by Lahore High Court that idea of developing its own housing scheme by the Authority (LDA) was not a valid reason to turned down the request of the private developer.

Mere issuance of notification under Section 4 of the Land Acquisition Act 1894 does not create any proprietary right in favor of acquiring agency. Under the present condition the action of Lahore Development Authority to demolish the infrastructure of the private developer and to establish its own housing society on same land is based on malafide and discrimination on the part of the authority. High Court declared the acts of taking over the land of the private developer as illegal and void ab initio.<sup>307</sup>

Government is at the same footing to pay compensation for acquisition of land for housing purpose as a private developer is responsible to pay compensation. Land was required by Multan Development Authority for the construction of bypass. For this purpose, a notification was issued under Chapter six of the Punjab Development of Cities Act 1976. The question was whether Provincial Government was liable to pay compensation for it or not. As by pass was being constructed by the Provincial Government and it was the beneficiary of this acquisition of land so Provincial Government was liable to pay compensation to the land owners.<sup>308</sup>

#### **3.2.4 Conversion of a property to a different use.**

If any person converts a property to use or purpose other than provided under a housing scheme, master plan of the housing scheme or classification map without getting the written approval of the authority he shall be punished with an

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<sup>307</sup> Miah Rafat Mehmood Vs D.G Lahore Development Authority, 2016 CLC 408.

<sup>308</sup> Mst. Naseem Zahra and others Vs Multan Development Authority and others, 2015 SCMR 1440.



imprisonment of one year or fine at the rate of ten thousand rupees per day or both sentences.<sup>309</sup>

Similar kind of restriction has been imposed on the management of the housing society. Society is bound to develop the housing society as per approved layout plan of the housing society.

Open spaces in the housing society could not be allotted for residential or commercial purpose.<sup>310</sup> Allegation against the accused person was that he made allotment of plots reserved for the graveyard for commercial purposes which was a clear violation of master plan and layout plan of the housing society. The accused was sentenced up to five years of rigorous imprisonment and disqualified to hold any public office for a period of ten years under Section 9(a) of National Accountability Bureau 1999.<sup>311</sup>

Residential plot was allotted to lessee subject to the condition that the plot shall not be sub divided except with the approval of the authority. The lessee approached the lessor for the sub division of the plot which was done by following the legal process of law. After that the lessee applied for the commercialization of the plot which was done but the due process was not followed. As per clause 3 of Schedule D to Regulation 26 of Karachi Building and Town Planning Regulations 1979, when use of land was to be changed or converted for any purpose, an application had to be made to the Commissioner. In the present case the due process was not followed so it was not a valid transfer in the instant case.<sup>312</sup>

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<sup>309</sup> Ibid, Section 37.

<sup>310</sup> Farzana Chaudhary Vs Province of Punjab, 2016 MLD1453.

<sup>311</sup> Malik Deen Vs Chairman National Accountability Bureau, 2019 SCMR 372.

<sup>312</sup> Muhammad Sadiq and others Vs Federation of Pakistan, 2013 SCMR1665.

Residential Plot cannot be converted from residential to commercial use by the housing society without getting approval from Karachi Development Authority and as per rules.<sup>313</sup>

It would be miscarriage of justice and abuse of the process of law if a developer of the housing society is developing his society in violation of Punjab Private Site Regulations 2005 by not mortgaging 20 percent area in the name of the authority.

Grant of an interim injunction to a developer who is violating law is not in accordance with law when he was constructing the housing society without approval of layout plan of the housing society. No injunction can be issued in such like circumstances.<sup>314</sup> Relocation of a residential plot at the initial stage of the housing society which would help to eliminate congestion and to supply the basic utilities services to all the members of the housing society such proposed change which does not injure public interest if made as per law can be allowed.<sup>315</sup>

#### **3.2.5 Power to make regulations.**

The authority may make regulations as may be necessary to carry out the purposes of this Act but these regulations should not be against the provisions of this Act or rules made for this purpose.<sup>316</sup>

### **3.3 The Punjab land use (classification, reclassification and redevelopment) rules, 2009**

In exercise of powers conferred by section 191 of the Punjab Local Government Ordinance 2001, the Government of Punjab vide notification number

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<sup>313</sup> Works Cooperative Housing Society Ltd and others Vs Miss Najma Saleem, 2015 YLR2719.

<sup>314</sup> T.M.A Samundri Vs Abdul Ghafur, 2013 CLC (Lahore) 333.

<sup>315</sup> Mansur Sharif Hamid and others Vs Shafiq Rehman and others, 2015 SCMR 1172.

<sup>316</sup> Ibid, Section 44.

SOR(LG)38-18/2009 dated 27,2009, these rules have been issued to regulate the activities of the housing industry. These rules are applicable to the whole area of the Punjab except the controlled area or city area in a city district.<sup>317</sup> Under these new rules, a city district Government or a tehsil municipal administration shall classify the land into the following classes i.e., residential, commercial, industrial per urban, agricultural and notified area.<sup>318</sup> A residential area shall be classified by the city district Government and tehsil municipal administration into following two classes i.e. approved scheme and established built up area.

Approved area includes RA1 area: means a residential area which consists of housing plots of more than 2 kanals with a passage of fifty feet to two hundred and twenty feet and a typical right of way of sixty feet, RA2: means the area consisting of plots from 1 kanal to 2 kanal with a passage from 30 feet to 180 feet and a typical right of way of 30 feet, RA3: this class consists of plots from 10 maralas to 1 kanal with a passage of 30 feet to 120 feet and a typical right of way of 30 feet, RA4: this class consists of a plot size of less than 10 marlas with a right of way from 20 feet to 80 feet.

A typical right of way of 30 feet, Established built up area includes RA1: this class consists of plots size with an area of more than 1 kanal with a right of way of roads from 40 feet to 220 feet and a typical right of way of 40 feet, RA2: this class consists of plots from 10 marlas to 1 kanal with a road side from 30 feet to 120 feet and a typical right of way of 30 feet, RA3: this class consists of plots from 5 marlas to 10 marlas with a road side size ranging from 20 feet to 60 feet and a typical right of

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<sup>317</sup> The Punjab Land Use (Classification, Reclassification and Redevelopment) Rules, 2009, Section 1, Second Edition, Manzoor Law Book House, Lahore, 2019.

<sup>318</sup> Ibid, Section 4.

way of 30 feet, RA4: this class consists of residential area with plot size ranging of less than 5 marlas and with a right of way of roads of 40 feet and a typical right of way of 20 feet.<sup>319</sup>

The relevant city district Government or tehsil municipal administration is under the statutory duty to divide the residential area into three categories i.e. permitted uses, permissible uses and prohibited uses. Permitted uses includes detached house, semidetached house, town house, residential apartment, neighborhood level park, place of worship, burial place and horticulture. Permissible uses include daycare centers, primary school, secondary school, dispensary, guest house, small size corner shop, office of professionals.<sup>320</sup>

It is a statutory duty of the city district Government or a tehsil municipal administration to prepare a land use classification map of the area concerned by using satellite images within a time period of 6 months.<sup>321</sup> After a careful scrutiny of the land use classification map, District Coordination Officer of the city district or Tehsil Municipal Officer shall submit the map and minutes of the meeting to Zila (District) Council or the tehsil council for its approval.<sup>322</sup>

### **3.4 The Punjab private housing schemes and land subdivision rules, 2010.**

Under the notification number SOR (38-2/2004-P, dated March 13, 2010). In exercise of powers conferred under the Local Government Ordinance 2001, the Governor of the Punjab is pleased to make the following rules to regulate the affairs of the housing industry. Under this new enactment the scope of the housing developer has been enhanced by including a firm conducting housing society and an

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<sup>319</sup> Ibid, Section 5.

<sup>320</sup> Ibid, Section 6.

<sup>321</sup> Ibid, Section 19.

<sup>322</sup> Ibid, Section 22.

owner of the land forming a housing scheme in addition to cooperative housing societies and housing companies, so, it has a wide scope as compare to the definition of developer given under the Punjab Private Site Regulation 2005.<sup>323</sup>

Under the new enactment a developer (cooperative housing society, housing company, a firm or an owner of land) desirous to form a new housing society shall file an application to a town municipal administration or to a tehsil municipal administration or a development authority as per territorial jurisdiction for initiating a new housing scheme.<sup>324</sup> An application for the formation of a housing society should be accompanied with a certified copy of national identity card, mailing address of the developer, a photocopy of the electricity bill, a certificate of registration of the developer, a location plan of the proposed housing scheme, details about the land whether owned by the developer or if not owned by the developer and if not owned by the developer then bank statement of the developer indicating amount available to purchase the land.<sup>325</sup>

The rules are silent with respect to the status of the land proposed for the housing scheme whether it is free from the encumbrances or not. The rules are silent about the location whether it is a consolidated land or a scattered land. The housing scheme can be granted permission to proceed with the housing society if the area of the housing scheme is not less than 100 kanals, the size of the road is not less than 60 feet in city district and not less than 40 feet in other areas, site is not under the threat of flood, the land of the housing scheme is not required to the Government for any

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<sup>323</sup> The Punjab Private Housing Schemes and Land Sub Division Rules, 2010, Section 2(9), The Manual of Development Authorities Laws, First Edition, Manzoor Law Book House, Lahore.

<sup>324</sup> Ibid, Section 4.

<sup>325</sup> Ibid, Section 5.

other public purpose and the proposal of the housing scheme is in accordance with the master plan of the housing scheme.<sup>326</sup>

The rules are silent with respect to seismic aspect which is a very serious deficiency in the rules. Pakistan has already faced a very serious earthquake in 2005 and many earthquakes of minor intensity after it. The geographical location of Pakistan is such that most of the areas of Pakistan are on the fault line. The application for housing scheme shall be processed by the town municipal administration or tehsil municipal administration depending upon the case, the application for new housing scheme shall be forwarded by the tehsil municipal officer or by the town municipal officer within a time period of 10 days from the date of receipt of it to district officer dealing spatial planning, within 10 days this application shall be forwarded to district planning and design committee by the district officer.

The decision of district planning and design committee to accept or reject the application should be intimated by the district officer spatial planning to the relevant initiating forum of the application in 5 days, within 5 days from the receipt the town municipal administration or the tehsil municipal administration shall intimate the developers about the fate of the application.

The application of the new housing scheme shall be forwarded to the water and sanitation department and the department shall issue no objection certificate or refuse it in 10 days, the application shall be forwarded within 5 days to the planning department which is under duty to respond within 5 days in positive way or in a negative way.<sup>327</sup>

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<sup>326</sup> Ibid, Section 6.

<sup>327</sup> Ibid, Section 7.

This is a welcome provision in the new rules that a time period has been prescribed for each and every office to respond to the application for the formation of the new housing society and it would be helpful to avoid unnecessary delay on the part of the Government officials. After this exercise if the housing scheme is feasible, a preliminary no objection certificate is issued to the developer of the housing scheme.<sup>328</sup>

It has been observed that most of the developers misuse this initial no objection certificate (NOC) and invite applications from the general public to make investment in the plots of the housing society as the general public do not know the difference between final permission and initial no objection certificate. An application shall be entertained by the town municipal administration or the tehsil municipal administration if it is accompanied by, copy of the national identity card, a document indicating the proof of ownership, khasra plan or aks-e-shajra certified by the tehsildar, non- encumbrance certificate issued by the relevant department, location plan signed by the certified town planner, layout plan of the housing society, details of the land yet to be acquired and it should not be more than 10 percent of the total land and it should be acquired by adopting the process of Land Acquisition Act 1894.<sup>329</sup>

This is the most important provision of the rules. As per this provision the developer of the housing society is required to purchase 90 percent of the land for the new housing scheme from its own pocket and file an application for the grant of permission of housing scheme.

A question arises how a developer of the housing scheme (housing company, cooperative housing society or owner of the land) would help the Government of

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<sup>328</sup> Ibid, Section 8.

<sup>329</sup> Ibid, Section 9.

Pakistan to achieve the goal of housing for all as envisaged by the United Nations Habitat agenda by providing plots at the cheap rates after purchasing land at very high rates from its own resources?

The answer of this question shall be sought out in the fourth chapter of the thesis relating to critical analysis of the legal framework. Another problem with this condition of purchasing 90 percent land before the start of housing scheme is that normally private housing companies due to financial resources can afford to purchase the 90 percent land in one go but the cooperative housing societies cannot afford to purchase 90 percent land in one go because the cooperative housing societies are formed by the poor people so this seems to have closed the last door opened to the poor members of the housing scheme to have their housing units.

Another problem with this condition is that when the developers proceed to acquire the remaining 10 percent land under Land Acquisition Act 1894 the prices of the land owners of this piece of land are dictated by the owners of this 10 percent landowners when they change the nature of their lands from agriculture to commercial in connivance with the land revenue officials.

This condition of 90 percent of land seems to be an obstacle in the way of the policy of housing for all. A housing scheme shall include 7 percent in the shape of open space or park, 2 percent as a graveyard, 5 percent as a commercial area, 5 to 10 percent as public buildings, 1000 square yard would be the maximum size of the plot, approach road should not be less than 60 percent in city districts and not less than 40 percent in other areas, minimum size of internal roads should be 40 feet and 20



percent of the land shall be earmarked for the low income group which contains plots of the size of 5 marlas each.<sup>330</sup>

It is very un- thoughtful policy and it cannot help to achieve the goal of housing for all. How the poor people can afford to purchase a plot of 5 Marlas in a very costly housing scheme (when a developer has purchased land for the housing scheme from his or its own pocket). Why a developer would like to provide 5 marlas plots on cheap and subsidized rate when the developers are not getting any kind of subsidy from the Government side?

Before the issuance of sanction for the housing scheme the developer is required to deposit scheme approval fee, submit a transfer deed consisting of area reserved for road, open space, park, 1 percent of scheme area reserved for public buildings in favour of TMA and mortgage 20 percent area of the total land in the name of the tehsil municipal administration or town municipal administration as a guarantee to complete the development of the housing scheme within the time frame, the developer of the housing society is also required to submit no objection certificate from the environmental protection department, it is a welcome step but the rules are ambiguous and vague about the criterion and aspects are to be considered by the environment department while granting no objection certificate.<sup>331</sup>

It has been observed that many housing societies do not mortgage and transfer the stipulated portion of land in the name of Tehsil Municipal Administration and if the land is mortgage after completion of the development work the mortgage portion of the land is not redeemed timely to the developers.

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<sup>330</sup> Ibid, Section 10.

<sup>331</sup> Ibid, Section 17.

In order to invite the general public to purchase the plots in the housing society when an advertisement is made the developer is required to include in it the total area of land along with location plan, details of the residential and commercial plots, the area or plots mortgage with the sanctioning authority, the proposed time period to complete the housing scheme, name of the sanctioning authority and the manner of allotment of the plots.<sup>332</sup>

The rules are silent with respect to the procedure to refund the amounts of the unsuccessful applicants and the mechanism to return these amounts. The advertisement for the housing scheme should include the details about the total area of the land of the housing scheme along with the layout plan of the housing scheme, the details about the residential and commercial plots, complete information about the plots mortgage with the development agency, estimated time period to complete the housing scheme.

The details about the development agency granting approval and clear information about approval number, the mechanism about the allotment of the plots, balloting or any other method, the procedure of cancellation of plot.<sup>333</sup>

Plots of the housing society were issued by the Government of Punjab on the basis of auction. From the date of auction of plot the successful bidder was required to submit one third of the price within seven days. The bidder submitted the price on eighth day it was held by the court that the day of auction of the plot was not to be counted towards calculating the days of submission of auction price.<sup>334</sup>

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<sup>332</sup> Ibid, Section 20.

<sup>333</sup> Ibid, Section 21.

<sup>334</sup> Abdul Rehman and others Vs Govt. of Punjab through Secretary and others, 2014 CLC1677.

Still there is a room for further improvement in this rule total area should also mention whether the land is scattered or consolidated, to further clarify the process of allotment of the plots the plot numbers should be very clearly mentioned, fixation of the period for the development of the housing scheme is a welcome step but there is a need to prescribe some surcharge or penalty for not completing the development work within the time line.

If the development charges are not paid on time, the regulatory authority cannot cancel the approval unilaterally without providing an opportunity of hearing. It was held by the Sindh High Court that when layout plan was approved by the development authority after payment of fifty percent charges and the remaining fifty percent charges were to be paid after six months which were not paid by the administration of the housing society as the amount of charges have been increased.

It was held by the court that development authority could not increase the development charges after grant of approval and as settled between parties and furthermore on failure to pay development charges it could not cancel the approval of the housing society without giving an opportunity of hearing.<sup>335</sup> With respect to procedure for the cancellation of plot, no housing society could cancel any plot without providing an opportunity of hearing. No housing society can cancel the plot of any member without providing an opportunity of hearing. Cancellation of allotment of plot could not be held to be valid as being violation of principle of natural justice.<sup>336</sup>

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<sup>335</sup> M. Hanif Khan through Attorney and others Vs Malir Development Authority through its D.G and others, 2016 YLR 1652.

<sup>336</sup> Hafiz Muhammad Ashraf Vs Lahore Development Authority, 2018 CLC 176.

The petitioner was granted a house under Punjab Government Servants Housing Foundation Rules, 2005 but failure to make installments the allotment was cancelled. Lahore High Court directed the housing foundation to re-allot the plot on payment of additional payment.<sup>337</sup>

The mechanism for the allotment needs to be mentioned there is a need to mention the mechanism for return of amounts of the unsuccessful applicants the time period during which the amounts shall be returned. The developer shall ensure that the allottee of the plot becomes the member of the housing society, this rule can be more effective if some penalty is imposed for those who do not occupy and develop the plot within the prescribe time this step would help to put a check on the people who invest money for speculation purposes.

Allotment of plots should not be cancelled without reason and intimation to the allottee. This condition is in accordance with the principles of natural justice that nobody should be condemned unheard. If there is a delay on the part of the developer the developer is bound to pay 2 percent amount paid by the investor to the developer for each month of delay.

As per rules if default is made in the payment of the installment of the plot then 1 opportunity should be given to the investor, it is a welcome step and instead of one there should be two opportunities. As per rules if there is default in payment of development charges 2 opportunities should be given this rule is good and if instead of 2 opportunities, 3 opportunities are provided it would be better. As per rules development charges should be clearly mentioned and these charges should not be increased without written approval of the development authorities.

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<sup>337</sup> Mst. Shahida Mohsin Vs Chief Secretary Govt. of Punjab and others, 2013 CLC1566.

As per rule 10 of the rules, 20 percent area is reserved for the low-income people, as per rule 22 of the rules, the size of the plots shall be up to 5 marlas and these plots shall be allotted on first come first serve basis and the plot holders are not allowed to sale the plots before the expiry of 5 years. This provision seems to be a first serious attempt to achieve the goal of housing for all in Pakistan. But still there are many issues attached with this initiative.

A similar kind of provision is found in the shape of Section 106 of the English Town and Country Planning Act 1990, which demands the developers of the housing industry in England to contribute towards affordable housing by the local planning authorities. From the coming into force of this Act special power has been granted to the Local Planning Authorities to reject the application of the developer if the developer of the housing industry is not contributing towards low-income housing. Planning permission for the housing society is granted which is a kind of an agreement in the shape of Section 106.<sup>338</sup>

As per rules plots reserved for the low-income people should be allotted on the basis of first come first serve basis and the plot holders are not allowed to sell the plots before the expiry of five years.<sup>339</sup>

But here a question arises whether this rule i.e. rule 22 is sufficient and capable enough that Pakistan can achieve the goal of housing for all as envisaged by UN Habitat agenda?

The answer to this question is no due to many reasons, firstly, as developers of the housing societies are bound to purchase a major chunk of land from their own

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<sup>338</sup> Calavita, N & Mallach, A, *Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion and Land Value Recapture*, Cambridge, MA: Lincoln Institute of Land Policy, 2010, Pages 423-438.

<sup>339</sup> Ibid, Section 22.

resources without any subsidy from the Government so under this situation to expect from the developers that they would allot plots to the poor and low class people is not understandable especially when there is no check and balance from the Government side to check the mode of delivery of plots to poor people, secondly, the condition of first come first serve for the allotment of plots is very vague as the developers would themselves determine it and this allotment process contains a situation of conflict of interest and it has provided an opportunity to the developers to accommodate their friends and relatives, so, this provision is opening a door for favoritism and nepotism.

Thirdly, housing activity horizontal wise is not the solution of the problem and not an optimum level of utilization of resources are possible if housing is done on horizontal pattern, as the solution of housing shortage lies in vertical housing pattern. A housing developer is required to submit 4 sets of the approved scheme to the town municipal administration or tehsil municipal administration as the case may be, a copy of sanctioned layout plan, location map, traffic plan, soil tests, land use analysis etc.<sup>340</sup>

The above-mentioned set of documents shall be forwarded to the respective agencies for approval within a period of 7 days. The relevant agency shall intimate the developer about the objections within a period of 20 days. After removal of the objections the agency shall convey its decision regarding approval or rejection within 15 days.<sup>341</sup>

Within a time period of one year the developer shall submit the landscape including plan for parks and open spaces and solid waste management system of the

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<sup>340</sup> Ibid, Section 26.

<sup>341</sup> Ibid, Section 27.

housing scheme.<sup>342</sup> As per rules the developer is under statutory duty to submit electricity and gas plan within one year and telephone plan within in three months.<sup>343</sup> As per rules the developer is under statutory duty to develop the housing scheme within a period of 5 years.<sup>344</sup>

After the sanction of the scheme by the relevant agency it is the responsibility of the relevant tehsil municipal administration or town municipal administration to ensure that there is no deviation from the approved housing scheme and for this purpose it can pay surprise visits to the housing site from time to time, in case of violation it can take action as per law, if the developer has failed to develop the housing scheme within the time period tehsil municipal administration or town municipal administration may take over the housing scheme.

The hosing scheme shall be developed by the tehsil or town municipal administration and in case of shortage of funds the deficit money shall be recovered by the tehsil municipal administration as an arrear of land revenue, the time period for the development of housing scheme can be extended only when 80 percent of the development work has already been performed by the developer of the housing scheme.<sup>345</sup>

As per rules the town municipal administration or the tehsil municipal administration as the case may be shall redeem 25 percent mortgaged plots on completion of water supply, sewerage and drainage, 25 percent plots shall be redeemed on completion of 100 percent completion of road networking within the housing scheme.

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<sup>342</sup> Ibid, Section 28 and 29.

<sup>343</sup> Ibid, Section 30, 31 and 32.

<sup>344</sup> Ibid, Section 34.

<sup>345</sup> Ibid, Section 35.

Remaining 25 mortgaged plots shall be redeemed on completion of 100 percent completion of electricity and streetlights works, 15 percent mortgaged plots shall be released on completion of sui gas supply work and 10 percent of the mortgage plots shall be redeemed on 100 percent completion of horticulture and solid waste management work, similarly bank guarantee shall be released on proportional development work being done.<sup>346</sup>

It is a kind of an internal check and balance on the efficiency and working of the developers of the housing society but it has been observed that in many of the cases the mortgaged plots are not released on completion of development work so this rule has a negative aspect as well.

The developer shall pay a preliminary planning permission fee at the rate of 5000 rupees for a housing scheme up to 2000 kanals and fee at the rate of 10000 rupees if the housing scheme is having an area above 2000 kanals, another fee shall be paid by the developer for sanction of the housing scheme at the rate of 1000 rupees for each kanals, the Government may change the fees from time to time.<sup>347</sup>

An appeal can be filed within 30 days by the developer of the housing scheme to the secretary to local Government and community development in case of an impugned order passed by the town or tehsil municipal administration and if an order has been passed by the development authority then an appeal can be filed to secretary housing, urban development and public health engineering department. The decision on appeal of the developer shall be made within 90 days.<sup>348</sup>

### **3.5. Legal Framework to start a housing scheme in Islamabad.**

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<sup>346</sup> Ibid, Section 36 and 37.

<sup>347</sup> Ibid, Section 38.

<sup>348</sup> Ibid, Section 47.



In order to regulate the affairs of the housing industry and developers of the housing industry in the territory of Islamabad, Capital Development Authority has been established to perform this function. The enactment on the basis of which Capital Development Authority (CDA) has been established is discussed along with the provisions relating to housing and accommodation.

### **3.5.1 Capital Development Authority Ordinance 1960.**

An Ordinance was issued by the Government on 21-6-1960 to establish Capital Development Authority (CDA). Capital Development Authority is responsible for the planning and development of Islamabad including grant of permission to introduce housing societies in Islamabad territory. Capital Development Authority is responsible for the planning and development of Islamabad territory plus it has the mandate to act as a Municipal Committee for Islamabad territory.<sup>349</sup>

There shall be an authority under the name and style of Capital Development Authority (CDA). It shall be a body corporate having a separate legal entity it can purchase property in its own name it can sue and be sued in its own name.<sup>350</sup> Capital Development Authority shall consist of a board of three members to be appointed by the Federal Government. Out of these three members a Chairman shall be appointed by the Federal Government.<sup>351</sup>

If loss is caused to the general public on account of failure of the regulatory authority or due to the negligence of Capital Development Authority, every person responsible for it is accountable for such loss.<sup>352</sup>

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<sup>349</sup> Suo Motu Case NO. 13 of 2009, PLD 2011SC 619.

<sup>350</sup> Capital Development Authority Ordinance 1960, Section 4, Second Edition, Manual of Islamabad Laws, Insaf Law Book House, Rawalpindi, 2016.

<sup>351</sup> Ibid, Section 6.

<sup>352</sup> B.N.P Pvt Ltd and others Vs Capital Development Authority, PLD 2017 Islamabad 81.

The authority is given a mandate to prepare a master plan for the Capital City and development of the capital site including approval for the establishment of housing schemes in Islamabad territory.<sup>353</sup>

Capital Development Authority could not acquire any land without disclosing the public purpose for which land is being acquired.<sup>354</sup> Capital Development Authority can acquire land for the establishment of housing scheme only in those sectors which are specific for the establishment of housing scheme only but not otherwise.<sup>355</sup>

Capital Development Authority shall prepare various schemes including land use, zoning and land reservation, community planning, housing, slum clearance and other facilities of public interests in Islamabad territory.<sup>356</sup> Regulation 4(1)A of Islamabad Capital Territory (Zoning) Regulations 1992 and Section 12 of Capital Development Authority Ordinance 1960 are in conflict with each other. CDA could not have extended the scope of Section 12 by framing regulation and to allow preparation of housing scheme by the private company with the sanction of Federal Government. It is something not intended by the Ordinance and not permitted by the statute as well.<sup>357</sup>

Army welfare trust acquired sixty percent land for the establishment of housing scheme. Remaining land could be acquired by the housing society with the assistance of Capital Development Authority under the relevant provisions of law by Capital Development Authority.<sup>358</sup>

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<sup>353</sup> Ibid, Section 11.

<sup>354</sup> Abdul Qadeer Khan Vs Chairman Capital Development Authority, 1999 YLR 247.

<sup>355</sup> Ghulam Hussain Vs Commissioner Islamabad, 2000 YLR 1711.

<sup>356</sup> Ibid, Section 12.

<sup>357</sup> Suo Motu Case No. 13 of 2009, PLD 2011 SC 619.

<sup>358</sup> Raja Basharat Hussain Vs Chairman Capital Development Authority, 2004 YLR 629.

Where the land reserved for playground, parks and other amenities was allotted by Capital Development Authority by violating master plan of the housing society, the act of the officials of Capital Development Authority was not less than criminal breach of trust, cheating and fraud.<sup>359</sup>

In the preparation of housing scheme, clause four of Regulation 4(1) A of Islamabad Capital Territory (Zoning) Regulations, 1992 was in conflict with Section 12 and Section 13 of the CDA Ordinance 1960.<sup>360</sup> With respect to duties and obligations of the housing societies, in case of violation of layout plan by the housing society, the officials of Capital Development Authority are under an obligation to take action against the housing society.<sup>361</sup>

Capital Development authority may prepare housing schemes subject to master plan of Islamabad, when it considers it desirable to be done in the public interest.<sup>362</sup> Acquisition of land merely under the label of public purpose by Capital Development Authority is not sufficient.

Acquisition of land must be for some housing society which is approved by Capital Development Authority and for some public purpose. No restriction can be placed on the jurisdiction of the court to check whether land is being acquired for some public purpose or not.<sup>363</sup>

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<sup>359</sup> Barkat Ali Vs Sultan Mehmood, 2013 CLC SC (AJ&K)1095.

<sup>360</sup> Suo Motu Case NO. 13 of 2009, PLD 2011SC619.

<sup>361</sup> M. Raza and others Vs Jammu and Kashmir Cooperative Housing Society and others, PLD 2013Islamabad 49.

<sup>362</sup> Ibid, Section 13.

<sup>363</sup> Abdul Qadeer Khan Vs Chairman Capital Development Authority, 1999 YLR247.

Authority may acquire any land in the specified areas in accordance with the procedure laid down in chapter four.<sup>364</sup> No housing society can be established in the territory of Islamabad without inviting objections from the general public.<sup>365</sup>

Construction of the petitioner was demolished by Capital Development Authority without providing an opportunity of hearing to the petitioner and without making compensation to the petitioner. The whole proceedings were null and void on the part of Capital Development Authority.<sup>366</sup>

All land within the territory of Islamabad can be acquired by Capital Development Authority at any time whenever there is a need for it.<sup>367</sup> When a notification under Section 4 of the Land Acquisition Act 1894 is issued and another notification under Section 22 of the Capital Development Authority Ordinance 1960 has been issued which one should be followed for the acquisition of land? Land Acquisition Act 1894 is a general law while Capital Development Authority Ordinance 1960 is a special law and whenever there is a conflict between these two the special law shall prevail and notice under Section 4 would be invalid and without any legal effect.<sup>368</sup>

Right to property guaranteed under the Constitution of Islamic Republic of Pakistan 1973 is an inalienable right of the citizens of Pakistan. Public functionaries are under an obligation that there is no unlawful deprivation of property because it amounts to violation of fundamental right to property.<sup>369</sup>

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<sup>364</sup> Ibid, Section 15.

<sup>365</sup> Ibid, Section 21.

<sup>366</sup> Muhammad Deen and others Vs Land Acquisition Collector, 1999 PLD SC 107.

<sup>367</sup> Ibid, Section 22.

<sup>368</sup> State Life Insurance Corporation Vs Mst. Sardar Begum, 2017 SCMR 999.

<sup>369</sup> Articles 23 and 24 of The Constitution of Islamic Republic of Pakistan 1973, 6<sup>th</sup> Edition, Pakistan Law Times, 2017.

Land cannot be acquired when there is a malafide and different contradictory reasons have been expressed by Capital Development Authority at different times for the acquisition of same land.<sup>370</sup>

Where land was being acquired by Capital Development Authority for the housing society of Federal Government Employees Housing Federation it was held by Islamabad High Court that there was a conflict of interest. This acquisition of land has not only created a situation of conflict of interest but any indulgence in matters relating to development, town planning and housing was ultra vires of Section 5 of the Capital Development Authority Ordinance 1960.<sup>371</sup>

No land can be acquired without payment of compensation to the landowners. The price of the land can be fixed by agreement or if no agreement has been made it can be fixed by Deputy Commissioner by keeping in view the provisions of Sections 30 and 31 of the Ordinance 1960.<sup>372</sup>

Section 30 of the Capital Development Authority Ordinance 1960 was declared against the injunctions of Islam so it needs to be amended to bring it in accordance with injunctions of Islam.<sup>373</sup> An appeal can be made against the order of compensation passed by Deputy Commissioner to Commissioner within a period of fifteen days.<sup>374</sup>

Where the whole proceeding for the acquisition of land is without any jurisdiction by Capital Development Authority, then the plea that in the presence of an alternative remedy no writ could be filed is not a hard and fast rule to stop the Court

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<sup>370</sup> Capital Development Authority through its Chairman Vs Abdul Qadeer, 1999 SCMR 2636.  
<sup>371</sup> Syed Mehmood Akhter Naqvi Vs Federation of Pakistan through Secretary Law, PLD 2012 SC 1089.

<sup>372</sup> Ibid, Section 29.

<sup>373</sup> Muhammad Safiullah Vs Federal Government of Pak, PLD1992 Federal Shariat Court 376.

<sup>374</sup> Ibid, Section 36.

to provide relief to an aggrieved person. It is a rule by which Constitutional Courts regulates its own jurisdiction. Where land acquisition proceedings have been taken without any jurisdiction and with mala-fide, writ petition can be filed and entertained.<sup>375</sup>

Another reason which is perhaps another obstacle to achieve the goal of housing for all as envisaged by UN Habitat agenda, Islamabad High Court has pointed out some major irregularities and malpractices in the housing industry of Pakistan. According to the Judgment of Islamabad High Court the malpractices like permission to Cooperative housing societies to launch housing schemes without getting No Objection Certificate from Capital Development Authority, Allocation of lands adjacent to housing societies in the name of plantation and beautification by CDA which are owned by CDA, putting the sources at the disposal of the private housing societies due to favoritism and nepotism.<sup>376</sup>

### **3.6. ISLAMABAD CAPITAL TERRITORY (ZONING) REGULATIONS, 1992.**

Housing society in the area of Islamabad can be sponsored by a registered company or a cooperative society, hereinafter referred to as sponsor, for an area not less than 100 acres(800 Kanal) falling with in Zone 2 and 100 acres (800 kanals) falling with in Zone-5 of the Islamabad Capital Territory Zoning Plan (outside the buffer zone).<sup>377</sup> The sponsor shall not violate any of the provisions of the regulation and shall not advertise or publicize the proposed scheme in any manner except in

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<sup>375</sup> The Murry Brewery Corporation Ltd Vs Federation of Pakistan through Secretary Ministry of Works, PLD 1972 SC 279.

<sup>376</sup> Ibid, PLD 1970 Lahore 821.

<sup>377</sup> Islamabad Capital Territory (Zoning) Regulation, 1992, Section 4, Edition 2016, Insaf Law House, Islamabad, 2016.

accordance with the provisions of Modalities and Procedures (M&P) framed under Islamabad Capital Territory( Zoning) Regulations, 1992.<sup>378</sup>

Private sector is allowed to purchase land in Zone-2 which comprises of area bounded by G.T road in the north and north east, north of Shahrah-e –Kashmir and capital limits in the west, comprising residential sectors of G-15, G-16, G17, F-16, F17, E-15, E-16, E-17, D-16, D-17, C-17 and B-17 it can develop it in accordance with the scheme of Zone1.<sup>379</sup>

Permission for the housing scheme can be granted by the authority if the minimum area of the housing scheme is not less than 100 acres, the layout plan of the housing scheme should be approved by qualified town planner registered with PCATP, the boundaries shall be as per master plan, development of the housing society should be in accordance with approval of the authority, the development charges shall be borne by the private developer of the society.

The land reserved for roads and other civic facilities would belong to the authority, in order to put a check and balance and to stop the developers to delay the development process the developers are required either submit hundred percent development charges or mortgage thirty percent land in the name of the authority, no allotment of plots is allowed till completion certificate is issued and the developers are bound to follow Islamabad Building Regulations 1963 and Islamabad Residential Sectors Zoning Regulations 1985.<sup>380</sup>

A request was made by Federal Employees Cooperative Housing Society, Islamabad to Capital Development Authority (CDA) to grant permission for

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<sup>378</sup> Ibid, Section 5.

<sup>379</sup> Ibid, Section 2(a).

<sup>380</sup> Ibid, Section 2(b).

plantation and beautification of land attached to the cooperative housing society. The permission was granted by CDA and after beautification and plantation of the land the cooperative housing society started to use the land as if it were owned by the cooperative housing society. Due to such nature of usage of land the permission was cancelled. The cooperative housing society filed a writ petition that its vested right was infringed so the order of the cancellation of permission may be set aside. It was held by Islamabad High Court that no such right existed and state land was entrusted to the housing society as a trustee which was misappropriated and converted to its own use by the housing society.<sup>381</sup>

### **3.7. ALLOTMENT OF RESIDENTIAL PLOTS UNDER ISLAMABAD LAND DISPOSAL REGULATIONS, 2005.**

These regulations have been issued vide S.R.O.711(1)/2005 by Capital Development Authority (CDA) in exercise of powers conferred by Section 51 of the Capital Development Authority Ordinance 1960, read with Section 49 of the Capital Development Ordinance 1960. This regulation extends to the land acquired by the Authority (CDA) in the Islamabad Capital territory.<sup>382</sup>

As per these rules plots in Islamabad shall be classified into following nine categories, i.e. residential plots, commercial and business plots, community buildings and facilities plots, administrative and public sector plots, industrial plots, diplomatic plots, public parks and graveyards etc., agro farming and agro industry and plots in model villages and sub urban centers.<sup>383</sup>

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<sup>381</sup> Federal Employees Cooperative Housing Society Islamabad through President Vs Chairman CDA, 2013 MLD255.

<sup>382</sup> Islamabad Land Disposal Regulation, 2005, Section 1(2), Manual of Islamabad Laws, Second Edition, Insaf Law House, Rawalpindi, 2016.

<sup>383</sup> Ibid, Section 3.



All plots in the developed sectors shall be allotted through the process of open auction and in the rest of areas the following process shall be followed for the allotment of residential plots. Seventy five percent of the plots shall be distributed by way of open balloting on the market price, ten percent residential plots are reserved for Federal Government employees, five percent plots are reserved for Defence Services personnel, five percent plots are reserved for disable persons and five percent residential plots are reserved for the employees of Capital Development Authority(CDA).<sup>384</sup> Residential plot could not be allotted to the employees serving in Capital Development Authority on deputation basis.

The services of the employees serving on deputation basis cannot be equated with the services of the employees serving on regular basis. The quota reserved for the employees of Capital Development Authority could only be availed by the regular employees of Capital Development Authority only and by those employees who have served for a period of ten years.<sup>385</sup>

The allottee (plot holder) of a residential plot is required to construct his plot within a time period of three years.<sup>386</sup> All plots are allowed to be transferred except the diplomatic plots and these residential plots can be cancelled on failure to develop the plots within the prescribe time period or on non-payment of dues within the prescribed time period or on violation of Municipal and other laws.<sup>387</sup> Any persons who consider himself as an aggrieved from any order may file an appeal to the board of Capital Development Authority within a period of three months.<sup>388</sup>

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<sup>384</sup> Ibid, Section 5.

<sup>385</sup> Ashfaq Ahmad Vs Capital Development Authority and others,2013 MLD 1538.

<sup>386</sup> Ibid, Section 16.

<sup>387</sup> Ibid, Sections 18 and 19.

<sup>388</sup> Ibid, Section 20.



### **3.8. NATIONAL HOUSING POLICY 2001.**

National Housing Policy 2001 is the main existing housing policy which is playing a guiding role for all layers of the Governments' i.e. Federal Government, Provincial Governments and local Governments. After the failure of the previous housing policies and after the disappointment of past strategies and measures, the focus of the current housing policy centers around the provision of housing being a necessity for the citizens of Pakistan.

The current housing policy is proposed to advance, execute and bolster measures so as to guarantee sufficient housing to everyone in the country. According to the census of 1998 there was a backlog of 4.30 million housing units in Pakistan.<sup>389</sup> Housing Policy 2001 acknowledges that about half of our urban populace lives in katchi abadis (slums), ghettos and squatter settlements.<sup>390</sup>

UN Habitat aims to help the member states to formulate housing policies and to implement those policies to achieve the goal of housing for all including slum up gradation and slum prevention.<sup>391</sup> The current housing policy intends to meet the backlog of housing units and for this purpose the production of housing units needs to be raised up to 500,000 housing units every year. To make moderate housing, particularly for the poor and low-income people is one of the foundations of the policy.

The primary objectives of the policy includes to accelerate housing activity and to generate employment for the skill and non-skill persons, to make an easier for the regulation of the kachi abbadis(slums), to provide measures by which malpractices

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<sup>389</sup> National Housing Policy 2001, Ministry of Housing and Works, p1.

<sup>390</sup> Ibid, p25,

<sup>391</sup> Human Rights in Cities Hand Book Series, The Human Rights Based Approach to Housing and Slum Upgrading, UN Habitat for A Better Urban Future, Page 14.

can be controlled and to suggest such policies by which cost effective policies regarding provision of housing can be formulated. This policy is also focused on the availability of housing inputs like land, materials and other inputs, to formulate housing policy for the regularization of Kachi Abadis, arrangements for low approaching housing, development of new towns and regularization of duties.<sup>392</sup>

On 29-3- 2008, a special program began for the provision of housing units which was intended to build one million housing units every year to poor people. This incorporate an integrated construction approach combined with delivery of construction materials, especially indigenous ones, to create a sound and decent living condition through technical and environment friendly housing plans.<sup>393</sup> On paper the housing policy is good but no practical steps have been taken to implement this policy. The reason for non-implementation of the policy is that the mandate for the implementation has been given to the Federal Ministry of Housing and Works but housing being the provincial subject the Federal Ministry of Housing and Works is unable to play an effective role.

Another reason for non-effectiveness of the policy is that Federal Ministry of Housing and Works is responsible to implement National Housing Policy 2001, so far it has not done well for the provision of finance, according to the report of the State Bank of Pakistan. As per report of State Bank of Pakistan, since the promulgation of the policy, the situation of execution of the housing policy is not satisfactory. On the implementation side a lot of work is yet to be done. The present slow progress in the

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<sup>392</sup> Ibid, P2.

<sup>393</sup> Ibid, P27.

implementation is because of lack of coordination among the Federal and Provincial Ministries on Housing and Works.<sup>394</sup>

By keeping in view vision 2030, which aims at providing housing units to all people in Pakistan, some housing programmes along with effective administrative steps were intended to be taken to meet the housing requirements of the poor and middle-class people. Under this vision a priority has been given to the housing units for the low-income groups.

To make optimum utilization of resources the model of vertical types of housing is suggested. In order to expedite the process of housing activity more financing facilities are planned to be applied.<sup>395</sup> The qualities of a good housing policy are three, firstly, a good housing policy should be such that everyone who needs a house can get it easily, secondly, society should perform its duties by keeping in trust sufficient housing units for future generations, thirdly, housing policy should not be discriminatory towards a particular section of the society.<sup>396</sup>

An important principle of a good housing policy is its interdependence with overall macroeconomics, environmental and social development policies.<sup>397</sup> The present housing policy was formulated in 2001 and it is a settled principle that when conditions change there will be implications also for the housing policy.<sup>398</sup>

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<sup>394</sup> State Bank of Pakistan, Mid Term Review of Medium-Term Development Framework, 2005-2010: Government of Pakistan, 2008.

<sup>395</sup> Synthesis Report on Pakistan's Preparatory Process for UNCSD, By Shafqat Kakakhel, Page, 1-35, 2012.

<sup>396</sup> The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach, Human Rights Quarterly, Volume 11, No4, 1989, Pages 522-560.

<sup>397</sup> [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm), Visited on 10-05-2020.

<sup>398</sup> Dimensions of Social Housing Policy: An Introduction, Arza Churchman and Yona Ginsberg, Journal of Architectural and Planning Research, Volume 8, No. 4, Pages 271-275.

So, the present housing policy needs to be updated and strengthened in the light of international best practices and according to the needs of the changed circumstances. A good housing policy should be tailored to local conditions.<sup>399</sup> A good housing policy should be capable to address these issues i.e. cost reduction of housing activity, free flow of financing, control to balance supply and demand and legal devices to secure maximum human values.<sup>400</sup>

### **3.9. NATIONAL ENVIRONMENT POLICY 2005.**

The National Environment Policy 2005 has a close linkage with the housing industry of Pakistan. With reference to housing and asylum, it incorporates measures, for example, the arrangement of supply of clean water and disposal of waste management from the housing societies and slums. Environmental policy can prove more effective after formulation of master plans at the Provincial, Divisional, Districts and Tehsil levels to upgrade the standard of housing infrastructure in line with international environmental standards.

### **3.10 THE NATIONAL ENERGY CONSERVATION POLICY 2005.**

The National Energy Conservation Policy 2005 gives guidance and actions to be taken to improve end use efficiency in all the fields including housing industry of Pakistan. This policy provides steps to be taken both short and long term to use energy efficiently at the household level, insulation of buildings suitable for different zones of Pakistan. This policy also aims to apply Building Energy Code in the housing industry of Pakistan. The establishment of a National Authority on the pattern

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<sup>399</sup> The state of affordable housing, G. Stacy Sirmans and David A. Macpherson, *Journal of Real Estate Literature*, Volume 11, 2003, Pages 133-155.

<sup>400</sup> Urban Housing and Land Use, Herbert U. Nelson, *Law and Contemporary Problems*, Volume 1, No. 2, Low-Cost Housing and Slum Clearance: A Symposium, 1934, Pages 158-167.

of Pakistan Housing Authority is a good option; it would help to use the scarce sources of energy at an optimal level and to avoid the wastage of precious resources of energy. The aims and functions of ENERCON are to take such measures which can reduce the consumption of energy. It is need of the hour to apply the energy policy in true letter and spirit.<sup>401</sup>

### **3.11 THE NATIONAL CLIMATE CHANGE POLICY 2012.**

The National Climate Change Policy 2012 is meant for proper land use, town planning and buildings models in the light of climate changes trends. Keeping in view the severe weather conditions in the rural areas the current climate change policy aims to do housing activity in accordance with the demands of the climate conditions. The policy aims to create housing structures to address the shortage of housing units for poor people and white-collar class families. To address the housing shortfall and to meet the goal of housing for all as envisaged by the UN Habitat agenda there is a need to earmark money in the budget for housing in the public sector development programmes (PSDPs) by all the Governments to implement various initiatives to reduce housing shortfall and to foster urban development. These incorporate, among others, the details of city development strategies and city improvement strategies; planning of national DRR approaches, one million housing units for low-pay citizens, legislative and regulatory changes for improved housing markets which is favorable for poor people and improvement of informal settlements(slums), elimination of encroachments, and improved water supply and sewage in urban zones of Pakistan.

### **3.12 THE TASK FORCE ON URBAN DEVELOPMENT REPORT 2011.**

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<sup>401</sup> National Energy Conservation Policy, the National Energy Conservation Centre (ENERCON) 2007.

The Task Force on Urban Development Report was established by the Planning Commission of Pakistan. Planning Commission (Islamabad) created it to conduct probe into the existing urban conditions and to give its recommendations to formulate a national urban policy to address the real challenges faced by the urban planning. The Task Force presented its report in 2011.

The report highlighted the real issues faced by the urban planning and suggested solutions for improvement in the environment management plans and disaster risk management in big cities of Pakistan. Proposals were also made for less energy consuming structures. The National Framework for Disaster Risk Management (NDMRF) 2007 pointed out problems faced by housing and other buildings from dangers, for example, seismic tremors, floods and landslides. The report has also pointed out that the current pattern of urban housing is such that it has failed to incorporate the building codes in the housing activity in the urban areas. This practice has led to unsafe mode of housing pattern in the big cities.<sup>402</sup>

### **3.13. THE NATIONAL DISASTER RISK REDUCTION POLICY 2012.**

The National Disaster Risk Reduction Policy 2012 provides guidance to tackle disaster risks created due to natural and human beings acts. The policy tries to advance need to take measures for managing the current vulnerabilities and perils and to further projects that reinforce flexibility, and guaranteeing that Disaster Risk Reduction is promoted and systematically integrated into recuperation and reconstruction programming.

Given the fast urbanization and populace growth, the policy underlines advancement of Disaster Risk Reduction through land use arranging, implementation

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<sup>402</sup> Report of National Disaster Management Authority (NDMA), 2007.



of construction laws, working by-laws and retrofitting approaches towards incapacitated structures. For the urban poor living in powerless regions, the policy looks to structure a comprehensive arrangement that can successfully lower existing dangers while simultaneously considering social, economic and physical angles.

For villages' territories, which are characterized by non-designed structures with various land use examples and requirements, endeavors, ought to advance more secure structure systems dependent on exercises gained from previous risk conscious recovery and reconstruction.<sup>403</sup>

### **3.14. HOUSING LAWS RELATING TO HOUSING INDUSTRY OF PAKISTAN.**

Following are the important laws relating to housing industry of Pakistan, which regulate the affairs of the housing activity.

#### **3.14.1 Registration Act 1908.**

The Registration Act 1908 is a significant enactment which prescribed the documents the registration of which is compulsory and the documents the registration of which is optional. Under provision 17 of the enactment an instrument which creates or extinguish, pronounce, declare, limit or transfer any right, title or interest to or in immovable property the value of which is 100 Pakistan rupees or more than it compulsory required to be registered.

There is no other valid mode of transfer of right, title or interest in the immovable property which is used for housing activity except to follow the procedure prescribed by this enactment. Due to very high rate of registration charges the general

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<sup>403</sup> National Disaster Risk Reduction Policy, 2012, By National Disaster Management Authority, 2012.

public in general and housing developers in particular do not follow the procedure of registration as prescribed by the Registration Act 1908 and in alternative they resort to other modes like file system.

Arrangements, for example, land redistribution are hard to execute without implementing the registration process as prescribed by the Registration Act 1908. A significant obstruction faced by the housing industry is the issue of malpractices in property records, especially the procedure of registration of lands in the urban areas. Due to poor land record system and resultantly the poor title records banks are reluctant to provide loans for housing and other productive activities. There is no incentive to follow the law relating to registration of land but there is a financial benefit if you do not follow law.

There are many serious loopholes in the registration laws.<sup>404</sup> In most of the areas of Pakistan the land record system is manual and no certificate of registration of ownership is issued. On alienation of property mutation is entered in the land record by patwari (a low ranked revenue officer who is very powerful in Pakistan) which is meant to know who is responsible to pay taxes to Government for a particular piece of land. Due to poor standard of land record the civil courts of Pakistan are always busy and engaged due to cases of disputed title of lands. This numerous litigation is undermining the potential of investment in the housing industry of Pakistan.

### **3.14.2 Land Acquisition Act, 1894.**

This enactment is the most important law relating to housing industry of Pakistan. When this enactment was promulgated its preamble was designed in such a

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<sup>404</sup> World Bank Report, 2004, Punjab Urban Sector Review.

way that private sector along with Government is encouraged to acquire land for public purposes.

This enactment is a double-edged instrument. For Pakistan this enactment in its present shape is not proving to promote housing industry rather a major reason for undermining investment in the housing industry of Pakistan. Most of the housing societies in Pakistan do not acquire land for the housing societies under Land Acquisition Act 1894, so, there is a gap between theory and practice.

The actual practice is that housing developers purchased lands from their own resources at high prices and then sell it on very high prices resultantly providing housing units to only rich people. In its present shape there is a very cumbersome process to acquire land under Land Acquisition Act 1894 and the Act hinders the speedy acquisition of land for housing industry. Defence Housing Authority (DHA) is a private sector housing developer in Pakistan. According to the Ordinance of DHA issued in 1999, land for DHA should be acquired under the procedure prescribed by Land Acquisition Act 1894. In practice the process of land acquisition adopted by DHA is totally different from theory.

DHA has adopted a unique procedure of acquisition of land by getting lands from the land owners with the help of middlemen who pays price to the land owners and provide lands to DHA authorities and in consideration take some portion of land as a consideration. DHA housing project is meant to meet the housing needs of the elite class of Pakistan. Land Acquisition Act 1894 provides for payment of compensation of land acquired on the basis of market value but in practice the price of the lands acquired under this Act are paid on the basis of registration documents which are undervalued.

There is massive litigation on the point of determination of market value (it shall be discussed in detail in next chapter of the thesis). Additionally, approves the position to get land apparently for a 'public reason', inside the importance of the Land Acquisition Act, 1894. It is evaluated there are over a million land-related cases pending in court in Pakistan, making forty percent out of all court cases.<sup>405</sup>

#### **3.14.3 The Stamps Act 1899.**

Stamp duty is compulsory to be paid whenever there is a transfer of land from one person to another the purpose may be including land for housing activity. Different provincial Governments are charging different rate of stamp duties even some Governments are charging stamp duty twice, firstly at the time of registration of land and secondly at the time of development of land.

Due to high rate of stamp duties and other taxes people sell their properties on the basis of power of attorney or some other means to avoid taxes i.e., income tax, sales tax, capital gain tax and wealth tax. The development of housing industry demands a low fix rate of tax for housing industry. The experience after the independence has proved that by lowering the tax rate Government of India earned more revenue rather decreased revenue.<sup>406</sup> The Government of Pakistan should also the housing industry of Pakistan on these lines.

#### **3.14.4 Illegal Disposition Act 2005.**

This enactment has been introduced to protect the proprietary rights of the plot holders and housing units of the people. No one can deprive any other person of his

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<sup>405</sup> Improving the Performances of the Housing, Tourism and Retail Sectors in Pakistan, The Economist, 30 March 2002.

<sup>406</sup> Stamp Duties in Indian States: A Case for Reform, Alam and Modi, World Bank Washington D.C, 2004.

property; no one can grab, control or occupy the property of another person without lawful authority. If somebody illegally disposes another person from his property that person can be punished with imprisonment up to ten years and with fine plus compensation as per law can also be awarded to the victim.<sup>407</sup>

It is however becoming an increasing source of concern that despite the presence of requisite rules and regulations, the monitoring and enforcement mechanism is somewhat not robust enough to curb the rather long list of irregularities being seen to be more and more frequent. A detail critical analysis of the Legal Framework relating to housing industry shall be made in the next (fourth) chapter of this thesis.

### **3.15. CONCLUSION.**

The regulatory regime is applied by the regulatory authorities at Federal as well as at Provincial level to regulate the affairs of the housing developers. The regulatory regime needs to be strengthening in such a way that there is neither impression of overregulation nor the impression of loose regulation. There is a further room for improvement in it but this legal framework should be amended and applied in the light of suggestions and recommendations in such a manner that the goal of housing for all may be achieved.

## **CHAPTER 4**

### **4. A CRITICAL ANALYSIS OF LEGAL FRAMEWORK RELATING TO HOUSING INDUSTRY OF PAKISTAN.**

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<sup>407</sup> Illegal Disposition Act 2005, Section 3, Second Edition, Mansoor Law Book House, Lahore.

In this chapter a critical analysis shall be made of the legal framework relating to housing industry of Pakistan to know the grey areas which needs to be improved, so that, the goal of housing for all as envisaged by the UN Habitat agenda may be achieved. Inadequate shelter wherever it may be leads to political, economic and social instability and results into multiple other problems.<sup>408</sup> Housing is considered as a mother of all industries because housing activity engages more than forty industries and provides jobs to skill and unskilled people. If the problem of housing right of the people is resolved other consequential issues connected with this right can also be resolved.

#### **4.1 ACQUISITION OF LAND FOR HOUSING SOCIETIES IN PAKISTAN: GAP BETWEEN THEORY AND PRACTICE.**

In order to start a housing society acquisition of land is a first step and the Land Acquisition Act 1894 also encourages the housing companies as it is reflected from the preamble of this Act.

##### **4.1.1 The Concept of Public Purpose Vis-A-Vis Housing Industry of Pakistan.**

Among other factors the decisive factor to decide, whether housing should be a poverty alleviation measure or merely a pure business activity, is the pattern and legal framework to acquire land for the housing activity in Pakistan.

The first step to start a housing society is purchasing or acquisition of land for the housing society. It is essential requirement in whatever form (cooperative housing society, private housing society etc.) housing activity is performed. During the age of British rule, in order to encourage the private sector (companies), the acquisition of

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<sup>408</sup> The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach, Scott Leckie, Human Rights Quarterly Volume 11, No.4, 1989, Pages 522-560.

land for companies was acknowledged in the preamble of the Act but due to ambiguity in the enactment there is divergence of opinions there are different interpretations of different courts.

The owner of the land remains owner of the land even after issuance of notification under section 4 of the Land Acquisition Act 1894. The land shall vest in the Government after the taking over the possession of the land by the collector.

Land would vest in the Government when the possession of the land has been taken over by the collector.<sup>409</sup> Land in question was acquired by Lahore Development Authority for establishing a housing scheme. Plaintiffs purchased land from the owners of the lands after the notification for the acquisition of land had been issued by the authorities.

Plaintiff challenged the notification of acquisition. It was a matter between original owners and the plaintiffs. The acquisition of land by Lahore Development Authority could not be challenged by the plaintiffs as they did not exist on that time. The original owners were entitled to compensation only.<sup>410</sup>

Government has been given authority to judge whether land is needed for a public purpose or not. So, the decisive authority lies with the Government concerned to decide whether declaration should be issued under section six of the Act or not. The Government is the sole judge to decide whether there is a need and whether the need is for public purpose or not. If there is a colorable exercise of powers the declaration of the Government can be challenged at the instance of aggrieved part (land owners), due to this reason there is a lot of litigation which is faced by the developers of the

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<sup>409</sup> Haq Nawaz Khan and others Vs Rab Nawaz and others, 1992 SCMR 993.

<sup>410</sup> LDA through D.G LDA and others Vs Messers. Shaukat and Raza Pvt Ltd, 2011 YLR 3060.

housing industry. No check can be imposed on the powers of the apex court of Pakistan to check whether the land is being acquired for a public purpose or not.<sup>411</sup>

#### **4.1.2 Encouragement of the Private Housing Companies by the Land Acquisition Act 1894.**

For carrying out the housing activity the law encourages to acquire land and this fact is reflected in the preamble of the Land Acquisition Act-1894 which reads as under

“Where it is expedient to amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition”.

The intention of the legislature can be inferred from the preamble of the Act, which is to promote the private sector to invest in the housing industry of the country. This enactment encourages the acquisition of land for public purpose. Public purpose can be equated with any welfare contributing objective such as construction of schools, hospitals, roads and dams.

The initiative for the welfare of the public can be taken by the public as well as by the private sector. The inclusion of the word for the companies connotes the intention of the legislature to encourage the private sector to acquire the land under the provisions of Land Acquisition Act 1894. The use of the words public purpose and a company does not exclude and is not inconsistent with the view that the purpose even in the case of acquisition for a company should be a public purpose.<sup>412</sup>

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<sup>411</sup> R.L. Arora Vs State of Uttar Pradesh and others, AIR 1962 SC 764.

<sup>412</sup> Satiyana Raju Vs Hari Hara Prasad and others, AIR 1955 Andhra 184.



There is no contradiction in the words public purpose and company and these words are used to acquire land for companies' i.e private sector.<sup>413</sup>

When the private housing scheme applied for no objection certificate (NOC) to the development authority to launch housing scheme, after filing this application by the private housing scheme, the development authority issued a notification under section 4 of Land Acquisition Act 1894 to acquire the land for the housing society of the authority owned by the development authority.

The private housing scheme challenged the notification that there was a conflict of interest of the private housing scheme and the development authority. As development authority wanted to establish a housing scheme on the land of the private housing company and due to this clash of interest the development authority did not accept the application of the private housing company.

High court set aside the order of issuance of notification being malafide, discriminatory and in violation of fundamental rights. It was also declared to be against the intention of the legislatures of the Land Acquisition Act 1894 as well, which intended to promote companies to do public welfare activities.<sup>414</sup>

#### **4.1.3 The Definition of Public Purpose in Relation to Acquisition of Land for Housing Activity.**

It is essential that the word public purpose should reflect from the preamble of the enactment and if it is not mentioned in the preamble then it cannot be added subsequently by way of affidavit by the legislatures of the enactment.<sup>415</sup> The word

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<sup>413</sup> A. Natesa Asari Vs State of Madras, AIR 1954 Madras 481.

<sup>414</sup> Miah Rafat Mahmood and 5 others Vs D.G LDA, Lahore and 3 others, 2016 CLC 408.

<sup>415</sup> Mushtaq Ahmad Khan, Land Acquisition Act 1894, Fifth Edition, Punjab Law Book House, Lahore, 2015.

public purpose is clearly reflecting from the preamble of Land Acquisition Act in explicit words.

Public purpose in the context of the Act includes the provision of village sites in districts. The definition of public purpose is not definite about the activities which may be declared as public purposes.

Due to vagueness of the definition of public purpose in the Act every acquisition of land is challenged to decide whether land acquired in the given cases is acquired for public purpose or not, so a flood gate of litigation is opened. The word public purpose has been interpreted by various courts in a different manner.

Land acquisition is founded upon the doctrine of *salus populi suprema lex*.<sup>416</sup> It means the collective interest of the public should be given preference over the individual interest of the person. But this provision does not provide unbridled powers to the Government to take over the property of any citizen in the country.

#### **4.1.4 Whether Acquisition of Land for Housing Activity is Against Constitutional Guarantee?**

Constitutional guarantee has been provided under the Constitution of Islamic Republic of Pakistan 1973. As per Constitution of Islamic Republic of Pakistan 1973, no property shall be compulsory acquired for a public purpose, save in accordance with law and after payment of compensation.<sup>417</sup> Apparently there seems to be a contradiction in the above-mentioned provisions but in fact it is not the case. Article 24 of the Constitution of Islamic Republic of Pakistan 1973 is explanatory to the provisions of the Act that land can be acquired for a public purpose but it can be done

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<sup>416</sup> Islamia University Bahawalpur through V.C Vs Khadim Hussain and 5 others, 1990 MLD 2158.

<sup>417</sup> Constitution of Islamic Republic of Pakistan, Article 24, Seventh Edition, Al Qanun Publishers, Lahore. 2016.

after following the due process of law and after payment of compensation to the land owners if the land is being acquired for a public purpose.

Private lands are acquired under the provisions of Land Acquisition Act 1894 for public purpose without consent of the owners of the land and paramount consideration behind this acquisition of land is the welfare of the general public. Object behind the legislative dispensation is not to deprive the land owners of their Constitutional rights. Such rights are secured under Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan 1973. Property can be acquired under the Act but after payment of compensation.<sup>418</sup>

No individual property can be acquired except in accordance with law and subject to payment of compensation.<sup>419</sup> No private property could be acquired except for public purpose and in accordance with law and after making compensation for it.<sup>420</sup>

Land Acquisition Act 1894 was enacted many years before the Constitution came into force and the provisions therefore would accordingly appear not to be subject to the Constitutional limitations on the acquisition of property. It is a law which was made by a competent legislature before the Constitution and it did not become invalid immediately on the Constitution coming into force.<sup>421</sup>

Right to fair trial has been recognized as a fundamental right under Article 10-A of the Constitution as a fundamental right. Depriving any person to raise an

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<sup>418</sup> Hyderabad Development Authority Vs Abdul Majeed, PLD 2002 SC 91.

<sup>419</sup> M.Ashraf Vs District Collector, Jehlum, PLD2002 SC 706.

<sup>420</sup> Fauji Foundation and others Vs Sami-Ur -Rehman, PLD 1983 SC 457.

<sup>421</sup> R.L. Aurora Vs State of Utterpradesh and others, AIR 1958 Allahabad 872.

objection against the deprivation of his right to property would be denial of the right to fair trial.<sup>422</sup>

So, the after-combine reading of the above-mentioned provisions of law the position is that property can not be taken from any body save in accordance with law and after payment of compensation. The person whose land is being acquired has a right to file to challenge the purpose for which land is being acquired as well as the amount of compensation can be challenged.

#### **4.1.5 Open Ended Definition of Public Purpose and Interpretation of Courts.**

The word public purpose has not been defined in the Land Acquisition Act 1894 in explicit and definite words, so, there is a lot of room for the interpretations by the courts. Most of the cases are those where the acquisition of land has been challenged to decide whether the purpose for which land is being acquired is a public purpose or not.

The collective interest would be preferred over individual interest of the person. The expression public purpose has wide scope under the Act and any act which is beneficial for the larger segment of the society should be included in the definition of public purpose.<sup>423</sup>

Public interest has been further elaborated, as per the judgment any purpose furthering general interest of community as opposed to particular interest of individuals is included in public purpose. Now a question arises whether each and every member of the society should be beneficiary of the society and then it would be called a public purpose or if some members of the society are taking benefit of the

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<sup>422</sup> Chinniot Cooperative Housing Society Ltd through its President Vs Govt. of Punjab through Secretary Cooperative Dept. and others, PLD 2016 Lahore 293.

<sup>423</sup> Qutub Ali Vs Custodian Evacuee Trust Property, Lahore, PLD 1964 SC 60.

land acquisition for fulfilling the requirement of public purpose. Where there is a shortage of housing units, the acquisition of land to remove this shortage of housing units is a public purpose.<sup>424</sup>

It is perfectly a legitimate policy on the part of the Government, when there is an extraordinary shortage of housing units in Delhi; it amounts to public purpose if the land is being acquired by the Government for the establishment of cooperative housing societies.<sup>425</sup> The purpose of the definition is served when only a section of the society is taking benefit in the shape of housing units; still the meaning of public purpose is served<sup>426</sup>

But here a problem arises if the land is being acquired by the rich people for the rich people only by excluding the poor segments of the society, can we call it land acquired for public purpose if it is to serve the interests of elite class only. The word public purpose indicates a purpose in which the general benefit of the society as compared to the special interest of a class of people is served.<sup>427</sup>

Another view point is that the word public purpose cannot be defined strictly and due to this reason, the definition of public purpose has been left open ended with a purpose to meet the requirements of the time to interpret it in future times according to the needs of the society. So, in spite of the fact that there is a lot of litigation on this point i.e. whether the land is needed for public purpose or not and what is meant by public purpose.

With respect to public purpose as defined in Section 3(f), it has been laid down by the Supreme Court in many cases that the purpose of the Act would not be

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<sup>424</sup> Land Acquisition Act 1894, Issac Ali Qazi, First Edition, Insaf Law House, Rawalpindi.2019.

<sup>425</sup> Ram Das Vs Land Acquisition Collector, AIR 1959 PB 479.

<sup>426</sup> Vera Raj Hauachariar and others Vs Secretary of State for India, AIR 1925 Mad 837

<sup>427</sup> Hamabai Framjee Vs Secretary of State for India, AIR 1914PC20.

served by giving it a rigid meaning so it is an elastic concept which has a meaning according to changed circumstances.<sup>428</sup> It is now universally agreed that any concept of public purpose bound in the strait jacket of any rigid formula is inconceivable.<sup>429</sup>

The word public purpose has different connotation in different times. Due to this reason no closed ended definition has been provided by the legislature and it has been left to the Government concerned to determine whether a public purpose would be served in a given case or not.<sup>430</sup> To acquire land for a special class of people is not a violation of Fundamental rights and it will remain a public purpose for determining the acquisition of land under the Act and Punjab Private Site Regulations 2005.<sup>431</sup>

The expression public purpose has no precise and rigid meaning except that it should have benefit for the public in general instead of an individual benefit.<sup>432</sup>

#### **4.1.6 Two Views about the Definition of Public Purpose.**

There are two opinions on this point of view one is that there is no need to strengthen it and there is no need to modify and improve the definition of public purpose and it can serve the needs of the housing industry. Second view point is that there is a need to modify, improve and strengthen the definition of public purpose in the Land Acquisition Act 1894, to save the housing developers from prolonged and lengthy litigation.

The answer to the above-mentioned question can be found after having a glance at the case laws to understand how the expressions of public purpose and market value have been interpreted and what kind of issues are faced in this regard.

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<sup>428</sup> Bagwat Dyal Vs Union of India and others, AIR 1959 Punjab 544.

<sup>429</sup> Ram Naryan and others Vs State of Bihar, AIR 1978 Patna 136.

<sup>430</sup> S.M.T Somnawanti Vs State of Punjab, AIR 1963 SC 151.

<sup>431</sup> Suo Motu Case No. 13 of 2007, PLD 2009SC217.

<sup>432</sup> Fauji Foundation Vs Sami ur Rehman, PLD 1983 SC 457.

Decision of the Government that land is needed under Section 6 sub section 3 of the Act should corroborate with the record of the case if land is being acquired for a company or for any other private institute. Sub section 3 of section 6 further clarifies that such a notification is a conclusive proof of the purpose for which land is being acquired.

With regard to the conclusiveness or finality attached to it, it was held by the court that when proposed acquisition of land was to serve the overall interests of the general public the purpose of the Act would be served.<sup>433</sup> Public purpose is a question of fact it has to be seen and judged in each case.<sup>434</sup> When land was being acquired for the establishment of a housing society. The proceedings of acquisition were challenged on the ground that the proposed land was being acquired for the benefit a limited class of people so it was not for a public purpose. The court decline to interfere in the matter due to factual controversy so the parties were referred to the relevant forum for the resolution of factual controversies.<sup>435</sup>

In another case the word public purpose has been interpreted by the Court that if land is being acquired for the benefit of general public then it is not important to judge whether payment is being made by the Government or by the company for which land is being acquired. <sup>436</sup> Where land is being acquired by the army welfare trust, such trust is included in the definition of company, so, this acquisition is included in the definition of public purpose.<sup>437</sup>

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<sup>433</sup> R.K. Agarwala and others Vs State of West Bengal, AIR 1965 SC 995.

<sup>434</sup> M. Sarwar Khan Vs Salamat Ali, 2012 CLC101.

<sup>435</sup> M.Shafi Vs Multan Development Authority through its D.G, 2010 YLR 1161.

<sup>436</sup> Bostan Vs Land Acquisition Collector, Rawalpindi, PLD 2004 Lah 47.

<sup>437</sup> Raja Basharat Vs Capital Development Authority, 2004 YLR 629.

In order to save time from frivolous litigation and to promote the housing activity, the legislature has included the housing activity in the definition of public purpose in very clear words.<sup>438</sup> Provision of land for carrying out educational, houses scheme is also treated as public purpose.<sup>439</sup>

Where land was needed for the establishment of the housing society under the plea of public purpose, owners of the land challenged the acquisition of land that it was not being acquired for public purpose. Writ petition of the owners of the land was dismissed by the High Court when the title of land of the land owners was alleged to be defective. The parties were referred to the trial court for the determination of the question of title of the land.<sup>440</sup>

Where the land was needed for the establishment of the housing society, while making decision whether the land was required for public purpose or not, it would require to be examined as to where the benefiting segment of citizens was located in the economic and social pyramid of society.<sup>441</sup>

Acquisition of land for a company may not necessarily be for public purpose, it has to be seen as per peculiar facts of each case.<sup>442</sup> Acquisition of land for the establishment of a housing scheme is a public purpose.<sup>443</sup>

Public purpose was found to vary with the time and the prevailing conditions in a given locality.<sup>444</sup> Public purpose included any land required for any purpose which the Government considers as a public purpose except a purpose which is

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<sup>438</sup> Land Acquisition Act 1894, Section 3 (f) (v). Fifth Edition, PLD Publishers, Lahore, 2015.  
<sup>439</sup> Indian Land Acquisition Act 1894, Section 3 (f) (VI).  
<sup>440</sup> Faisalabad Development Authority Vs Raja Jahangir Nasir, 2004 SCMR 1247.  
<sup>441</sup> Ch. Nazir Ahmad Vs Province of Punjab, 2007 CLC 107.  
<sup>442</sup> Muhammad Ihaq Vs Govt. of Punjab, 2002 SCMR 1652.  
<sup>443</sup> Muhammad Shafi Vs Multan Development Authority through its D.G, 2010 YLR 1161.  
<sup>444</sup> Al Riaz Pvt Ltd Vs Province of Sindh, 2007 YLR 568.



against the tenants of Islam.<sup>445</sup> Public purpose is always to be decided according to requirements of a given acquisition and it cannot be unyielding.<sup>446</sup>

There may be cases where the land is not strictly needed for a public purpose yet it may be a public purpose if it has been declared so by the competent authority. The decisive factor in this regard is not the source of payment but the decision whether the land is needed for a public purpose or not.<sup>447</sup> Land acquired by WAPDA Housing society for the construction of the housing society is a public purpose.<sup>448</sup>

Public purpose has not been defined in its generic sense in section 3(f) of the Land Acquisition Act 1894; it is an expression which is a relative term and will depend and vary from case to case depending upon the circumstances of each case.<sup>449</sup> Land needed for the construction of housing units for the employees of the dispensary of state insurance scheme is a public purpose.<sup>450</sup> Land needed for the purpose of settlement of immigrants is a public purpose.<sup>451</sup> Requisition for the purpose of housing a member of the staff of foreign consulate is a public purpose.<sup>452</sup>

Housing scheme for about 20 members of a cooperative society is a public purpose.<sup>453</sup> Land needed for the building of residential houses of industrial labor is a public purpose.<sup>454</sup>

Provision for suitable accommodation of pilgrims round about a temple is a public purpose.<sup>455</sup> Acquisition of land for rehabilitation of displaced persons by the

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<sup>445</sup> Waris Ali Vs Member Board of Ruvenue, Lahore, 2014 YLR 2400.

<sup>446</sup> Muhammad Khan Vs Federation of Pakistan, 2012 CLC 101.

<sup>447</sup> Bostan Vs Land Acquisition Collector, Rawalpindi, PLD 2004 Lahore 47.

<sup>448</sup> Zafeer Gul and 190 others Vs Govt. of N.W.F.P through Secretary, 2001 CLC 1853.

<sup>449</sup> Allah Ditta and others Vs Province of Punjab, PLD 1997 Lahore 499.

<sup>450</sup> Bhai Malimbo and others Vs State of Gujrat, (1978)2 SCC373.

<sup>451</sup> Aswini Kumar Nath Vs State of West Bengal, AIR 1952 CAL. 679.

<sup>452</sup> State of Bombay Vs Ali Gulshan, AIR 1955 SC 810.

<sup>453</sup> Ratilal Shakarabhai and others Vs State of Gujrat, (1970) 2 SCC 264.

<sup>454</sup> Jhandu lal and others Vs State of Punjab, AIR 1961 SC 343.

provincial Government is a public purpose.<sup>456</sup> The word public purpose is difficult to define but it is not a precondition to declare an acquisition of land for the use of Government itself or for the purpose in which the whole general public is beneficiary of the land being acquired.<sup>457</sup>

Land can be acquired for a cooperative housing society, cooperative housing societies registered under Cooperative Societies Act 1925 is qualified as company for the purpose of Land Acquisition Act 1894.<sup>458</sup> The acquisition of land for a company is in substance for a public purpose inasmuch as constructing dwelling houses and providing amenities for the benefit of the workmen employed by it.<sup>459</sup>

It is not necessary to the validity of the land acquisition proceedings that the word public purpose to be mentioned in the notification under Section 4 of the Act.<sup>460</sup> As a result of acquisition of land if the larger portion of the general public is taking benefit of it. It can not be said that land is not being acquired for a public purpose if land is being acquired for a company.

The difference between notification under section four and acquisition under Section six of the Act is that. Notifications under Section 4 notification may be issued for land being needed for a public purpose which is mentioned in Section 40 of the Act while under the latter provision when notification is issued for the acquisition of land it should be mentioned whether land is needed for a public purpose or for a

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<sup>455</sup> Amulya Chandra Banerjee and others Vs the Corporation of Calcutta, AIR 1922 PC 333.

<sup>456</sup> Shankar Lal Naran Vs Land Acquisition Collector, AIR 1961 ALL.529.

<sup>457</sup> Tej Ram Jagram Vs Union of India, AIR 1959 Punjab 478.

<sup>458</sup> Zafeer Vs Govt. of NWFP, 2001 CLC 1853.

<sup>459</sup> State of Bombay Vs Bhanji Munji and others, AIR 1955 SC41.

<sup>460</sup> Babu Borkya Thakur Vs State of Bombay, AIR 1960 SC 1203.

company. The declaration issued under Section 6(3) is considered as a conclusive one.<sup>461</sup>

The concept of public purpose is not static. It varies from time to time and according to the circumstances of thought prevailing in the country. To give a close eneded definition is not possible but there is no doubt to declare that when there is a shortage of housing units, the acquisition of land for eliminating housing shortage in this situation would be a public purpose.<sup>462</sup>

Land was being acquired by the respondent company for the establishment of housing society. The petitioner filed this Writ petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan 1973. The petition is liable to dismissed on two grounds, firstly, the land was being acquired for a public purpose as each and every member from the general public could purchase the plot in the housing society, secondly, the petition could only be filed under the above said provision only when there was a matter of public importance and in the instant petition only one person was affected (whose land was being acquired). The writ petition was dismissed.<sup>463</sup>

Acquisition of land by Government at the expenses of the society (Lahore Cantonment Housing Society Ltd) to ease acute housing shortage in city and to provide shelter to defense and civilian personnel was declared as an acquisition for public purpose.<sup>464</sup> Protection of property rights, no properties can be acquired compulsorily or taken possession of save for a public purpose.<sup>465</sup>

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<sup>461</sup> A.K. Agarwal Vs State of West Bengal and others, AIR 1965 SC 995.

<sup>462</sup> Anond Kumar and others Vs State of Madhya Pradesh and others, AIR 1963 Madhya Pradesh 256.

<sup>463</sup> Suo Motu Case No. 13 of 2007, PLD 2009 SC 217.

<sup>464</sup> Dr. Naseem Javaid Vs Lahore Cantonment Housing Society Ltd. PLD 1983 Lahore 552.

<sup>465</sup> Allah Ditta Vs Province of Punjab, PLD 1997 Lahore 499.

Where the acquisition is made for the purpose of a company it is not necessary that the compensation should be met wholly or partly out of public reserves.<sup>466</sup> If the land is being acquired for a company the main purpose of which is to earn profit for the company but if this economic activity is a source of promotion of national economy and it is becoming a cause for the welfare of the public it is a public purpose.<sup>467</sup>

Petitioner challenged the notification of acquisition of land that the acquisition was not for public purpose. The land was being acquired for the residents of Government servants. There is no element of discrimination because all the Government servants are entitled to housing unit in the society. The acquisition of land was declared to be for public purpose although the general public was not entitled to it but it was meant for Government servants only. The writ petition was dismissed.<sup>468</sup>

Where the land was being acquired for the construction of housing scheme it does not cease to be acquisition for public purpose if some flats and shops were to be constructed for commercial purposes. These shops and commercial area was meant to meet the needs the residents of the housing scheme. The acquisition was declared to be for public purpose.<sup>469</sup> Where the land was being acquired for a public purpose on failure of the purpose of the acquisition the Government could utilize the acquired land for any other public purpose the land could not be claimed back by the original owners.<sup>470</sup>

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<sup>466</sup> Hari Hara Prasad Vs K Jagana and others, AIR 1955 Andhra 184.

<sup>467</sup> Ram Narain Singh and others Vs State of Bihar, AIR 1978 Patna 136.

<sup>468</sup> Mst. Salma Muazzam VS LDA through D.G LDA and 30 others, 2015 MLD 1014.

<sup>469</sup> Mst. Parveen Akhter and 40 others Vs Azad Jammu and Kashmir Govt. through its Chief Secretary, 2014 CLC 1304.

<sup>470</sup> Malik Muhammad Iqbal Vs Govt. of NWFP and others, 1996 SCMR 127.

#### 4.1.7 Acquisition of Land Not for Public Purpose.

Acquisition of land for construction of housing units for members of a particular cooperative housing society cannot be said to be an acquisition for public purpose. The general interest of the public is the precondition for acquisition of land for public purpose. Where the purpose of the acquisition of land is to acquire the land even for construction of housing units it cannot be called acquisition for public purpose if the object is to serve the interest of a few individuals.<sup>471</sup>

When the statute does not define public purpose at all no presumption arises as to the existence of a public purpose.<sup>472</sup> After acquisition of land for public purpose the utilization of same land for any other purpose is not a public purpose.<sup>473</sup> Where the acquisition is proved to be not for public purpose but with an ulterior object, extraneous to the scope of the Act, the notification by the Government can be set aside.<sup>474</sup>

The land of the petitioner was being acquired for Lahore Development Authority (LDA) Avenue-1 Housing Scheme under Land Acquisition Act 1894 under the definition of public purpose. Petitioner being Pakistani was settled abroad and had purchased land with hard earned income. The grievance of the petitioner was that his land could not be acquired due to protection available to him under Protection of Economic Reforms Act 1992. High court found petitioner entitled to exclusion of his property from the operation of scheme. Petition was accepted and the acquiring authority was stopped to acquire the land under Land Acquisition Act 1894.<sup>475</sup>

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<sup>471</sup> Musamiyam Imam Hyder Buksh Rizvi Vs State of Gujrat and others, AIR 1971 Gujarat 158.

<sup>472</sup> The State of Bihar Vs Sir Kameshwar Singh, AIR 1952 SC 252.

<sup>473</sup> Ram Das Vs Land Acquisition Collector, ILR 18CAT.99(PC)

<sup>474</sup> Manickchand Mahata Vs Corporation of Calcutta, ILR 48 CAL.916.

<sup>475</sup> Suleman Dawood Vs LDA through D.G, 2008 CLD 850.

The land acquisition for the personal benefit of a particular class of employees would not be in the public interest, so it cannot be called land acquisition for public purpose.<sup>476</sup> Land was not the need of the society but it was acquired for the purpose of establishment of a residential colony and the same was for the benefit of few individuals. Acquisition of land for such a purpose was like committing a dacoity on the valuable rights of the citizens.<sup>477</sup>

The purpose of construction of dwelling houses cannot be considered necessarily or per se to be a public purpose. Construction of houses in an area where the dwelling accommodation is in excess of requirement cannot advance a public purpose. Similarly, construction of houses in a heavily congested area or in slums area cannot be said to serve a public purpose because it would only worsen the congestion and thereby adversely affect the health of the public.<sup>478</sup>

Where the land was already acquired for the members of the cooperative housing society the land could not be acquired for Lahore Development Authority under the provisions of Land Acquisition Act for public purpose. Members of the cooperative housing society were already poor people so the notifications issued for the acquisition of land for the Lahore Development Authority society were set aside as the members of the cooperative housing society were poor people, they were more deserving. Lahore Development Authority society could not get the land for public purpose.<sup>479</sup> When acquisition of land is only to enrich a special group of people any

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<sup>476</sup> Gulshan Hussain Vs Commissioner Revenue, Lahore, 2000 YLR 1711.

<sup>477</sup> Nazir Ahmaed and 8 others Vs Commissioner, Lahore, 2000 MLD 322.

<sup>478</sup> Bhagwat Dayal and others Vs Union of India, AIR 1959 Punjab 544.

<sup>479</sup> Chiniot Cooperative Housing Society Ltd Vs Govt. of Punjab, PLD 2016 Lahore 293.

such acquisition would be unjust enrichment and it would be negating public purpose.<sup>480</sup>

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<sup>480</sup> Syed Nazar Abbas Naqui Vs Commissioner, Sargodha, 1996 SCMR 1277.

#### **4.1.8 Whether Courts Can Look into the Matter of Acquisition of Land to Strike Down the Acquisition Proceedings?**

There are two views whether courts can look into the matter of acquisition of land. One view is that the courts cannot look into the matter because it is a policy matter, the other view is that the courts can look into the matter of acquisition because it is in accordance with the right to fair trial, that right which is a right given by the Constitution of Islamic Republic of Pakistan 1973, after introduction of eighteenth amendment in the Constitution of Pakistan 1973.<sup>481</sup>

Land Acquisition Act 1894 is a confiscatory statute designed to deprive citizens of their valuable rights in property through coercive measures by state by exercising authority under this Act. The provisions of the Act need to be interpreted in the favor of protection, preservation and maintenance of rights and interests of the citizens.<sup>482</sup>

The declaration for the acquisition of land can be challenged on the ground that it was in colorable exercise of powers of the state. The court can enquire into question of public purpose, whether the land is required for public purpose or not.<sup>483</sup> Courts are not precluded from considering whether the purpose for which the lands are acquired under the Act is a public purpose or not and if it is not for a public purpose the mere declaration by the Government that it is a public purpose would not make the acquisition legal.<sup>484</sup>

It is considered that the notification for the acquisition of land is a conclusive proof of the fact that land is needed for a public purpose so when there is conclusive

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<sup>481</sup> Ibid, Article 10-A.

<sup>482</sup> Division Engineer Gujranwala and 30 others Vs Rana M. Shareef, 2002 CLC 985.

<sup>483</sup> Smt Somawanti and others Vs State of Punjab, AIR 1963 SC 151.

<sup>484</sup> Veeraraghava Chariar and others Vs Secretary of State for India, AIR 1925 Madras 837.



proof it cannot be challenged in any court of law and the aggrieved party has got no right to challenge the notification in the court of law. It does not seem to be a sound argument, it was held by the court that it is wrong to assume that right of suit of party has been taken away by Section 6(3) of the Land Acquisition Act 1894. It was held by the privy council that a certain enactment which took away the right of a subject to file a suit to question the act of the Government was *ultravires*.<sup>485</sup>

The Burma Government passed Act 4 of 1898 and Section 41 provided that no civil court is to have jurisdiction to determine any claim on any right over land as against Government. This provision was held to be *ultra vires* of the Burma Legislature. This right could not be taken away. Land was being acquired by the Federal Government employees housing federation.

It is duty of the court to closely examine such facts and circumstances particularly when it is not a case of acquiring land for construction of public school, hospital and road but it is for the benefit of little specific class of persons. High Court set aside acquisition proceedings as illegal, void and without jurisdiction and legal effect.<sup>486</sup>

Apparently, the acquiring agency of the Government is the best judge to determine whether land is being acquired for a public purpose or not but the matter has not been left to be decided according to the unbridled authorities of the acquiring agencies but the courts have been given authority under the Act to check whether land is being acquired for a public purpose or not.<sup>487</sup>

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<sup>485</sup> Ganga Ram Vs Land Acquisition Calcutta, (1912) 40 Cal, 391.

<sup>486</sup> Malik Basheer and 40 others Vs Federal Govt. of Pakistan, PLD 2018 Islamabad 68.

<sup>487</sup> Board of Transport of Bombay Vs Karishna, AIR 1956 SC 294.

Government had to evaluate public purpose objectively on the basis of reasonable material as sacred fundamental right of individual duly safeguard under the provision of Article 24 of the Constitution was likely to be affected. When no malafide on the part of Government or board of revenue was established, petitioner Company was intending to set up housing scheme under grasp of acquisition which purpose could not be equated in any manner with public purpose.<sup>488</sup> As a general rule the court cannot see into the matter when land is required for a housing scheme. Government is fully authorized to decide when land is required for a public purpose or not.

Notification issued under Section 4 of Land Acquisition Act 1894 is a conclusive proof of the fact that land is needed for a public purpose. Court can look into the matter when land is being acquired under colorable exercise of power.<sup>489</sup>

Under the present enactment relating to Land Acquisition the definition of public purpose is ambiguous and it is causing frivolous litigation. There are contradictory judgments of the higher courts. In many a cases acquisition of land for housing activity has been declared as a public purpose and in many other cases the acquisition has not been declared as acquisition not for public purpose.

If the Government of Pakistan is serious to achieve the goal of housing for all as envisaged by the UN Habitat agenda the relevant laws including Land Acquisition Act 1894, should be amended to include housing in the definition of public purpose and to make provision for unified, transparent, and quality oriented system and litigation minimization.

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<sup>488</sup> Messers. Eden Developers Pvt Ltd Vs Govt. of Punjab, PLD 2017 Lahore 442.

<sup>489</sup> Muhammad Ashraf Vs District Collector Jehlum, PLD 2002 SC 706.

The definition of the public purpose should be amended in such a manner that public purpose includes acquisition of land for the construction of housing units and any other purpose which the Governments considers can serve the public purpose according to the needs of the time. When the definition of public purpose would be definite and clear with respect to its meanings, there would be no room for interpretation and easier for the courts to apply the relevant provisions of law. By making the wording of the definition of public purpose deninite, it would be much easier to acquire land for housing purposes and the contradictory judgments can also be avoided.

The first portion of the definition should explicitly mentions few purposes for which land can be acquired by the Government for public purposes and the second portion of the definition should be open ended with the word and public purpose includes any other purpose which the Government considers to be as public purpose, this later portion of the definition would help the Government to acquire land in future times according to the needs of the society and time. If the definition of public purpose instead of being inclusive only is shaped as combination of exclusive (first portion of definition) and inclusive (second portion of definition of public purpose), it can be more effective for acquisition of land for housing industry.

#### **4.1.9 Absence of A Clear-Cut Criteria to Determine Market Value in The Legal Framework of Pakistan.**

Absence of a clear criterion to determine market valve is another reason which is undermining the investment in the housing industry and which is also a major reason of litigation faced by the developers of the housing industry of Pakistan.

There has been a lot of litigation on the yardstick to calculate the amount of market value and the amount of compensation to be paid to the owners of the

land. Section 23 of the Act lays down the following criteria, matters to be considered in determining the amount of compensation the court shall take into consideration the following things i.e., market value of the land to be acquired when the notification under section four is issued, the damage suffered by the land owner due to the standing crops and trees, damage suffered due to severance of land, damage suffered to other movable and immovable property, damage suffered due to change of residence and business, damage suffered during the period of notification and taking possession of land and in addition to above mentioned compensation the court would award 15 percent on such market value in consideration of compulsory acquisition of land<sup>490</sup>. In order to obviate the difficulties encountered in acquisition of land for public purpose, amendments have been introduced by all the provincial Governments (acquisition of land is a provincial subject as per Constitution of Pakistan) in the Act according to the needs of each provincial Government.

Out of these amendments the most important one is introduced by the West Pakistan due to which there is a lot of litigation on the point of calculation of amount of market value. For the purpose of determining the market value, the court shall take into account transfers of land similarly situated and in similar use.

The potential value of the land to be acquired if put to a different use shall only be taken into consideration if it is proved that land similarly situated and previously in similar use has, before the date of the notification under Sub Section (1) of Section four been transferred with a view to being put to the use relied upon as affecting the value of the land to be acquired. In spite of all above mentioned amendments, the acquisition of land for public purpose by the provincial

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<sup>490</sup> Land Acquisition Act 1894, Section 23, Manual of Land Acquisition Laws, Second Edition, Insaf Law House, Rawalpindi, 2019.

Governments has become an elusive exercise. This also applies to acquisition of land for the developers of the housing industry.

From the following judgments of the higher courts it can be judged how difficult it is to acquire land for the housing activity in Pakistan and what is the criterion to determine market value which is to be paid by the developers of the housing industry to the land owners.

The term market value is not defined in Land Acquisition Act. Market value has been interpreted by various courts in various meanings and instead of resolving the issue (a clear interpretation of market value) the matter has become more complicated due to diverse and contradictory judgments of the higher courts on this point. Market value can be described as owner though not obliged to sell is willing to accept and a vender not obliged to purchase is willing to pay.<sup>491</sup>

It means the market value of the land to be acquired for the housing society would be the amount which a lay man prescribed for a piece of land. In another judgment of the higher court the term market value is interpreted in these words the term market value would mean the price fetch from market while assessing compensation potential value would have to be taken into consideration, inflationary trend and depreciation between date of acquisition and date of award will also be taken into consideration.<sup>492</sup>

Now when multiple aspects would be considered there is a likelihood of mistake which can lead to further litigation. As per Land Acquisition Act 1894, while determining the market value of the land, market value of land is to be taken as

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<sup>491</sup> MA Malik, The land Acquisition Act 1894, Second Edition, PLD Publishers, Lahore, 2013 Page 19.

<sup>492</sup> Ram Nath Vs Land Acquisition Collector, LR 1917 A 194.

existing on the date of publication of the notification under Section 4(1). Another yard stick to determine the market value of the land was prescribed in this judgment that price in the preceding year instead of 6 or 7 years will be considered along with potential value of land.<sup>493</sup>

An owner is entitled to get compensation determined on the basis of valuator's opinions, prices of confide transactions, rents and profits of related property before acquisition.<sup>494</sup> There is a difference between market value and potential value of land. Market value is what a willing purchaser is ready to pay to a seller and potential value of land is the future possible use of the land.<sup>495</sup>

In another judgment it was held that while calculating the amount of market value the court should consider the location of the land, nature of land and the future potential of the land.<sup>496</sup> Compensation to be paid to land owners for their acquired land would be determined on the basis of one year of average of land sold in the vicinity to the date of notification under Land Acquisition Act.<sup>497</sup>

Another criterion to determine the market value was laid by the apex court of Pakistan that while determining the amount of compensation the collector of land acquisition should consider the evidence brought on the record by the parties in addition to the average of one year sales of lands in the vicinity plus potentiality and future prospective of the land. Another criterion was laid down by the honorable court that while determining the amount of market value the court should consider evidence

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<sup>493</sup> Land Acquisition Collector Abbotabad and others Vs M. Iqbal and others, 1992 SCMR 1245.

<sup>494</sup> Rahim Khan Vs Land Acquisition Collector, PLJ 1996 Peshawar 3(DB).

<sup>495</sup> Majid Ali Kazmi Vs Land Acquisition Collector, PLD 1988 SC 32.

<sup>496</sup> Avsumili Gopalor Krishna Vs Special Deputy Director Land Director, AIR 1980 SC 1870.

<sup>497</sup> Govt. of Pakistan through Secretary Ministry of Defence Vs Sardar Muhammad Sami, PLD Govt. of Pakistan through Secretary Ministry of Housing Vs Nadir Khan, 1987 Peshawar 77.

brought on the record by the parties in addition to average of one year price.<sup>498</sup> While determining the market value of land it is not for the court to speculate as to the future potentialities of lands.<sup>499</sup>

Yet another divergent view was expressed by the court that compensation must be awarded by taking into consideration value of land with all its potentials including present and future potentials.<sup>500</sup> In determining the amount of compensation the potential of the land on the basis of which land can be used in near future should also be considered along with the value of past transactions of the lands in the vicinity of the land being acquired.<sup>501</sup>

While interpreting the definition of market value it was held by the court that when land is being acquired for the housing scheme by exercising state power and not by mutual negotiations then maximum amount of compensation should be provided to the land owners by the developers of the housing colonies. Courts should fix such amount of market value that neither a land owner is deprived of his rights nor the acquiring agency is unduly burdened, sale average of the previous years should be considered by the court.

But sale average of the last how many years should be considered is not clear in the judgment.<sup>502</sup> The considerations given under section 23 are not exhaustive with respect to determination of market value and compensation of land being acquired.<sup>503</sup>

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<sup>498</sup> Muhammad Saeed and others Vs Collector Land Acquisition and others, 2002 SCMR 407 (a)

<sup>499</sup> Yeshwantrao Govindrao Vs Collector Nagpur, AIR 1961 Bombay 129.

<sup>500</sup> Sultan and others Vs Mst. Bibi, 1972 SCMR 348.

<sup>501</sup> Water and Sanitation Authority Quetta Vs Niaz Muhammad and 7 others, PLD 1992 Quetta 75.

<sup>502</sup> Karachi Water and Sewerage Board Employees Vs Land Acquisition Collector, PLD 2002 SC 91.

<sup>503</sup> Province of West Pakistan Vs M. Saleemullah and others, PLD 1966 SC 547.

The amount of compensation for the land being acquired is to be determined according to the usage of the land when the land is being acquired.<sup>504</sup>

The best method to determine the market value is to consider the market value of the portion of the land being acquired at the time of issuance of notification under section 4 and to consider the price of the adjoining lands at the time of issuance of notification for the acquisition of land.<sup>505</sup> Land owners did not accept the amount of market value; award was announced after seven years after the issuance of notification for the acquisition of land. Award was declared against the mandate and command of section 11 of the Land Acquisition Act 1894.<sup>506</sup>

While determining the market value of land to be acquired the court shall take into consideration the damage suffered due to standing crops, damage suffered due to severance of land and damage due to acquisition to other property of the land owners. In addition to market value the referee court should award twenty five percent of the market value in the shape of cash.<sup>507</sup>

The market value should be determined as the amount which a buyer is willing to pay and seller willing to sell is ready to accept without hesitation.<sup>508</sup> While assessing the amount of compensation the collector is required to take into consideration not only the market value but he should also take into consideration the potential value of the land.

Valuation table prepared and notified by the deputy commissioner in terms of section 27-A of Stamp Act 1899 is not a conclusive proof to determine the market

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<sup>504</sup> Nagpur Improvement Trust Vs Vithal Rao, AIR 1973 SC 689.

<sup>505</sup> Jagendra Nath Chattergi and others State of West Behgal, AIR 1971 Calcutta 458.

<sup>506</sup> Water and Power Development Authority Pakistan through Chairman Vs Haji M Riaz Hussain, 2014 MLD 1528.

<sup>507</sup> National Highway Authority Vs Sher Zaman, 2015 MLD 913.

<sup>508</sup> Province of Punjab through Project Director Housing and Physical Works Vs Sher Muhammad and others, PLD 1983 Lahore 578.



value of the property but it can be taken into consideration along with other factors particularly in the absence of any evidence to the contrary regarding value of the property.<sup>509</sup>

An important factor is worth consideration that for what objective the land is being acquired. If the land is being acquired to enhance the agriculture potential of the land then the future potential of the land is to be considered but if the land is being acquired for housing scheme the formula for fixing the price of agriculture land cannot be applied and if applied it would be against the ends of justice. The method to judge the market value would be different one.<sup>510</sup>

Classification or the nature of the land is also a relevant consideration because an area may be banjar qadim or barani as in the present case but its market value may be very high because of the future potentials.<sup>511</sup>

Market value and potentiality of the land to be acquired for the housing society should be kept in view at the time of requisition and acquisition of a particular piece of land.<sup>512</sup> While determining the market value mere past sales should not be considered, the price offered by the willing purchaser to the willing seller must also be kept in view.<sup>513</sup>

Where location of the land is such that some portion of the land is situated in the territorial jurisdiction of municipal limits and some portion is outside it, the

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<sup>509</sup> Province of Punjab through Land Acquisition Collector and others Vs Begum Aziza, 2014 SCMR 75.

<sup>510</sup> Akhter Hussain Vs Govt. of Azad Jammu and Kashmir, 2014 MLD 179.

<sup>511</sup> Govt of Pakistan Vs Rahander and others, PLD 1961 Dacca 177.

<sup>512</sup> Govt. of Pakistan through Ministry of Defence Vs Deen M. Chuttal Brochi, 1983 CLC 1281.

<sup>513</sup> Fazaul Rehman and others Vs General Manager S.D.B and others, 1973 SCMR 225.

collector awarded the compensation at the same high rate as if the whole area was within the territorial jurisdiction of municipality.<sup>514</sup>

Land is not to be valued merely in accordance with the use to which it is being put but also by reference to use to which it could reasonably be put in future.<sup>515</sup> While determining the market value sale average of the proceedings years is to be taken into consideration for the purpose of grant of compensation for the land.<sup>516</sup> It was held by the Supreme Court of Pakistan that High Court could not enhance the amount of compensation without giving cogent reasons to disagree with the award of the collector, finding of facts arrived at by the reference court could not be interfered with by the High Court on surmises and conjectures. Sale deeds of the small pieces of land could not be determining factor for compensation.<sup>517</sup>

When the owners of the lands accepted compensation under protest, Condition appended to statement and acceptance of compensation under protest would show that there was no final, conclusive and voluntary settlement between parties the whole proceedings are liable to set aside.<sup>518</sup> Acquired land being adjacent to an industrial estate and located within two main roads and at a distance of one thousand feet from the canal.

The order of the High Court to enhance the value of compensation was up held by the Supreme Court keeping in view the peculiar location of the land.<sup>519</sup> Factors to be considered for the determination of market value, for determining the market value

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<sup>514</sup> Province of Punjab Vs Maulvi Muhammad Faizan and others, PLD 1980 Lahore 632.

<sup>515</sup> Collector Quetta Vs Habibullah and 14 others, PLD 1970 Quetta 35.

<sup>516</sup> Hyderabad Development Authority through M.D Civil Centre Hyderabad Vs Abdul Majeed and others, PLD 2002 SC 84.

<sup>517</sup> Special Land Acquisition Officer Vs Mahrani Biswal and others, 2012 SCMR 1179.

<sup>518</sup> Raja Muhammad Abdullah Vs Govt. of Pakistan through Secretary Ministry of Defence, 1986 MLD 252.

<sup>519</sup> Sardar Muhammad Ashraf LRs and others Vs Govt. of NWFP through collector and others, 2011 SCMR 1244.

not only the factors highlighted in sections 23 and 24 of Land Acquisition Act 1894 were relevant but the peculiar facts and circumstances of each case were more important for deciding the amount of market value.<sup>520</sup>

Supreme Court of Pakistan held while determining the market value the principle is gold is given for gold and not copper for gold.<sup>521</sup> Where the company is acquiring land for the welfare of public purpose the owners of land would be entitled to 15 percent compensation in addition to market value but when the land is being acquired by the company exclusively for commercial and profit-making purpose the owners of the land would be entitled to get 25 percent compensation in addition to market value.<sup>522</sup>

From the above said diverse interpretations it is very much clear that the acquisition of land for the housing industry is a very problematic and cumbersome process. Supreme court of Pakistan has laid down some principles which need to be considered while determining the market value of the land being acquired, an entry in the revenue record as to the nature of land may not be conclusive.

In the process of determining the market value of the land the use of which the land is capable of being put should also be considered and market value existing the time of notification under section 4 should also be considered along with the average price of the land transactions during the last year.<sup>523</sup> Market value is to be

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<sup>520</sup> Askari Cement Ltd. Through Chief Executive Vs Land Acquisition Collector (Industries), 2013 SCMR 1644.

<sup>521</sup> Land Acquisition Collector Vs Mst. Iqbal Begum, PLD 2010 SC 719.

<sup>522</sup> Civil Aviation Authority through Project Director and others Vs Rab Nawaz and others, 2013 SCMR 1124.

<sup>523</sup> Sardar Abdul Rauf and others Vs the Land Acquisition Collector, D.C Abbotabad, 1991 SCMR 2164.

considered in terms of money and person interested cannot be granted land as an alternative of market value.<sup>524</sup>

Market value of the land means value of the land at the time of acquisition of land when the land is being used for public purpose.<sup>525</sup> There is a different criterion to determine the market value of the land to be acquired for housing society under Land Acquisition Act. If the land has been purchased on cash basis then generally fewer price is paid as compare to purchase of land on the basis of credit.<sup>526</sup>

While determining the market value the aggregate of interests of all the persons in the land is combined to calculate the market value of the land.<sup>527</sup> When the acquisition process of the land has been delayed for a period of 12 years then the market rate at the time of issuance of notification cannot be called an appropriate market value.<sup>528</sup>

If the land was being acquired for enhancing agricultural potential of land then future potential of the land was to be considered while keeping in view the market value of land but if the land was to be acquired for housing scheme. If the land was being acquired for housing scheme then the formula would be different one as the housing activity enhances the market value of the land many a times more than its previous value.<sup>529</sup>

Escalation of price of the land between the date of notification under section 4 and the date of award was another factor which needs to be considered while

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<sup>524</sup> Faisalabad Development Authority Vs Raja Jahangir Nasir, 2004 SCMR 1247.

<sup>525</sup> Mushtaq Ahmad Vs Mirpur Development Authority, 2013 CLC SC 734.

<sup>526</sup> Shrimati Kusamgauri Ramray Munshiv and others Vs Special Land Acquisition Collectot Ahmadabad, AIR 1963 Gujrat 92.

<sup>527</sup> Govt. of India Vs the Century Spinning and Manufacturing Company Pvt. Ltd, AIR 1942 Bombay 105.

<sup>528</sup> Waris Ali Vs Mukhtar Ahmed, 2012 CLC 1212.

<sup>529</sup> Amjad Ali Raja Vs Land Acquisition Collector, PLJ 2013 SC (AJ&K) 290.

determining the market value of the land. Delay of two to three years has been declared a factor for enhancing the market value of the land. Furthermore, inflationary trend and depreciation of currency could not be ignored.<sup>530</sup>

Considerations and factors for determination of market value of the land being acquired vary from time to time and location to location keeping in view the present use. The vicinity and ambience of the land being acquired shall also be considered. Assessment of land to be acquired is to be made objectively. If the land owners claim more and higher prices then onus of proof is on the land owners.<sup>531</sup>

Land was being acquired for the housing society. Controversy between the parties decided by the collector without application of mind would be violation of the requirements of section 24-A of the General Clause Act 1897. High Court rightly remanded the case to the collector to decide the market value after following the process of law in letter and spirit.<sup>532</sup>

Small and big plots of land cannot be considered of the same value as in big chunk of land some facilities are not provided which are available in the small chunk of land. Compensation fixed for small plots meant for residential plots cannot be awarded to big chunk of land.<sup>533</sup>

It is a well settled principle of law that section 23 of the Land Acquisition Act is to be construed liberally in favor of the general public whose lands are being acquired by the Government. The basic purpose of section 23 is to provide a complete

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Ibid,

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The Land Acquisition Collector Vs Abdul Waheed Chaudhary Advocate, 2004 UC 102.

<sup>532</sup>

Syed Moeen Shah Vs Land Acquisition Collector, 2005 PLJ 762.

<sup>533</sup>

Chaudhary Muhammad Hussain Vs Commissioner Income Tax, NLR 2005 Revenue SC 31.

indemnity to owners of the land for the land which is being compulsory acquired by the Government.<sup>534</sup>

The method used to calculate compensation in another case could not be applied to a second case without similarity of all details. Each case has its own peculiar circumstances so each case should be decided on its own merits.<sup>535</sup> Land was being acquired by the Government for the establishment of a housing scheme. It was decided to pay an alternative plot in lieu of compensation.

Later on, the acquiring agency decided to pay cash as the market value of the land. High Court directed the acquiring agency to fulfill its promise by giving an alternative plot and if plot was not available to pay consideration in terms of cash.<sup>536</sup>

Land acquired for housing scheme or agricultural purpose. A criterion was laid down by the court to deal cases of land acquisition.<sup>537</sup> The standard to judge the market value should not be subjective test but objective test.<sup>538</sup> One point that should be kept in the mind of the collector is that the land owners whose land is to be acquired are to be paid compensation and not the price of the land.<sup>539</sup>

Land owners are to be compensated for their lands; there is a difference between market value of the land and compensation of the land. Market value is only one of the matters to be considered by the collector in determine the amount of compensation.<sup>540</sup>

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<sup>534</sup> Muhammad Ali Vs Land Acquisition Collector, 2004 UC 636.

<sup>535</sup> Province of Punjab Vs Muhammad Akram, 1998 SCMR 2306.

<sup>536</sup> Syed Muhammad Ali Vs Lahore Development Authority, 2017 YLR 1087.

<sup>537</sup> Akhter Hussain and others Vs Govt. of Azad Jammu and Kashmir through Chief Secretary, 2014 MLD 179.

<sup>538</sup> Murad Khan Vs Land Acquisition Collector, Peshawar, 1999 SCMR 1647.

<sup>539</sup> L.DA through its D.G Vs Commissioner Lahore Division, 2009 CLC 86.

<sup>540</sup> Province of Sindh through Collector of Daddu Vs Ramzan, PLD 2004 SC 512.

Acquisition of land was a unilateral act of the acquiring agency and it was usually unacceptable so in assessing the market value of the land being acquired the difference between voluntary sale and unwilling taking over of property must be kept in view.<sup>541</sup> The object of Land Acquisition Act 1894 was to provide complete indemnity to the owners of the land and not to allow the acquiring agency to acquire land without proper compensation.<sup>542</sup>

Section 23 of Land Acquisition Act 1894 can be challenged that it is against the fundamental rights of the citizens as guaranteed under the Constitution of Islamic Republic of Pakistan 1973 to hold and dispose of the property. The challenge would be limited to the question of procedural reasonableness.<sup>543</sup>

Section 23 of Land Acquisition Act 1894 cannot be said to be in violation of Article 14 of the Constitution of Islamic Republic of Pakistan 1973 because it does not apply to those transactions which took place before commencement of the section.<sup>544</sup>

#### **4.1.10 Overnight Change of The Nature of Land from Agriculture to Commercial by Revenue Department to Enable Owners to Claim More Compensation from Housing Developers.**

Societies tend to get heavily bogged down during the process of land acquisition. As soon as a housing society is launched in a particular area, cost of adjoining land immediately appreciates. The revenue department, the representatives of the local Government of the area concerned in which housing society is being

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<sup>541</sup> Allah Razi Vs Islamic Republic of Pakistan, 2011 CLC 532.

<sup>542</sup> Khawaja Ashraf Ali Vs Land Acquisition Collector, PLD 2010 SC 719.

<sup>543</sup> Aflatoon and others Vs Lt. Governor of Delhi, AIR 1974 SC 2077.

<sup>544</sup> Muhammad Adil Ali Vs Govt. of Pakistan, 1972 PLJ 341.

launched and opportunist land dealers all jump into the arena to exploit the situation to their advantage.

They all assume the shape of a mafia and dictate their terms to the housing developers concerned. There are no legal means available to the developers of the housing societies to purchase the land for the housing societies without bribing the officials of the revenue department and other people i.e. owners of the lands.

If Government of Pakistan is serious to achieve the goal of housing for all then it needs to strengthen its legal framework to save the exploitation of the developers of the housing societies at the hands of the land mafias. At the time of getting approval for the housing scheme from the relevant development authorities the developer is required to submit the lay out plan of the hundred percent lands including that portion of land which is yet to be acquired.

After getting the approval from the development authority, when the developers proceed to purchase the portion of land initially not purchased, but included in the master plan, they face a hardship. They face hardship when the pages in the revenue record are replaced by the revenue authorities with the pages which show the nature of the land as commercial one.

This fraud is done by the owners of the adjoining lands in connivance with revenue officials to charge commercial rates of their lands which are included in the master plan. Due to this blackmailing the developers are forced to pay high prices of the lands included in the master plan but which are purchased after getting approval from the relevant development authorities.



In this state of affairs the record of revenue department cannot be considered as a conclusive proof the nature of the land.<sup>545</sup> As per law the developers of the housing societies are required to file lay out plan of the whole site on which housing society is to be established by including both areas of lands i.e purchased portion and the portion of land yet to be purchased with the authority or Tehsil Municipal Administration (TMA). After grant of approval of the housing society when efforts are made to purchase that part of land which is included in the layout plan of the housing society but which has not been purchased yet the owners of this piece of land exploit the situation by demanding exceptionally high prices.

Owners of this portion of land take the cover of Constitutional protection that no body can be deprived of his property without proper compensation and without following the due process of law but the developers of the housing societies fell themselves as helpless due to non availability of a legal remedies.<sup>546</sup>

So, the developers of the housing industry become victims at the hand of land owners and land mafias. Government of Pakistan in order to protect and encourage the housing industry should take steps to strengthen the Legal Framework relating to housing industry in general and Land Acquisition in particular.

#### **4.2.1 No Remedy Available to Aggrieved Developers Under the Legal Framework of Pakistan if Higher Market Rate is Charged by Land Owners.**

As per latter and spirit of the Land Acquisitions Act 1894, if land is acquired by the private housing companies or cooperative housing societies and if an amount

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<sup>545</sup> Project Director Quetta Cantt. Vs Murad Ali and Company, 1999 SCMR 125.

<sup>546</sup> Constitution of Islamic Republic of Pakistan 1973, Article 4 (2) (a), Fifth Edition, PLD Publishers, Lahore, 2015.

less than the market value is fixed by the collector the land owners have got a remedy under section 18 of the Act but if contrary to it if an amount more than the market value is fixed by the collector then the private housing company or the cooperative housing society has got no legal remedy.

Any person who is aggrieved from the order of the collector regarding the area of land being acquired, the measurement of the land, the amount of compensation, any reservation about the distribution of the amount of compensation, may file a written application to the collector of the area concerned. There is a remedy available to the owners of the land if fewer amounts are paid as a compensation for acquiring land.

The owners of the land by exercising their constitutional right and the right provided by the Land Acquisition Act 1894 can file reference to the court for getting high amount of market value of their lands.<sup>547</sup> In this way the housing societies are delayed, when even after payment of appropriate amount of compensation, the land owners commit abuse of the process of law by filing frivolous litigation to claim more compensation. Housing developers are blackmailed to pay prices of the lands according to the wishes of the land owners.

Very interesting to note that the aggrieved housing developers i.e. housing companies or the cooperative housing societies have no remedy even if these are aggrieved one and it was decided by the supreme court of Pakistan in the case of Pakistan Vs. Abdul Hayee Khan.<sup>548</sup>

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<sup>547</sup> The Land Acquisition Act-1894, Section 18, Third Edition, P.L.D Publishers, Lahore,2016.

<sup>548</sup> Pakistan through Military Estate Officer Kharian Cantt. Vs Abdul Hayee Khan through Legal Heirs and 5 others, PLD 1995 SC 418

It has been reaffirmed in these words that we are not inclined to agree with the contention of learned Deputy Attorney general for the reason that full bench of this court after taking into consideration all attending circumstances of the case and the law on the subject. The court is of the opinion that a reference under section 18 of the Land Acquisition Act 1894 before the referee court by a beneficiary is not competent.<sup>549</sup>

Whether a housing company could file appeal against the judgment passed by the referee court. High Court answered the question in negative. High Court gave its decision on the basis of the decision of Supreme Court of Pakistan in Peer Khan case.<sup>550</sup> Order of the civil court on reference made to it by the land acquisition collector was final and application could only be filed by the land owners only if they feel themselves as an aggrieved.<sup>551</sup>

In another case when this matter came under consideration of the highest court of Pakistan once again it declared in very clear words that beneficiary of the acquired land has no right and locus standi to either file reference against the award of compensation or appeal. Beneficiary housing company cannot file appeal against the judgment arising out of reference under section 18 of Land Acquisition Act 1894. Petition for leave to appeal by the beneficiary being not maintainable was dismissed by the Supreme Court of Pakistan.<sup>552</sup> Shariat appellate bench of Supreme Court of Pakistan in its judgment has declared section 18 of Land Acquisition Act 1894 being in contravention of injunctions of Islam as it prohibited appeal or reference to be filed

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<sup>549</sup> Defence Department of Pakistan through Secretary Ministry of Defence Vs Province of Punjab and others, 2006 SCMR 402

<sup>550</sup> Pir Khan Vs Military Estate Officer, Abbotabad, PLD 1987 SC 485.

<sup>551</sup> Pak. Steel Mill Corporation Ltd Vs Deputy Commissioner Karachi, 1989 SCMR 812.

<sup>552</sup> Chairman WAPDA Vs Ghulam Shabbir, 2009 SCMR 1051.

by the housing company or the developers of the housing industry.<sup>553</sup> Furthermore, Land Acquisition Act 1894 is based on the rule to rob Peter to pay Paul. There is no scope for such type of action in an Islamic state, as it offends the injunctions of Islam and this rule has no place in an ideological state like Pakistan.<sup>554</sup>

#### **4.2.2 Remedy available to the Aggrieved Housing Companies (Developers) in India.**

A contrary view taken by the apex court of India is very important in *Indo Swiss Time vs. Umro* case, in which the interpretation of the word person interested in the Act is an inclusive one and not closed ended. After acquisition of land by the acquiring agency of the Government the land is transferred in the name of the company. Company is included in the meaning of word person used in the Act because it is interested in the matter that a proper amount of compensation is paid to the land owners. So, the apex court of India has provided a relief to the developers of the housing industry by filing a reference under Section 18 of the Act if they are forced to pay undue amounts to the land owners.

#### **4.2.3 Steps needed to be taken to strengthen the Legal Framework of Pakistan to provide relief to developers of the Housing Industry.**

As per section 18 of the Land Acquisition Act 1894, any person who has not accepted the award may file a written application to the collector if he has any objection regarding measurement of the land, the amount of compensation, the person to whom it is to be payable or the apportionment of the compensation.

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<sup>553</sup> Military Estate Officer, Quetta Circle Quetta Cantt. Vs Assistant Commissioner cum Collector Quetta, 1997CLC 556.

<sup>554</sup> Nazir Ahmed and 8 others Vs Commissioner, Lahore, 2000 MLD 322.

A careful examination of this provision indicates that, it is a clear injustice which is being done to the housing developers in Pakistan that a housing company or a cooperative housing society for whose benefit the land is being acquired under the law and which is supposed to pay the market value of the land if aggrieved by the amount of the market value is not a person interested and it has got no remedy.

Company was thus held to be person interested within the meaning of section 18 of the Act in the jurisdiction of India.<sup>555</sup> It is need of the hour that in order to promote the investment in the housing industry of Pakistan by the private sector the housing developers should also be treated as a person interested under section 18 of Land Acquisition Act 1894.

Universal declaration of Human rights declared housing as a right and it has been subsequently reaffirmation at the 1996 UN Habitat conference as “Adequate Shelter for All”.<sup>556</sup> According to the planning commission of Pakistan shelter is one of the basic necessities of life and occupies the biggest portion of any human settlement but there is a huge shortage of housing units in the country.

Meeting the backlog in housing industry of Pakistan is beyond the financial resources of the Government of Pakistan. This necessitates putting in place a legal framework to facilitate financing in the housing industry by the private sector and mobilize non-Governmental resources.<sup>557</sup>

An investment of rupees nine hundred and fifty billion is envisaged in the Medium Term Development Framework (MTDF) for the development of housing. Out of this amount about nine hundred and twenty billion investments by the private

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<sup>555</sup> Chand Pvt. Ltd Housing Company Vs Land Acquisition Collector, 1981 H 213 (FB).

<sup>556</sup> <http://www.unhabitat.org> visited on 1-9-2016.

<sup>557</sup> News Paper Daily Dawn, 4 September 2017.

sector and rupees thirty billion investment by the public sector is expected.<sup>558</sup> Government alone cannot meet the housing shortfall so Government will Act as a facilitator instead of a developer.<sup>559</sup> If the whole amount of public sector development programme (PSDP) is spent on housing activity and leaving no money for any other development work even then Government of Pakistan cannot achieve the goal of housing for all as envisaged under the UN Habitat agenda without the help of the private sector.

Under the above scenario when the housing companies and cooperative housing societies will be forced to acquire remaining 10% (it was 20 percent under rules of 2005) land on very high prices under section 9 subsection (h) of the rules of 2010. The situation is further worsening when the housing developers have no recourse to the court (as housing developers are not included in the definition of person interested). Due to the above said issues faced by the developers of the housing industry of Pakistan the developers of the housing industry do not follow the procedure prescribe by the Act for the acquisition of land and these housing developers resort to purchase the lands directly from the owners of the lands from their own resources and without following the procedure prescribe by Land Acquisition Act 1894. When the developers purchase lands from their own resources on very high rates then afterwards only rich people can afford to purchase a plot in the housing societies developed by these developers.

From this very stage of the development of the housing societies middle class and poor class of Pakistan are out of race to have their own housing units. So, there is

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<sup>558</sup> Medium Term Development Framework 2005-10. By planning commission of Pakistan, Page 183.

<sup>559</sup> National Housing Policy 2001, By Ministry of Housing and Works, Page 45.

a gap between theory and practice in the legal framework of Pakistan relating to housing industry of Pakistan. In order to encourage the developers of the housing industry, the present legal framework relating to acquisition of land for the housing industry needs to be strengthened.

Under the above said circumstances the private sector is not being encouraged so the legislature or apex court of Pakistan by looking into the ground realities and bitter truths in housing industry should take a sympathetic view by giving a right to the housing developers to challenge the amount of market value of the land to be acquired for the housing society. This remedy has been provided by the apex court of India to housing developers in India.

#### **4.2.4 Steps Needed to be taken to protect the developers of the Housing Industry from exploitation.**

The following steps needs to be taken to encourage the developers of the housing industry in Pakistan to do housing activity to achieve the goal of housing for all and to eliminate the malpractices and blackmailing.

#### **4.2.5 As a Long-Term Solution, Computerization of all Land Record System.**

To make the land revenue record foolproof the land revenue record should be computerrised. This would help to stop the overnight changing of the nature of the land from agriculture to commercial to charge high prices from the developers of the housing societies.

#### **4.2.6 As a Short-Term Measure, Seal the Land Record of The Relevant Area.**

As a short-term measure and before the computerization of revenue record is done. Before the issuance of notification under the Act the land record of the area concerned in which the housing society is being formed must be sealed to unable the

revenue officials to change the nature of the land. The best time to perform this act is before the information is leaked about the formation of a housing society in an area.<sup>560</sup>

Pages of mutation must be signed in order to stop the practice of replacing and adjusting the pages in the record containing unauthorized entries. Due to the problems faced like above the Supreme Court had to declare that an entry in the revenue record as to the nature of the land may not be conclusive.<sup>561</sup>

#### **4.2.7 Improvement in The Registration Act 1908.**

Non testamentary documents relating to immovable property are registered on the basis of description of property which is the only stipulation to identify the property.<sup>562</sup> If the registration of non testamentary documents pertaining to immovable property which is situated in more than one district is required to be done it should be done by providing number of true copies of the map or plan equal to the number of districts should be provided.<sup>563</sup> These couple of sections of Registration Act needs to be amended in such a manner that the officials of the revenue department can not change the nature of the land from the agriculture to commercial etc, and if there is a need to do so it should be done in collaboration with the authorities entrusted with the task of town planning or development authorities.

#### **4.2.8 Removal of Dichotomy Between Land Acquisition Act and Rules of Development Authorities.**

There is no precondition of land in the Land Acquisition Act by a private housing company or cooperative housing society. But contrary to it the development

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<sup>560</sup> Ishaq Ali Qazzi, Punjab Land Acquisition Rules 1983, Section 5, Manual of Land Acquisition Laws, Insaf Law Book House, Rawalpindi, 2019.

<sup>561</sup> Abdul Rauf Khan Vs Land Acquisition Collector, 1991 SCMR 2164.

<sup>562</sup> Registration Act 1908, Section 21 (1), Seventh Edition, PLD Publishers, Lahore, 2015.

<sup>563</sup> Ibid, Section 21 (4).



authorities in the provinces have been applying the rules for the grant of NOCs' to these housing companies and cooperative housing societies. These rules contain condition of ownership/possession of major portion of land before the grant of no objection certificate to start a housing society.

Thus, there is a dichotomy in the Act and the Rules of the development authorities. The condition of ownership of major portion of land has heated up the prices of the land resultantly the prices of lands have increased many folds due to this reason housing has become only a dream for the middle class and poor class of Pakistan.

Private housing companies and other major housing developers can afford to purchase a major portion of land before the start of housing scheme but cooperative housing societies which are formed by the poor people cannot afford to purchase a big chunk of land in one go. Due to the above said situation the last door the last hope available to the poor class of Pakistan to have their own house is likely to be affected badly.

#### **4.2.9 Relaxation of the Condition to purchase Big Chunk of Land before getting NOC from Development Authorities.**

The present practice of large-scale acquisition of land is a direct result of the rules of the regulatory authorities to grant NOC. This condition should be relaxed to the extent as determined by each province before grant of NOC by the regulatory authorities. The relaxation of condition will help neutralize the negative effect on the growth of housing industry and also save the cooperative housing societies formed by the people of modest means (cooperative housing societies) from becoming extinct from the housing industry of Pakistan. This relaxation would help each province to

prescribe a portion of land (whatever it may be) for the grant of NOC by keeping in view the political, social, cultural and economic priorities of each province.

#### **4.2.10 Protection of The Developers of The Housing Industry from The Owners of Small Portion of Lands being acquired under the Act.**

Generally, when the developers of the housing societies purchase a major portion of land, it was 80 percent under the Punjab Private Site Regulations 2005 and now, under the Rules of 2010 it has been enhanced up to 90 percent, and submit the lay out plan of the whole 100 percent housing scheme to the development authority for the grant of NOC.

When after the grant of NOC, when these housing developers proceed to acquire this small portion of land the prices of this small chunk of land are dictated by the owners of this small piece of lands in collusion of land revenue officials.

In order to protect the housing developers from the blackmailing at the hands of such land owners the relevant section of the Land Acquisition Act 1894, needs to be amended in such a manner that the price of this small chunk of land is paid equal to the value of land already purchased by the developer of the housing society.

#### **4.2.11 Divest the revenue officials of the power to change in land use.**

An amendment should be introduced in the Registration Act 1908 in such a manner that the revenue officials can not change the nature of the land without consultation of officials dealing with town planning.

### **4.3 OVERLAPPING OF JURISDICTION AND SHIFTING OF RESPONSIBILITIES BY THE GOVERNMENT DEPARTMENTS.**

A well planned and organized city ensures the wellbeing and good health of its inhabitants. It (well-planned city) equally has a direct positive impact on the

motivation, attitudes, habits and professionalism of the people which equally reflects in the character of the nation as a whole.

According to UN Habitat estimates at the end of this century fifty percent of the world's population would be reside in big cities. The problems of homelessness and squatter settlements can increase many folds. All these problems would be a big challenge to the rulers of these poor countries.<sup>564</sup>

If the legacy of the past is taken as an example Pakistan should have been an excellent in the field of town planning. One of the earliest cities in the world to display conscious design in its layout and functioning is our own Harappa Civilization. Similarly, the cities of Indus valley in Pakistan are the earliest examples. Adequate housing has a correlation with the social and economic development of the human beings.<sup>565</sup>

When we talk about deliberately planned and managed cities in history: At the same time Muslims are accepted as true fathers of rational planning of cities and empires. Muslims are also credited to have originated the idea of formal zoning.<sup>566</sup>

The function of physical planning and town planning being a provincial matter as per fourth schedule of the Constitution of Islamic Republic of Pakistan 1973, so, the provinces enjoyed complete autonomy for performing these functions when the local Government ordinance came to force in 2001 which is now part of the Constitution of Islamic Republic of Pakistan 1973, due to seventeenth amendment in the Constitution of Islamic Republic of Pakistan 1973.<sup>567</sup>

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<sup>564</sup> The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, UN Habitat, Page 3.

<sup>565</sup> [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm). Visited on 10-05-2020.

<sup>566</sup> Syed Ali Zafar, Cities Without constitution, The Nation 16-1-16.

<sup>567</sup> Constitution of Islamic Republic of Pakistan 1973, Sixth Schedule, Seventh Edition, Kausar Brothers Publishers, Lahore, 2017.

After coming into force of Local Government Enactments of 2001 and 2109 the main responsibility to look after the affairs of the housing and town planning is of local Governments with a limited role of provincial Governments.

One the promulgation of Local Government Ordinance 2001 the functional responsibility for preparation of spatial plans was of the local Governments. The responsibility for the preparation of plans for land use including classification and reclassification of land transferred to district Governments.<sup>568</sup>

Development authorities which have an important role in the housing industry were also shifted to the local Governments.<sup>569</sup>

Preparation of master plans, structural and outline development Plans were required to be prepared within one year by town and union councils, within two year by the district Government and within three years by the city district Governments.<sup>570</sup> Spatial plans were not completed by the local Governments within the time frame given by the Local Government Ordinance 2001.

The reason for the failure was lack of capacity and lack of any expertise in the fields of urban planning on the part of local Governments. In addition to necessary qualifications, town planning needs vision for the future. There are hardly very few people in our planning departments who have this attribute.<sup>571</sup>

Another reason for this neglect was no action on the part of the provincial Governments to provide technical assistance to local Governments. Punjab Government had issued Punjab Private Site Regulations in 2005 which was a measure

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<sup>568</sup> Ibid.

<sup>569</sup> Local Government Ordinance 2001, Section (52), 3<sup>rd</sup> Edition, Irfan Law Book House, Lahore, 2017.

<sup>570</sup> National Housing Policy 2001, Ministry of Housing and Works, Page 29.

<sup>571</sup> Syed Ali Zafar, Cities without constitution, The Nation 16-1-08)

not in time because the subject of housing was devolved to the local Governments in 2001 and these rules were required to be issued in 2001. The Punjab Private Site Regulations have done classification and reclassification of land.

The level of seriousness given by the Government of Punjab to the subject of housing and town planning can be judged from this fact that Government of Punjab has issued Punjab land use, Classification, reclassification and redevelopment, rules 2008 on 12, March 2008. Under these rules land has been classified into six classes. These six classes include residential, commercial, industrial, peri urban agriculture and notified areas and each one of these has been further classified into permitted use, permissible use and prohibited use.<sup>572</sup>

The local Governments are supposed to prepare classification map about the usage of the land of the sanctioned housing societies according to law.<sup>573</sup>

Local Government is also required to prepare a land use classification map using satellite images of the area. After the Rules of 2005, the Punjab Land Use (Classification, Reclassification and Redevelopment) Rules 2010 have been issued. These rules provide guidance to all the stakeholders of the housing industry. Development agencies issue approval to the housing developers to perform housing activity on the basis of these Rules.

From the start of local Government to date the needful has not been done in the whole Pakistan only few Governments have prepared master plans and classification and reclassification of land have been done. Similarly, only few Local Governments have done zoning of land within their territorial jurisdictions to regulate

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<sup>572</sup> The Punjab Land Use Rules 2008, Section 4, The Manual of Development Authorities Laws, First Edition, Mansoor Law Book House, Lahore, 2013.

<sup>573</sup> Ibid, Section 16.

the affairs of the housing industry in an effective manner. As contrast to Pakistan in many countries Local Governments have performed these tasks in a very good manner to provide an adequate housing to people in a sustainable development process.<sup>574</sup>

The spatial plans were not completed by the local Governments within the time frame. As a result of it two sets of regulatory frameworks one of development agencies and other of Tehsil Municipal Administration were operating in the country.

Federal Government cannot deal with this subject directly because it is the exclusive domain of the provincial Governments and local Governments. So, the Federal Government can play indirect role by providing technical assistance to the Local Governments. Federal Government can play a vital role by helping local Governments in preparing spatial planning and capacity building.

Pakistan is signatory to UN Habitat Agenda and in recognition of role of the local Governments UN Habitat declared local authorities as their closest partners in implementing this Agenda. UN Habitat emphasized the member countries to strengthen the financial and institutional capacities of the local Governments in their respective areas.<sup>575</sup> There is a need to establish as soon as possible the proposed Urban Policy Research Centre to work under the vision 2030 to prepare spatial development plan for the provinces, to prepare structural plans at a district and master plans for at the tehsil level.<sup>576</sup>

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<sup>574</sup> The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, UN Habitat, Kenya, Page 5.

<sup>575</sup> [www.un.org/conference/habitat](http://www.un.org/conference/habitat), Visited on 01-03-2020.

<sup>576</sup> Medium Term Development Framework 2005-10, Planning Commission of Pakistan, page 182.

#### **4.3.1 Role of the Federal Government as a facilitator to provide housing units.**

So, it is suggested that Federal Government should not leave the local Governments as helpless. Federal Government should provide assistance to local Governments in terms of capacity building, financial as well as technical support.

Federal Government should hire experts in housing and town planning to assist local Governments from all over the world to prepare new master plans both at national and city levels. Due to limitation imposed by the Constitution of Islamic Republic of Pakistan, Federal Government cannot perform this function itself but it can atleast facilitate the whole process.

Federal Government should not leave this important subject to the sweet will of the local Governments as it lacks capacity and it should perform the role of facilitation to complete the task.

#### **4.3.2 Establishment of a separate single office at Provincial level.**

Establishment of a single office to regulate the housing industry at each provincial level is the ideal solution to coordinate with the Local Governments in the whole province. Punjab Government has already taken a step and it has established an organization under the name and style of Punjab Housing and Town Planning Agency (PHATA) to bring orderliness in the housing industry of Punjab and to implement the main points of National Housing Policy 2001. It is an institution which is playing the role of a bridge between the Federal Government and Provincial Government in the province of Punjab.

#### **4.3.3 Need to introduce national spatial Act to encourage housing industry of Pakistan.**

There is a dire need to enact a National Spatial Act which should provide for a monitoring role of housing industry at Federal, Provincial and Local levels. Under it

provincial spatial development plans and district structure plans and tehsil master plans should be prepared.

#### **4.4 USE OF NAMES OF VARIOUS DEPARTMENTS OF THE GOVERNMENT TO GAIN CREDIBILITY AND TO ATTRACT GENERAL PUBLIC TO INVEST IN HOUSING INDUSTRY OF PAKISTAN.**

Cooperative housing developers entered the housing industry in the era of 70's in the housing industry of Pakistan. Since then, it is a common practice that Government functionaries serving in a Ministry/Division become sponsors. In this way various cooperative housing societies have been formed and registered. While doing so the nomenclature of the Ministry/Division is used for registration and getting credibility of the general public.<sup>577</sup>

Few examples of these kinds of societies include Federal Board of Revenue (FBR) employees' cooperative housing societies, national assembly secretariat employers' cooperative housing society, and air force cooperative housing society. The sponsors of these cooperative societies use the names of these prestigious departments to gain public confidence. It also helps these cooperative housing societies to get more money from the public. Some other kind of housing societies use the names of cities in order to mislead the general public. An example in this regard can be quoted of Messrs.' Green Field Developers Housing Society which used the name of Islamabad to give impression to the general public as if the above said

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<sup>577</sup> [www.punabcooperative.com](http://www.punabcooperative.com), Accessed on 16-8-2017.



housing society were situated within the territorial jurisdiction of Islamabad whereas the housing society was situated in the district of Attock.<sup>578</sup>

The underlying reasons for the use of the nomenclature of the Government department is to boil down to using it for gaining credibility in order to enlist a large number of members for mopping of funds and influencing the departments concerned with the housing development. Keeping in view the dire need of the housing units, the sponsors of some of the housing societies have used the nomenclature to mop huge money from the general public without getting No Objection Certificate (NOC) from the relevant development authority or they have raised funds from the public without purchasing any land or by purchasing less land as compare to funds collected.

This practice of using name has been without getting NOC from the relevant institutions. When these cooperative societies commit embezzlement of funds these institutions are defamed. In order to stop this practice, Punjab Private Site Regulations 2005, have prescribed that no scheme shall be advertised in any forum, media, press prior to its sanction.<sup>579</sup>

This is a welcome step but to make the system more compact and foolproof it must be included in the Pakistan Electronic Regulatory Authority that unapproved and unregistered housing society's advertisement does not constitute advertisement at all.<sup>580</sup>

The developer of the housing scheme is required to include following essential information in the advertisement, location plan of the housing scheme along with the

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<sup>578</sup> Messers. Green Field Developers Pvt. Ltd. Vs Competition Commission of Pakistan, 2018 CLD 404.

<sup>579</sup> Punjab Private Site Regulations 2005, Section 58(7), Second Edition, Mansoor Law Book House, Lahore, 2007.

<sup>580</sup> Pakistan Electronic Media Regulatory Authority 2002, Section 201.

total area, total number of residential and commercial plots, complete information about the mortgage plots, propose time period in which housing scheme is likely to be completed, name of the development authority which has granted sanction along with the sanction number and what would be the procedure of the allotment of plots either by way of balloting or any other.<sup>581</sup>

In the near past a scam was committed by Park Enclave housing society by committing fraud after collecting billions of rupees from the general public. The general public was invited to invest money in the housing society by an aggressive media campaign. The money was collected for a housing society which existed only on paper without physical possession of land.

According to Pakistan electronic media regulatory authority an advertisement means a set of visional and audio message for the projection of a product, service or idea with the object of propagating sale, purchase or hire the product or idea for creating other related effect.<sup>582</sup>

This definition will be useful to stop the registered cooperative societies from advertising plots before sanction by the development authority or Tehsil Municipal Administration (TMA) of the concerned area. But as a durable solution of the problem and in order to stop unregistered and in unauthorized cooperative societies from advertising the plots the definition of advertisement should be changed. It should be changed by adding that no advertisement can be made to for plots which is not

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<sup>581</sup> The Punjab Private Housing Schemes and Land Sub-Division Rules, 2010, Section 20, First Edition, The Manual of Development Authorities Laws, Manzoor Law Book House, Lahore, 2011.

<sup>582</sup> Pakistan Electronic Media Regularity Authority 2002, Section 2(a), First Edition, Imran Law Book House, 2003.

approved or sanctioned by the relevant development authority or Tehsil Municipal Administration.

#### **4.4.1 Prohibition on the advertisement of false housing schemes in the media.**

As housing is a basic necessity of life and an important need for each and every person, so each and every person of the society should play an active role in the provision of this necessity. Media is not an exception to it. Media can play an important role in this respect.

The role of media is just like a double-edged instrument. These days in order to earn more and more money media allows advertisement of housing societies without verification and confirmation about the genuineness of the housing scheme. An amendment should be introduced in the Pakistan Electronic Media Regulatory Authority Ordinance 2002, prohibiting the media to advertise any housing scheme unless it contains detailed information as mentioned in Section 20 of the Rules of 2010 and permission from the relevant development authority that it has no objection if the housing scheme is advertised in the media should be taken.

#### **4.4.2 Prohibition of the registration of housing schemes containing nomenclature of Government departments.**

An amendment should be introduced in the relevant laws of private housing companies and cooperative housing societies that no developer of the housing society is registered which contains the nomenclature of any Government department or ministry. Already this kind of prohibition was available in the repealed Companies Ordinance 1984 that no company could be formed which contains the name of Quaid-e-Azam, Pakistan, or attachment of Federal Government or Provincial Government or nomenclature of any international organization like UNO, WHO etc. On the same

analogy there is need to put a ban on the registration of housing societies which use the names of various Government departments.

#### **4.4.3 Amendment in the regulatory framework to put a check on false advertisement of housing societies.**

An amendment needs to be introduced in the regulatory framework of development authorities in order to restrict the unapproved societies from making advertisement in the media. This amendment would help to put a check on the spread of false housing societies.

#### **4.4.4 Need for An Effective Role of Competition Authority.**

There is a need to play an effective role by the Competition Authority to put a check on false advertisement of the housing societies. False marketing claim in the advertisement for the housing society amounts to harming the business interests of the competitors within the meaning and scope of Section 10 of the Competition Act 2010.

Housing society (Messrs.' Green Field Developers Private Limited) was established near Attock in front of New Islamabad Airport. As the airports are generally constructed outside the cities so same is the case with new Islamabad Airport.

Housing society was established which is situated within the territorial limit of Attock and it (housing scheme) was sanctioned and approved by the Tehsil Municipal Administration. This housing society was using the name Islamabad to give an impression to the general public as if the housing society was situated within the territorial jurisdiction of Islamabad and it was sanctioned by Capital Development Authority (CDA). Competition Authority took cognizance of the matter and declared that false and misleading information in the advertisement of the housing society

amounts to harming the business interests of its competitors so it was a violation under Section 10 of Competition Act 2010.

Competition Authority imposed penalty and took undertaking from the housing authority not to use the word Islamabad but Attock in its advertisement.<sup>583</sup> Park View Villas at River Edge Housing Scheme in its advertisement gave an impression to the general public that the above-mentioned housing scheme was approved by Lahore Development Authority and furthermore it indicated in its advertisement as if it were an extension of River Edge Housing Scheme.

As a matter of fact, this housing scheme applied for the sanction/approval to Lahore Development Authority (LDA) but the approval was not granted as the proposed land was situated in a flood zone or khaddar area so it could not be used for residential purpose. Competition Authority directed the developers of the housing society to refrain from deceptive marketing practice.

Penalty was imposed on the housing society along with the direction to inform the general public through appropriate clarifications in two Urdu and two English newspapers for a period of one week that Park View housing society was not part of River Edge Housing Scheme and it was not approved by Lahore Development Authority.<sup>584</sup>

There is further need to increase and strengthen the role of the Competition authority to regulate the affairs of the housing industry.

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<sup>583</sup> Messers. Green Field Developers Pvt. Ltd. Vs Competition Commission of Pakistan, 2018 CLD M404.

<sup>584</sup> Messers. Vision Developers Pvt. Ltd. Vs Competition Commission of Pakistan, 2018 CLD 350.

#### **4.5 REGISTRATION PROVISIONS OF COOPERATIVE HOUSING SOCIETIES AND PRIVATE HOUSING COMPANIES A MAJOR REASON OF MALPRACTICES IN HOUSING INDUSTRY OF PAKISTAN.**

Among other housing developers the major housing developers are private housing companies and cooperative housing societies, these housing developers can become very effective to achieve the goal of housing for all but unfortunately these two have been used to do massive corruption in the housing industry of Pakistan. The major reason is that the legal framework which is meant to regulate the housing developers has become an instrument at the hands of housing developers of the housing to commit corruption in the housing industry. These housing developers can become very effective to achieve the goal of housing for all if some suitable amendments are introduced and the legal framework is strengthened.

##### **4.5.1 Introduction.**

State has a basic obligation to provide a good quality of life to its citizens. Supreme Court of Pakistan in the case of *Shehla Zia vs. WAPDA* has held that “It is the duty of the Government to ensure that all the citizens of Pakistan are provided with all amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally”.<sup>585</sup>

Right to housing is also included in the amenities and facilities of the life. In order to provide the housing units to all the citizens of Pakistan there is a need for a strong legal frame work to regulate the activities of the housing developers from registration to onward.

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<sup>585</sup> *Shehla Zia Vs WAPDA*, PLD 1994 SC 693.

As contrary to it the situation in Pakistan is not satisfactory shelter is one of the basic necessities of life. In order to provide the housing units to the general public the LegalFrame work instead of properly regulating the housing developers is undermining the potential of investment in housing industry of Pakistan.

#### **4.5.2 Reasons for the mushroom growth of housing societies.**

Due to these reasons, there is a gap between demand and supply of the housing units in Pakistan, rapid increase in population, no attention on the construction of new housing units, shifting of people from villages to big cities and transformation of living style from joint family to a single-family system.<sup>586</sup>

People prefer to invest in property and real estate because these are treated to be a safe asset for future times. Due to uncertain business conditions and poor and fluctuating performance of the stock markets, now the focus of the investors is to invest in the housing industry being a safe investment. Under this situation housing societies have been formed at a rapid pace.

These housing societies' i.e. cooperative housing societies and private housing societies earned abnormal profits. Due to a serious lacuna in the registration laws there was a mushroom growth of cooperative housing societies and private housing companies. As there was no precondition of land for the registration of above two identities. So, these two housing developers offered plots to the people to rob them without having any piece of land or by offering plots in excess of the available plots. The aim was to collect as much money as possible from the public by taking full advantage of the weak legal framework. This activity was sendemic and went

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<sup>586</sup>

[www.google.com](http://www.google.com), visited on 3-3-20119.

unchecked on account of loopholes in the legal frame work relating to registration of cooperative housing societies and private housing companies.

#### **4.5.3 Serious Lacuna in the pre-requisite of Registration of Cooperative Housing Societies.**

Cooperatives Societies Act 1925 is the relevant law under which cooperative housing societies are registered. Ten persons who are major can form a cooperative housing society and if it has an object to raise funds from its members then the persons forming the society must be residents same town or villages. Furthermore they must belong to same tribe, class, caste, or occupation. No society which would use the word bank or will conduct banking activity shall be registered under this Act unless, its paid up capital is 20, 000 or more and societies with limited liability will use limited as a last word of their names.<sup>587</sup>

Another important enactment by which the affairs of the cooperative societies are regulated is Cooperative Societies Rules 1927 says that every application for the registration of a society should contain name of the members forming the society, the place of residence of the members, the responsibility of the members of the cooperative housing society, the territorial jurisdiction within which the society will function, the purposes of the society, face value of the shares of the society, debt equity details and details about the loan raising details about the books of accounts and three copies of the bye laws. An authorized person on behalf of a society can sign the application for registration if another society is a member of a society.<sup>588</sup>

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<sup>587</sup> Cooperator Societies Act 1925, Section 7, First Edition, Manual of Cooperative Societies Law, Mansoor Law Book House, Lahore, 2015.

<sup>588</sup> Ibid, Section 2.



A cooperative housing society could be formed and still it can be formed without having any piece of land.

On the same lines private housing societies have been registered under the Companies Ordinance 1984 by taking undue advantage of the lacuna in the provisions relating registration of private housing companies.

#### **4.5.4 Deficiency and Repugnancy in the Provisions of Private Housing Companies.**

In order to form a private housing company it is mandatory to file five copies of the memorandum and articles of association along with the declaration by a lawyer or member of Institute of Chartered Accountants of Pakistan that all the conditions required for the formation of a company have been fulfilled and the purposes of the proposed company are clear and there is no ambiguity in the object clause of memorandum of association. On submission of all these details a company can be registered by the registrar of the province in the territorial jurisdiction of whom the registered office of the proposed company is situated. If the registrar is satisfied after reading the memorandum and articles of association that company is being formed for a lawful purpose, he would issue certificate of registration of private housing company which would be a conclusive proof of the registration of a private housing company.<sup>589</sup>

Another enactment relating to the formation and registration of the companies is Companies General Provisions and Forms Rules 1985. Under section 30 of this Act memorandum and articles of association of the proposed company stamped as per law

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<sup>589</sup> Companies Ordinance 1984, Section 30, Nazeer Ahmad Shaheen, Third Edition, Federal Book House, Rawalpindi, 2012.

and attested by a lawyer as per law should be submitted in the office of the registrar for the registration of the proposed company.<sup>590</sup>

From the above two sections of the companies laws it is very clear that there is no pre condition for having land for the registration of a housing company. A housing company without having any piece of land could be incorporated under Companies Ordinance 1984 and Companies Rules 1985. Private housing companies and cooperative housing societies had been taking full advantage of the above-mentioned deficiency in the registration provisions of housing societies. Once these housing societies were registered these societies sold plots to the general public without having any piece of land or by selling more plots than available plots under the cover of registration certificates which were a source of satisfaction for the investors and general public.

These housing developers in the shape of cooperative housing societies and private housing companies after getting registration certificates from the relevant authorities deceived the general public by using the undue advantage of these registration certificates. As most of the people are illiterate in Pakistan and they do not know the technicalities, so, by relying on these registration certificates being issued by the relevant authorities they invested their hard earned money in these housing societies. In this way massive frauds were done in the housing and real estate sector of Pakistan. The thing that helped these housing developers was the registration certificates being issued by the relevant authorities without having any piece of land.

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<sup>590</sup> Companies General Provisions forms Rules 1985, Section 4, Nazeer Ahmad Shaheen, Second Edition, Awais Publication, Rawalpindi, 2012.

These housing societies used these registration certificates as a proof of genuineness of the housing society to deceive the general public. So, there is a need to change the provisions relating to registration of housing developers in such a manner that no body can deceive the general public by taking unde advantage of weakness in the legal framework. Here an other relevant question arises whether there is a need for chnge/amendment in the present legal framework relating to registration of private housing companies or there should be a new self contained law for this purpose? It has been discussed in the next heading.

#### **4.5.5 Whether the registration of Private Housing Companies under the Companies Act 2017 is Constitutional or Unconstitutional?**

A new enactment under the name and style of the Companies Act 2017 has been introduced in which the mode of formation of a new company has been prescribed according to which 3 or more than 3 persons who have joined hand to start a new company for an object which is not against law may form a public limited company by signing the copies of memorandum and articles of association of the company. In the same way 2 or more than 2 persons by signing memorandum and articles of association of the proposed company may form a private company.<sup>591</sup>

A new section has been introduced to deal with the matters of real estate companies. Subject to other provisions of the law relating to real estate companies, no real estate company can invite advances from the general public unless and until it has obtained approvals and all NOC required to be obtained from the relevant authorities of the local and provincial Governments, no housing scheme can be advertised without getting permission of the local authority in whose territorial jurisdiction the

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<sup>591</sup> A.S Arieen, The Companies Act 2017, Section 14, By A, First Edition, Key Law Reports Publications, Lahore, 2018.

housing society is situated and the permission of Securities and Exchange Commission of Pakistan(SECP).

It cannot sale any housing unit without the permission of the development authority and SECP, as it is primarily the responsibility of the provincial Government and Local Government to regulate all the affairs of the private housing company so in order to enable the relevant authority to do so SECP shall provide all the necessary information and documents to the relevant regulatory authority.<sup>592</sup>

Constitution of Islamic Republic of Pakistan 1973 is the basic and fundamental law of Pakistan and it is not only a law but a touchstone to check the validity of other laws. Any law or any section of other law for the time being enforced if it is against any Article of the Constitution of Islamic Republic of Pakistan 1973 is null and void to the extent of repugnancy.

As per Fourth Schedule of the Constitution of Islamic Republic of Pakistan 1973, housing is a purely a provincial subject and provinces enjoy complete autonomy to regulate all the affairs of the housing industry from start(registration) till end (winding up) and Federal Government has nothing to do with it. Another provision which is pertinent to mention here is the item number 31 of the Federal legislative list of the Fourth Schedule, generally corporations are under the purview jurisdiction of the Federal Government but those corporations which are owned or which are controlled by a Province and which are carrying on business only to the extent of territorial jurisdiction of a single province shall be the exclusive domain of the province in which that company is operating.

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<sup>592</sup> Ibid, Section 456.

Similarly, cooperative societies and corporations the objects of which are confined to a single province shall be the domain of the provinces but if these corporations are doing business beyond the territorial jurisdiction of the province then Federal Government would regulate it. Corporations, whether trading or not if confined to a single province shall be the domain of the Provincial Governments and if operating beyond the territorial jurisdiction shall be domain of the Federal Government.<sup>593</sup>

Under the new enactment an attempt has been made to claim/extend jurisdiction over the affairs of the housing companies operating in the provinces although it is against the letter and spirit of the Constitution of Islamic Republic of Pakistan 1973. The primary purpose of introducing section 456 in the Companies Act 2017 is to earn more and more revenue for the Federal Government even if it (Section 456) is against the fundamental law of the country.

Due to such like provisions, there is no clear line of jurisdiction among the three layers of the Government; the mafias have taken undue advantage due to shifting of responsibilities by the three levels of the Governments in case of frauds and malpractices on the part of the private housing companies. Now, it is the time to realize that housing is exclusively a domain of the provinces so the provincial Governments should exercise complete authority over all the activities of the housing companies from the formation till winding up of the housing companies. Due to this unconstitutional provision the Government of Pakistan instead of earning revenue is losing more due to frauds, malpractices and due to lack of check and balance and due

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<sup>593</sup> The Constitution of Islamic Republic of Pakistan 1973, Item Number 31, Fourth Schedule, Second Edition, By Nafeer Ahmad Malik, Irfan Law Book House, Lahore. 2016.

to absence of a clear-cut line of jurisdiction among the three level of Governments i.e. Federal, Provincial and Local Governments

#### **4.5.6 Steps needed to be taken to strengthen the Legal Framework regarding registration of Housing Companies.**

In order to modify and strengthen the legal framework of housing industry many factors must be kept in view. That such legal framework should be designed which is not against the Constitution of Islamic Republic of Pakistan 1973, which is the supreme and fundamental law of the country, such framework should be designed which can stop the malpractices and frauds and such legal framework should be designed which can prove helpful to achieve the goal of housing for all.

##### **4.5.6.1 Formulation of a new enactment for Housing Companies by Each Provincial Government.**

The current practice is not one federal level law i.e. The Companies Act 2017 is regulating all the affairs of the housing companies situated in all the provinces of the country. This provision i.e. Section 456 is in conflict with the Fourth Schedule of the Constitution of Islamic Republic of Pakistan 1973. Another problem with this provision is that if a housing company is registered under the Companies Act 2017, which is a federal level law the Federal Government or the concerned department i.e. SECP has no mechanism to check the malpractices and frauds being committed by these housing companies. This registration law needs to be amended on urgent basis and it should be replaced by the Housing Companies Registration Act at each provincial level.

##### **4.5.6.2 Condition of Ownership of Land before registration of Housing Companies under the Provincial Housing Companies Act.**

This registration law needs to be amended on urgent basis and it should be replaced by the Housing Companies Registration Act at each provincial level. Precondition of some land for housing companies and cooperative housing societies must be incorporated in the registration laws to stop the practice of cheating the general public by collecting money under the cover of registration certificate and without owning land for the housing society.

Before discussing the issue of introducing amendment in the registration provisions it is very important to look this matter from many angles as it is not an easier decision. If an amendment is suggested to impose a condition of ownership of land before the grant of registration certificate by the registrar. One positive aspect of this condition is that this amendment would enable only genuine and serious housing companies to apply for registration and only those companies which own land and are serious to do housing activity would be able to get registration certificates. But another question which is attached with this discussion is what should be the percentage of land for getting registration certificate?

The registration laws being very liberal the condition of ownership of land before filing application for registration will close the door of registration of housing societies by spurious sponsor. Next step is to decide the quantum of ownership of land for the registration of housing companies. Whether it should be 80 % as stipulated by the Punjab Private Site Regulations 2005.<sup>594</sup>

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<sup>594</sup> Punjab private site regulation 2005, Section 2 Sub (g), The Manual of Development Authorities Laws, First Edition, Manzoor Law Book House, Lahore, 2016.

Or ninety percent land of the total land required for housing scheme as prescribe by Section 9 of sub-section (h) (1) of the Punjab Private Housing Schemes and Land Subdivision Rules, 2010.

There is a need to strike a balance between these two options (no condition of ownership of land or eighty or ninety percent ownership of land before registration) in such a way that fake and greedy housing developers are discouraged and genuine and fair housing developers are encouraged to carry out housing activity to achieve the goal of housing for all.

**4.5.6.3        Whether a high percentage of ownership of land is compatible with the goal of housing for all or not?**

The provision of eighty percent or ninety percent ownership of land by a private housing company or cooperative housing society before its registration may not be in the best interest for a number of reasons which are important if the Government of Pakistan is serious to achieve the goal of housing for all as envisaged by UN Habitat agenda.

**4.5.6.3.1       Housing has been declared as a top priority industry.**

First of all, housing has been given a top priority for its beneficial effects on economic growth. Housing activity helps in employment generation, housing activities boost the economy. Due to housing activity forty allied industries are engaged and job creation at a large scale for skilled and non-skilled labor is possible.<sup>595</sup>

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National Housing Policy 2001, Ministry of Housing and Works, Page 9.



Affordable housing for low-income groups contribute to poverty alleviation measure and it is a welfare-oriented activity.<sup>596</sup> Housing and construction industries can be called the mother of all industries as these trigger economic activities in the forty supporting industries.<sup>597</sup> Housing and construction sector have been notified by the Government as a priority industry and it is included in “C” Category among the industries.

Thus the condition of ownership of eighty percent land prescribed in the Punjab Private Site Regulations 2005 and condition of ninety percent ownership of land under the Punjab Private Housing Schemes and Land Sub Division Rules 2010, is against the national policy of the Government of Pakistan as Medium Term Development Framework 2005-2010, is prepared after consultation of all the provincial Governments, so the condition of eighty percent or ninety percent ownership of land before granting permission is a deviation from the mainstream policy.

**4.5.6.3.2      Encouragement of private sector to share the burden of Government of Pakistan to achieve the goal of housing for all.**

This condition of 80 % or 90% ownership of land before the start of private housing society is also not appropriate as private sector has been assigned the main role in the development of housing industry of Pakistan and this thing can be inferred from the explicit reference in the preamble of the Land Acquisition Act 1894, about the acquisition of land needed for public purpose and land needed for companies and for private sector.<sup>598</sup>

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<sup>596</sup>

Ibid.

<sup>597</sup>

Ibid

<sup>598</sup>

The Land Acquisition Act 1894, Preamble, Third Edition, PLD Publishers, Lahore, 2015.

Pakistan is also a party to UN Habitat agenda in which private sector is identified as the primary house delivery mechanism. Private sector is a backbone of Shelter for All policy as adopted in UN Habitat.<sup>599</sup>

It is beyond the financial resources of the Government alone to achieve the goal of housing for all even if the entire current annual public sector development budget is spent on housing activity by leaving no money for other sector even than the goal of housing for all cannot be achieved by the Government without the help of the private sector. This necessitates putting in place a legal framework which encourages and facilitates private sector. Financing in the housing industry of Pakistan by the private sector and mobilize non-Government resources is the correct approach.

If the land is being acquired for a public purpose it does not matter that the authorities of the Government are acquiring this piece of land on behalf of a company. If the objects of the company would help to promote the national economy it would be considered as an acquisition of land for a public purpose.<sup>600</sup>

Land acquired by the company for the construction of a building is for a public purpose if it would be beneficial for the general public; such acquisition of land is for public purpose.<sup>601</sup> Construction of residential accommodation for defense and civilian personal by the cooperative housing society is an acquisition of land for public purpose.<sup>602</sup>

The point to be noted in the above cases is that the present law of companies came into force in 1984 and the above-mentioned case was decided by the Lahore high court in in the 1983 and that time company's Act 1913 was applicable under that

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<sup>599</sup> [www.un.org/conference/habitat](http://www.un.org/conference/habitat), visited on 1-09-2017.

<sup>600</sup> Ramesh Agarwal Vs Land Collector Patna, AIR 1978 Pat 136

<sup>601</sup> Ramesh Chand Vs State of U.P, AIR 1980 SC 131

<sup>602</sup> Province of West Pakistan Vs Bashir Muhammad Khan, PLD1983LAH55

Act the world company included cooperative society in its definition of a company. So, land acquired under the Land Acquisition Act 1894 for a cooperative housing society is also a public purpose.

Notification issued for the acquisition of land can not be declared under section four of the Land Acquisition Act 1894 if the land is being acquired for a private company for doing housing activity which is clearly mentioned in the notification.<sup>603</sup>

When land is being acquired for a private company the the Government cannot be excluded from the acquisition process of land if the land is being acquired for a public purpose which is to be performed by the private company.<sup>604</sup> The decision of the provincial Government shall be final if the decision is being made with respect to acquisition of land for a public purpose or for the private company.<sup>605</sup> If land is required by the company for the construction of housing units the detailed procedure in part VII of the Act needs not to be followed.<sup>606</sup> The condition of eighty percent ownership as prescribed by section 5(q) of Punjab private site registrations 2005 and ninety percent ownership under the Rules of 2010 and submission of site development plan for the entire housing scheme.<sup>607</sup> This provision makes the housing society capture of owner of the ten percent land which is yet to be acquired under the land acquisition Act 1894, but which is included in the site development plan of the housing scheme. After getting approval of the housing scheme when the housing developers proceed to acquire this twenty percent land the price of this twenty percent

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<sup>603</sup> R.L Arora Ram Ditta Mal Vs State of Utterpradesh and others, AIR 1958 Allahabad 126.  
<sup>604</sup> Notesa Asariv Vs State of Madras, AIR 1954 MOD 481  
<sup>605</sup> R.L Arora Vs State of Utterpradesh, AIR 1958 All 872.  
<sup>606</sup> Bhawat Dayal and others Vs Union of India, AIR 1959 Punjab 544  
<sup>607</sup> Punjab private site regulation 2005, Section 5 (q). The Manual of Development Authorities Laws, First Edition, Manzoor Law Book House, Lahore, 2016

land is dictated by the owners of this ten percent land in collision with the officials of revenue department.<sup>608</sup> This rule is against the intent of the legislature of the Land Acquisition Act 1894 which encourages the companies and private sector to undertake public purpose including housing.

The condition of ninety percent ownership of land is also in utter disregard of ground realities in Pakistan as the members of the cooperative society are generally poor people and lower grade officials. Due to low income the members of the cooperative housing society cannot afford to purchase land for their houses in Bahria Town and Defense Housing Authority or other costly private housing companies. So, the only way left for them is to have a house through cooperative housing society. The condition of ninety percent ownership of land which is very high will close the last door open for the members of the cooperative housing societies.

As members of the cooperative housing society cannot afford to accumulate so many funds from their own resources to purchase the land for the cooperative housing society in one go. The condition of ninety percent ownership of land before getting approval is inequitable as it will only encourage members with adequate financial means to form housing societies and discourage under privileged classes to form housing societies.

Last but not least the condition of ninety percent ownership of land before granting approval is also against the spirit of the Medium-Term Development Framework 2005-10 passed by the planning commission in which all the for provinces are parties.

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<sup>608</sup>

Muhammad Younas Vs Ashiq Hussain, PLD2007SC217.

#### **4.5.6.3.3 A separate law for the registration of Housing Companies and Cooperative Housing Societies why necessary?**

Two solutions can be offered for this problem, a new self-contained law may be enacted for the registration of housing companies to deal all the matters of the housing societies situated in all the provinces, another solution may be to have a separate law for the registration of housing companies and cooperative housing societies for each province.

Due to the limitation imposed by the Constitution of Islamic Republic of Pakistan 1973, the second option is more appropriate and suitable. This would help each province to prescribe a pre-condition of ownership of land for registration of housing companies and cooperative housing societies by keeping in view the local conditions and development priority of each province. As each province has its own development propriety due to its specific geographic, economic and social differences in comparison with other provinces. So, each province should modify the Cooperative Societies Act 1925 and Cooperative Societies Rules 1927 by imposing the condition of ownership of land according to its local conditions and same procedure should be followed in the case of housing companies.

#### **4.5.6.3.4 The condition of ninety percent Ownership of Land before registration causes to acquire land on High Rates.**

The condition of ninety percent ownership of land as prescribe by the Punjab Private Housing Schemes and Land Sub Division Rules 2010 and condition of eighty percent ownership of land as per Punjab Private Site Regulations 2005 is compulsory to apply for sanction of the housing society.<sup>609</sup>

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<sup>609</sup>

Muhammad Younas Vs Ashiq Hussain, PLD 2009 SC 217.

Before grant of NOC for the housing society by the development authority is not suitable. As officials of Revenue department are empowered under the Registration Act 1908 to change in land use from agriculture to industrial, commercial or housing purpose. As a result of it when information leaks out that housing society is being launched in the particular area the inhabitant of the adjoining lands change the nature of their lands from agriculture to commercial to take more money from the housing developers.

The owners of the adjoining lands do it in connivance with revenue officials' i.e. with the help of Patwaris (a lower rank officer of revenue department who is custodian of all land record). When NOC to launch a housing scheme is granted to the developers and they proceed to acquire the remaining portion (ten percent) of land they have to pay very high prices of the lands.

#### **4.6 WEAKNESS IN THE LEGAL FRAMEWORK REGARDING HOUSING PLANNING, TOWN PLANNING AND INEFFICIENT SYSTEM OF PROVISION OF UTILITIES AND CIVIC AMENITIES.**

The major reason of poor planning in the housing industry of Pakistan is the notion that the Government should exclusively deal with this subject and three levels of Governments i.e. Federal Government, Provincial Governments and Local Governments have been shifting the responsibilities on each other.

The little bit work done in the field of town planning has not been done on modern lines but it has been confined only to the extent of survey, analysis and without coherent planning and without taking into consideration the economic, social and environment concerns. After independence of Pakistan housing activity has been done in a haphazard manner due to which the system of planning in the housing industry of Pakistan has collapsed now.

The relevant authorities in the housing industry of Pakistan could not respond efficiently to rapid urbanization phenomenon and could not provide basic civic amenities to the housing industry of Pakistan. Due to these reasons the regulatory authorities of the housing industry have failed to maintain a congenial and health living environment.

Due to rapid increase in migration from rural to urban areas and due to increase in population in Pakistan housing activity has been done in a hurried manner. Most of the cities in Pakistan have been developed without any coherent planning. Due to haphazard manner of housing activity the quality of life has deteriorated, pollution has increased, lack of solid waste management facilities, water pollution and lack of clean drinking water and poor sanitation situation has become a common phenomenon in the housing industry of Pakistan. As a result of negligence of the housing authorities to pay attention to the spatial planning, urbanization phenomena and urban development have not been addressed comprehensively in Pakistan.<sup>610</sup> There has been haphazard growth around big cities and along national highways and this fact can be seen while moving from Lahore to Peshawar via GT road due to establishment of housing societies.

Many big cities in Pakistan are dominated by poor housing, inadequate infrastructure, and poor and lack of civic facilities. Now it is a time to strengthen the legal framework of Pakistan, to ensure sustainable development, in the light of a change in perception of town planning and the old planning system of town based on merely physical survey and analysis needs to be replaced with new thoughts.

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<sup>610</sup> Medium Term Development Framework 2005-2010, Planning Commission of Pakistan, Page 177.

It (legal framework) needs to be changed in a larger context of social, economic and environmental sustainability. As a stop gap arrangement and till the formulation of a strong legal framework relating to housing industry the existing laws must be followed strictly and no NOC should be issued to any housing society without following the relevant laws, rules and regulations. This framework includes submission of town planning distribution plan of the scheme as per town planning standards, it includes physical survey plans infra-structure design as per laid down standards. These standards aim to provide basic civic amenities i.e. water supply, sewerage, roads, pavements and other amenities in the housing society.

The present laws relating to town planning and housing are focused on physical features of the housing schemes without paying any attention on socio economic and environmental aspects. In order to address this issue UN Conference on human settlement, second meeting of Habitat was held in Turkey (Istanbul) in 1996 for discussing the current state of urbanizing world and two documents were adopted for the sustainable development of cities, towns and communities.<sup>611</sup> In order to highlight the issue of poor standard of town planning paragraph forty three of Istanbul Declaration reads as under integrating urban planning and management in relation to housing, transport, employment opportunities, environmental conditions and community facilities.

#### **4.6.1 Need to revisit the Planning Standards.**

The legal framework of Pakistan needs to be strengthened in such a way that all the planning standards should be revisited in the light of the concept of sustainable human settlement. It should be mandatory under the rules that no scheme should be

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<sup>611</sup> [www.habitat.org](http://www.habitat.org), visited on 12-05-2018.



approved unless it is submitted by a town planning firm, duly approved by Pakistan Council of Architecture and Town Planners (PCTAP). In this regard the pattern of Defense Housing Authority can be followed by the regulatory authorities of the provinces to pay a surprise visit to check the status of the housing schemes.

#### **4.6.2 Establishment of a regulatory mechanism at Provincial Level.**

Each provincial Government should establish a monitoring authority to check the progress and development of the housing societies to ensure the conformity of the housing standards. As housing is a provincial subject so Provincial and Local Governments should play an active role in this field. Introduction of Punjab Private Housing and Land Sub Division Rules 2010 is a good step, there is a need to implement these rules in letter and spirit.

#### **4.6.3 Provision of Basic Infrastructure in The Housing Societies.**

It has been seen in many cases that most of the genuine housing societies which otherwise fulfill all the cordial formalities results into a failure due to non-provision of basic civic amenities. Each provincial Government should take steps that no NOC is granted to any housing scheme without provision of basic amenities. In this regard provincial Government should take steps to encourage all the Governments' departments to supply the basic civic amenities to housing industry on preferential basis.

#### **4.7 RIGHT TO HOUSING IN PAKISTAN: NATURE OF RIGHT TO HOUSING AND OBLIGATIONS OF THE STATE TO ACHIEVE THE GOAL OF HOUSING FOR ALL AS ENVISAGE BY UN HABITAT AGENDA.**

Housing is one of the basic necessities of life. Supreme Court of Pakistan while interpreting the fundamental right to life has very clearly declared in *Shehla Zia*

vs. WAPDA case that life does not mean a life like an animal or life like a vegetable. When we talk about the life of a human being it includes in it all the essentials of the life which are necessary to spend a healthy and an honorable life. Food, clothes and Housing are the basic necessities of life and without these essentials of life there is no existence of life.

Now, the question arises what is the nature of this right whether it is a positive right or a negative right? What is the responsibility of the state in the provision of this right? Pakistan is member of UN Habitat agenda which envisaged the goal of housing for all. In addition to it Pakistan is member of many International Treaties and Conventions which emphasis the member states to take steps to provide the basic necessity of housing to its citizens.

Whether the present legal framework of Pakistan is capable enough to achieve the goal of housing for all or it needs to be strengthened? If a large number of people in Pakistan are deprived from this basic necessity of life, where is the problem, whether there is a problem in the distributive justice or in the corrective justice? If the present legal framework is not capable to achieve the goal of housing for all what amendments and mechanism needs to be introduced to achieve the goal of housing for all? An attempt will be made to find out the answers of the above said questions.

#### **4.8 IMPORTANCE OF HOUSING AS A BASIC NECESSITY.**

Housing is a basic necessity, but before discussing it, it is important to discuss and understand the concept of right itself.

##### **4.8.1 What is meant by Right?**

Before discussing the right to housing it is necessary to understand the concept of right. Right is an interest recognized and protected by law. It consists of two

<sup>612</sup>components i.e. interest and that interest which is recognized by law of the land.

Interest may be anything which has some value in terms of money and in case of violation or loss of this interest the law provides a remedy by which that interest can be restored or maintained. In the words of J. S. Mill right is something which the society ought to defend when I am in possession of something.<sup>613</sup> Theorizing about rights has a history of more than five hundred years.<sup>614</sup>

The contribution of Wesley Newcomb Hohfeld is worth mentioning here, who has contributed a lot in the discussion of rights. He clarified the concept of right and removed ambiguities attached with the concept of rights. He noticed that many Jurists confuse various meanings of the term right, sometimes switching senses of the word several times in a single sentence. In his view such imprecision of language shows a concomitant imprecision of thought and thus also of the resulting legal conclusions. In order to clarify the concept, he classified the concept of rights into eight distinct concepts. In order to clarify the concept of rights, he has defined the concepts of rights into four pairs of jural opposites and four pairs of jural correlatives. When there is a right of one person then there is a corresponding duty of some other person. If there is no corresponding duty and one can do what he wants then it is outside the domain of rights and it is either liberty or privilege.

Thus, when we say one has a right it means the right holder has a right claim to claim respect and enforcement of your rights. This reasoning is the basis of recognition, respect and enforcement of all civil and political rights embodied in the

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<sup>612</sup> Sir John Salmond, *Salmond on jurisprudence*, Second Edition, Sweet & Maxwell, 1966, Page 218.

<sup>613</sup> J.S Mill, *Utilitarianism*, Sher, G, Indianapolis: Hackett. 2002, Page 54.

<sup>614</sup> William A. Edmundson, *An Introduction to Rights*, 2004, Page 15.

constitutions of various states of the world. This civil and political right enables the citizens to participate in the civil and political life of the state without discrimination.

These are called first generation of rights the enjoyment of which is promised by the Government to the citizens of the state. There are many jurists who are of the view that these first generations of rights are very narrow to define the scope of free and equal citizenship. According to these jurists free and equal citizenship could only be realized by honoring an additional set of claims, including rights to food, shelter, clothing medical care and employment. These second generation of rights when combined with the first generation of rights can prove vital in protecting the interests of the citizens.<sup>8615</sup>

With the development of human beings it was felt that merely a guarantee on the part of the state that people would not be disturbed in the enjoyment of their civil and political rights were insufficient and in order to have dignified life they need more rights in the shape of economic rights i.e. right to work, right to an adequate standard of living, right to housing and in the old age when a citizen who has served the state throughout his life is unable to serve in the old age, a right to pension. There is no meaning of right to a life without housing.

#### **4.8.2 What is the nature of this right to housing, whether it is a positive right or a negative right?**

Rights are of two kinds, positive rights and negative rights. Negative rights are those rights in which there is a right on the part of a person that a right available to a person is being enjoyed by a person without any interruption or disturbance of the part of other persons.

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<sup>615</sup> Cranston, Maurice, Human Rights: Real and Supposed, Political Theory and the Rights of Man, 1967, Pages 43-51.

There is a right on the part of one person for example one person is having a right i.e. house; the right holder should not be disturbed in the enjoyment of his right. This is called a negative right. In negative right there is a negative right on the part of one person and a negative duty on the part of the others. Negative right means there is a duty on the part of others that they should refrain from doing anything which can cause disturbance in the enjoyment of the rights by the right holder. According to UN Habitat statistics about two million people are evicted from their houses every year in the world.<sup>616</sup>

The term forced eviction is defined as the permanent or temporary removal against the will of inhabitants from the homes without the provision of legal protection.<sup>617</sup> Due to forced evictions of the people from the houses the proportion of the poverty changes in the cities into further poverty.<sup>618</sup> Due to forced evictions of the people from the housing units the people living in extreme poverty and destitution suffer from serious trauma and these people become further vulnerable in the society.<sup>619</sup>

Positive rights and positive duties are those rights in which there is duty on the part of one person to do some overt act positive act and there is a right on the part of other person that some positive act may be done to enable the person to achieve/get that right. Now there are two aspects of right to housing, one is negative one and the other is positive one.

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<sup>616</sup> UN-Habitat (2007), Global Report on Human Settlements 2007: Enhancing Urban Safety and Security.

<sup>617</sup> General Comment No.7: The Right to Adequate Housing, U.N Committee on Economic, Social and Cultural Rights, 6<sup>th</sup> Session, Annex 6, UN, Document. E/1998/22 (1997).

<sup>618</sup> OHCHR and UN Habitat (2009), the Right to Adequate Housing, Fact Sheet Number 21, Page 5.

<sup>619</sup> OHCHR and UN Habitat (2014), Forced Evictions Fact Sheet Number 25, Page3.

When we talk about the negative aspect of right to housing it means those who have a housing unit should not be disturbed in the enjoyment of these rights and in this respect, there is a negative duty on the part of others. When we talk about the positive aspect of housing, it means those who have no house should be provided housing units.

#### **4.9 PAKISTAN IS MEMBER OF UN HABITAT AGENDA WHICH ENVISAGED THE GOAL OF HOUSING FOR ALL.**

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 endeavors to provide basic necessities of life such as housing, food and clothing irrespective of caste, creed and sex or any other discrimination to all the citizens of Pakistan.<sup>620</sup>

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<sup>621</sup>

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.<sup>622</sup>

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<sup>620</sup> The Constitution of Islamic Republic of Pakistan 1973, Article 38, Second Edition, Irfan Law Book House, Lahore, 2005.

<sup>621</sup> Punjab Private Housing Societies and Land Sub Division Rules 2010, Section 10(j), First Edition, The Manual of Development Authorities Laws, Manzoor Law Book House, Lahore, 2012.

<sup>622</sup> Ibid, Section 22.

#### **4.10 INTERNATIONAL TREATIES AND CONVENTIONS WHICH EMPHASIS THE MEMBER STATES TO TAKE STEPS TO PROVIDE THE BASIC NECESSITY OF HOUSING TO ITS CITIZENS.**

Housing is one of the fundamental elements for human dignity, physical and mental health and overall quality of life, enabling one's development.<sup>623</sup> Housing has been recognized and acknowledged in various International Conventions and Treaties. Universal Declaration of Human Rights (1948) recognizes housing as a right, International Convention on Economic, Social and Cultural Rights 1966, International Convention on Elimination of all forms of Racial Discrimination 1965, International Convention on the Elimination of all forms of Discrimination against Women 1979, Convention on the Rights of the Child 1989, Convention relating to the Status of Refugees 1959, International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families 1990.<sup>624</sup>

Declaration of the Rights of the Child 1959, International Labour Organization recommendation No. 115 Concerning Workers Housing 1961, Declaration on Social Progress and Development 1969, Declaration on the Rights of Disabled Persons 1975, Vancouver Declaration on Human Settlements and Action Plan 1976, UNESCO Declaration on Race and Racial Prejudice 1978, ILO Recommendation No. 162 Concerning Older Workers 1980, Declaration on the Right to Development 1986, Global Strategy for shelter to the year 2000 (1998), Vienna Declaration and Programme of Action 1993, Copenhagen Declaration and Programme of Action 1995, Beijing Declaration and Platform for Action 1995 and a very Specific International

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<sup>623</sup> Lawrence Friedman, *the law of the living, the law of the dead: property, succession and society*, 1966, Page 341.

<sup>624</sup> UNCHS (HABITAT), *Position paper on Housing Rights* March, 2001.

Instrument in this regard is Istanbul Declaration on Human Settlements and Habitat Agenda 1996.<sup>625</sup>

According to Article 25 of the Universal Declaration on Human Rights declares that every human being has the right to a level of living adequate for the health and wellbeing of himself and his family which includes food, clothing and housing.<sup>626</sup>

According to Article 14(h) of the International Convention on the Elimination of All Forms of Discrimination Against Women, as per meaning of this Article All the states parties to the convention shall take measures to provide equal opportunities to women along with men to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water etc.<sup>627</sup>

According to Article 21 of the International Convention Relating to the Status of Refugees, the contracting states shall take maximum efforts to provide as good living conditions to the refugees as are being provided to the citizens of the states without discrimination.<sup>628</sup>

#### **4.11 WHETHER THE PRESENT LEGAL FRAMEWORK OF PAKISTAN IS CAPABLE ENOUGH TO ACHIEVE THE GOAL OF HOUSING FOR ALL OR IT NEEDS TO BE STRENGTHENED?**

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 endeavors to provide basic necessities

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<sup>625</sup> Centre on Housing and Evictions (COHRE). 1998. Forced Evictions, September Housing Rights Page 3.

<sup>626</sup> www.goole.com visited on 26-9-2016.

<sup>627</sup> International Convention on the Elimination of all Forms of Discrimination Against Women (1979) Adopted by United Nations General Assembly Resolution 34/180 on September 1979.

<sup>628</sup> International Convention Relating to the Status of Refugees (1951) Adopted by United Nation General Assembly Resolution 429(v) on 28 July 1951.



of life such as housing, food and clothing irrespective of caste, creed and sex or any other discrimination to all the citizens of Pakistan.<sup>629</sup>

Article 38 is part of the principles of policy under the Constitution of Islamic Republic 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 writ petition under Article 184(3) of the Constitutional of Islamic Republic of Pakistan 1973.

So, 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. According to Article 23 of the Constitution of Islamic Republic of Pakistan 1973, every citizen has a right to acquire, hold and dispose of property in any part of Pakistan.<sup>630</sup>

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. According to Article 24 of the Constitution of Islamic Republic of Pakistan, no person shall be compulsory deprived of his property save in accordance with law and if property is required by the state it can acquire it by

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<sup>629</sup> The Constitution of Islamic Republic of Pakistan 1973, Article 38, Second Edition, Irfan Law Book House, Lahore, 2015.

<sup>630</sup> Ibid, Article 23.

following the process of law and after making compensation to the owners of the land.<sup>631</sup>

As earlier discussed, rights are of two kinds positive and negative rights. The above-mentioned provisions of the Constitution of Islamic Republic 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.<sup>632</sup>

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

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<sup>631</sup> The Constitution of Islamic Republic of Pakistan 1973, Article 24, Second Edition, Irfan Law Book House, Lahore, 2015.

<sup>632</sup> Punjab Private Housing Societies and Land Sub Division Rules 2010, Section 10(j), First Edition, The Manual of Development Authorities Laws, Manzoor Law Book House, Lahore.

Class cannot sale the plot before the expiry of five years.<sup>633</sup> 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?

An attempt will be made in the next portion of the thesis to find out the answers of these questions.

#### **4.12 WHAT IS THE RESPONSIBILITY OF THE STATE IN THE PROVISION OF THIS RIGHT?**

If we look at the responsibility 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.<sup>634</sup> Under the Constitution of Islamic Republic 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

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<sup>633</sup> Ibid, Section 22.

<sup>634</sup> Dimensions of Social Housing Policy: An Introduction, Azra Churchman and Yona Ginsberg, Journal of Architectural and Planning Research, Volume 8, No.4, 1991, Pages 271-275.

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 constitution of Islamic Republic of Pakistan 1973 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 meet 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 Islamic Republic 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 Islamic Republic 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.<sup>635</sup>

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 Islamic Republic 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.

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<sup>635</sup> Constitution of Islamic Republic of Pakistan 1973, Articles 23&24, Seventh Edition, Irfan Law Book House, Lahore.2015.

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 marls for low-income group.<sup>636</sup> According to John Rawl, social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged, consistent with the just saving principle.<sup>637</sup>

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

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<sup>636</sup> Punjab Private Housing Societies and Land Sub Division Rules, 2010, Section 10(j), The Manual of Development Authorities Laws, First Edition, Manzoor Law Book House, Lahore, 2012.

<sup>637</sup> Political Liberalism. New York, John Rawl, Columbia University Press, 2005, Pages 182-183.

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? The answer to this question was provided 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.<sup>638</sup>

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 (Government, developers of the housing industry, investors).

This method should not be considered in complete substitution of the present legal framework but in addition to it (amendment in the present LegalFramework plus a new self contained lae at each provincial level). The present legal framework may

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Cayman Development (K) Sdn Bhd Vs Mohamad Saad Bin Long [1999]3 AMR 3259.

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.

Now, coming back to the question whether housing should be a part of fundamental right instead of part of principles of policy as prescribed by the Constitution of Islamic Republic of Pakistan 1973? The principles of policy are not binding on the Government (no Writ Petition can be filed under the Constitution of Islamic Republic of Pakistan 1973 under Article 199 or 184(3) in the High Courts or Supreme Court of Pakistan for its enforcement) but these are like a polestar that provides direction to the Governments to formulate policies.

If housing is made part of fundamental rights in the Constitution of Islamic Republic 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 Constitution of Islamic Republic of Pakistan 1973. 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.

Government should provide an access to adequate housing to all citizens of the state. It is a better but realistic view that right to housing does not mean and should not be taken to mean that the Government must provide houses for every citizen that will be a near impossibility. It is not possible because state resources are limited as compare to social needs. It is however arguable that the provisions of principle of policy though not in the nature of positive rights.

Principles of policy have close affinity and relationship with fundamental rights. It is because fundamental rights and principles of policy are complementary and supplementary to each other. Fundamental rights establish political democracy; the principles of policy establish economic and social democracy. No Government of Pakistan can afford to neglect these principles of policy while formulating plans and policies for the development of the country.

No Government can afford to do so because it is responsible for all its actions to the people in general. There is no legal sanction behind the principles of policy given in the Constitution of Islamic Republic of Pakistan 1973 the ultimate sanction lies with the people of Pakistan.

The people of Pakistan will never let the ruling party acquire power again if it fails to adhere to these principles of policy which includes housing in it. Thus, the Constitution of Islamic Republic of Pakistan 1973, aims at bringing about a synthesis

between principles of policy and fundamental rights and together they form the core of the Constitution of Islamic Republic of Pakistan 1973. The Constitution of Islamic Republic of Pakistan 1973 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. It is duty of the Government to give expression to any of them through appropriate legislation whenever the occasion arises and subject to availability of resources.

Here a criticism is made that mere mentioning of housing as a fundamental right in the principles of policy is not sufficient. According to Viljoen, rights of the socio-economic nature may be hidden in what we know as civil and political rights and it is possible to make interpretation of civil and political rights in such a manner that that enhances the socio-economic rights.<sup>639</sup>

The reasoning is at the root of the decision in the case of *Shehla Zia vs. WAPDA*. In this case Supreme 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 established that there is a correlation between adequate housing and the rights to life and healthy living. After this land mark 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 meaning of which is as under everyone has the right to have access to adequate

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<sup>639</sup> F Viljoen, *The justiciability of socio-economic and cultural rights: Experience and problems*, 2006.

housing and state must take all reasonable legislative and other measures.<sup>640</sup> Measures should be taken to its available resources to achieve the progressive realization of this right and no one who has a housing unit should be evicted except by the order of the court and after taking into consideration all the relevant facts of the case. Housing as a right has been recognized since 1990. As per French law guaranteeing shelter constitutes a duty of solidarity for the entire nation.<sup>641</sup> 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. Just like the Constitution of Islamic Republic of Pakistan 1973 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 to forcibly evict pavement dwellers in Bombay would deprive them of their means of livelihood due in particular to the proximity of their hutments to their source of income and employment. Right to life includes right to livelihood and

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<sup>640</sup> [www.google.com](http://www.google.com) visited on 26-6-2018.

<sup>641</sup> The Right to Housing a fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions brochure prepared by christophegaly, advisor to the United Nations Special rapporteur on the right to food and melikozden, director of the cetim's human rights programme and permanent representative of the cetim to the United Nation.

housing.<sup>642</sup> In another case it was held by the Supreme Court of India that right to life includes adequate nutrition, clothing and housing.<sup>643</sup> 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.<sup>644</sup> 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.<sup>645</sup>

There is a need to create an enabling environment for the citizens by the Government that all the citizens in Pakistan can have this basic necessity of life and those who are already having this basic need are not deprived from it except in very extreme cases where a person is deprived of his property or housing unit after payment of compensation.

Keeping in view the enormous importance and relevance of housing as a basic necessity to the overall development of the person and the nation generally, the legal framework of Pakistan should provide some regulatory and administrative mandatory provisions and directives towards giving teeth to the Article 38 of the Constitution of Islamic Republic of Pakistan 1973. To be realistic it is agreed that the state cannot directly provide houses for every citizen of Pakistan.

Efforts should be taken by the Government of Pakistan towards addressing those issues that impedes delivery of housing units to the majority of the citizens in generally and poor class in particular. The requirements in relation to the

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<sup>642</sup> Olga Tellis and others Vs Bombay Municipal Corporation and others, 1986 AIR SC 180.

<sup>643</sup> Qasim Ali Vs Hasham, 1981 SCMR 516.

<sup>644</sup> The National Campaign for Housing in India, Towards a People Bill of Housing Rights: An Approach Paper, Draft 4, at 17 (February 1988).

<sup>645</sup> The UN Committee on Economic, Social and Cultural Rights and the right to Adequate Housing: Towards an Appropriate Approach, Human Rights Quarterly, Volume 11, No 4, 1989, Pages 522-560.

implementation of housing rights are comprised of essentially three elements i.e., minimum core obligations of the state in relation to housing, progressive realization of the right to housing as resources permit and no regression of housing rights.<sup>646</sup>

The major hindrance in the goal of housing for all as well as for malpractices in housing industry of Pakistan is the procedure for the acquisition of land for the housing industry. So, the state should evolve a legislative regime that ensures and enhances availability and access of land. A good, efficient and effective land policy will not only make land available and accessible but would also help the development and growth of the economy as a whole because housing activity provides job to more than forty industries.

Also, a good land policy administration would facilitate the growth in other industries related to housing industry. Short of recommending the creation of an enforceable right to housing the legal framework relating to housing industry should provide a foundation towards realizing the constitutional provision expressed in Article 38 of the Constitution of Islamic Republic of Pakistan 1973.

The legal framework relating to housing industry in Pakistan needs to be strengthen keeping in view the grew areas mentioned above. 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 body is evicted or displaced without an order of the court and after following the due process of law.

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<sup>646</sup> Housing Rights-The new benchmarks for Housing Policy in Europe? Padraig Kenneth Urban Lawyer, Volume 37, No1.2005, Pages 87-111.

With such provision in the Constitution of Islamic Republic of Pakistan 1973 the onus is placed on the Government to justify before the court any action tending to encroach on citizens right to housing by assuring their rights and accessibility to land.

#### **4.13.CONCLUDING REMARKS OF THE CHAPTER.**

From the above said discussion it is quite clear that the present legal regime i.e Land Acquisition Act 1894 has not been followed in practice by the housing developers in Pakistan for the acquisition of land for the housing societies. Another point that has been concluded from the above said discussion is that Land Acquisition Act 1894 in the present form is problematic so it can not meet the requirements of the housing industries the relevant provisions of the above said law especially the definition of public purpose and market value needs to be strengthened. The registration laws of the housing companies needs to be dealt by the respective provincial Governments which is also scheme of the Constitution of Islamic Republic of Pakistan 1973. PEMRA laws needs to be modified and changed to stop the anauthorised housing societies from advertising their housing schemes in the media to lure the general public to make investment in these housing societies. There is a need for an overhauling of the Legal Framework of housing industry in Pakistan in line with the Constitution of Islamic Republic of Pakistan 1973. The role of the Provincial Governments needs to be enhanced and strengthened and the institution of Local Government can play a vital role for the development of housing industry in Pakistan.



## **CHAPTER 5**

### **RECOMMENDATIONS AND SUITABLE AMENDMENTS IN THE LEGAL FRAMEWORK RELATING TO HOUSING INDUSTRY OF PAKISTAN**

Following are the recommendations to improve and strengthen the legal framework relating to housing industry of Pakistan.

#### **5.1 Recommendation of The General Nature to Strengthen the Legal Framework of Housing Industry**

##### **5.1.1 Application of The Legal Framework on Uniform Basis**

The goal of housing for all as envisaged by the UN Habitat can be achieved in Pakistan if the present legal framework relating to housing industry is applied after incorporated suitable amendments in it. Provided, it is applied across the board without any discrimination on the basis of political, religious, ethnic or any other nature by all the provinces of Pakistan. All the Provincial and Local Governments must ensure their strict application in all districts through the prescribed regulatory mechanism. Housing is a provincial legislative subject so it is the main responsibility of the provinces to apply the relevant laws in coordination with local Governments.

##### **5.1.2 Identification and Biannual Report About Illegal Housing Schemes**

Federal Government cannot deal with the issues faced by the housing industry of Pakistan directly due to the Constitutional embargo. So, all the districts must give a confirmation report that no unauthorized housing scheme exists in its area and the prescribed rules are being implemented. This report after every six months should be submitted to the provincial housing ministry of each province and each provincial housing ministry should coordinate with the federal Government to achieve the goal of housing for all in Pakistan.



### **5.1.3 Last Opportunity to The Outlaw Housing Schemes**

In order to stop the malpractices and for fair dealings in the housing industry an identification of delinquent housing schemes in all the provinces should be done by all the provincial Governments in their territories. In order to bring all such housing schemes in the mainstream such housing schemes should not be stopped at once but an opportunity should be provided as a last resort to bring such housing schemes in the mainstream. All such housing schemes should be given one-year time period to fulfil the requirements laid down in the relevant laws else legal proceedings be initiated against delinquents.

### **5.1.4 Standardization of All the Instruments of Housing Societies**

In order to protect the investors from the clutches of the housing developers the relevant legal framework should regulate standardization of application forms, formats, allotment letters, title documents, sale deeds, sale of lease and holding rights and where necessary the housing developers should be ordered to modify and amend their instruments to promote fairness in the housing industry.

### **5.1.5 Introduction of Financial Consultant in The Regulatory Committee**

Most of the housing societies fail due to non-availability of funds or mismanagement of funds so in order to prevent this situation and to assist the housing developers the housing industry regulatory and monitoring mechanism should have a financial consultant in the scrutiny committee as envisaged by Punjab Private Site Regulation 2005. The other provinces should follow this good step taken by the Government of Punjab. The aim of this amendment should be to explore the feasibility of a business model by exploiting all finance generating avenues.

#### **5.1.6 Elimination of Qabza Mafia (Illegal Occupant) From Housing Societies**

It is a major problem faced by most of the housing societies that file of the plot is in the name of one person and the possession of the plot is with another person and the illegal occupants are not ready to hand over the possession of the plots to the allottees (rightful claimants) of the plots. Regulatory and monitoring laws must ensure that the plots of the members are not distributed due to adverse possession and delivery of the plots is handed over to the rightful claimants.

#### **5.1.7 Tax Incentive to The Housing Developers**

The ease of doing housing activity demands that an investor friendly legal framework relating to housing industry is introduced. Income tax laws should be helpful to encourage the housing developers in preference to other industry because of its value addition activity and increasing employment opportunity for the general public (housing activity provides jobs to more than forty industries).

#### **5.1.8 Discouragement of Greedy Property Dealers**

Housing is a basic necessity and one of the fundamental needs of every person. Housing should not be treated as a nasty business rather it should be treated as a poverty alleviation measure so land Tax laws should be friendly towards genuine buyers and harsh towards investors / speculators. A welcome step in this regard has been taken by the Government by imposing a tax on the sale of plot before the holding period of three years. This step would be helpful to eliminate the speculation in the housing industry of Pakistan. Housing should not be treated like a commodity.

#### **5.1.9 Elimination of File System**

File system has increased the prices of the plots many folds. A buyer instead of constructing a house sells it again and again to earn more and more profit and similarly the new buyer further sells it and so on an artificial inflation is created in the

housing industry. All transactions of land/property should be entered in the deeds of transaction on the basis of certified copies of "Fard" issued by District Government, Copying to Agency and not by Patwari.

#### **5.1.10 No Increase in The Prices of The Land (Plots) But Increase in The Development Charges Only**

In order to discourage the dealers' mafia in the housing industry the artificial increase in the prices of the plots should be discouraged. The housing schemes should be bound to keep prices of the land intact as advertised/approved originally. However, development charges should be enhanced, but through resolutions passed by general body meeting in case of Cooperative Housing Societies and by concerned regulatory authority in case of private developers.

#### **5.1.11 Documentation of Land (Plots) Transactions**

The elimination of file system should be followed by the registration of each and every transaction with the registrar. All Transactions in connection with sale and purchase of land/ property /plots by the society or by individual members should be made through cheques/pay orders/bank draft only. The system of registration of land transactions has already been linked to Federal Board of Revenue (FBR). This development would help in documentation of economy and transparency in the housing industry.

#### **5.1.12 Compulsory Condition of National Tax Number (NTN) To Purchase A Plot**

Without national tax number nobody should be allowed to purchase any piece of land. The relaxation that a person without having an NTN can purchase any plot by paying a double rate of tax is not good step. This condition has opened a gateway for those who have black money, by taking an undue advantage of this condition such

people can dump money in the housing industry. Such people can perform money laundering by paying a double rate of tax. Each party to a transaction must have a national tax number (NTN). Nobody should be allowed to purchase any plot without having a valid NTN number. This step would stop the people having speculative aims to enter the housing industry.

#### **5.1.13 Allotment of Plot After Physical Demarcation on Ground**

Selling of plots by way of selling files only has not only increases the prices of the plots many folds it has also opened a flood gate of corruption when more plots than the available plots on land are sold or in some other cases files are sold without having any plot at all. The plot should be allotted to the members, only after on ground demarcation as approved by the Board of Directors. Each and every sale/purchase of land/plot must be approved by a decision in the meeting of Board of Directors.

#### **5.1.14 Term of Office and Introduction of Rotation Policy**

The management of the housing societies forms a monopoly and due to continuous tenures, the management of the housing societies commits embezzlement. In order to put a check and balance on the working of the management of the housing societies there should be a rotation policy and all the members of the housing societies should be given an opportunity to run the affairs of the housing societies. This rotation policy would help to put a check and balance on the working of the regime of the housing societies. The period of each term should not be more than one year.

#### **5.1.15 Cancellation of Plot After an Opportunity of Hearing**

No member of any housing society should be deprived of his or her plot for non-payment of any instalment or non-payment of development charges. If the cancellation of plot is required in any case the opportunity of hearing should be given

to the member concerned. The housing society should not cancel the allotment of plot of any member except by stating the reason and with the approval of the Board of Directors. Any such action should be intimated to the allottee (member) through a registered post acknowledgment due.

#### **5.1.16 An Opportunity to Pay the Development Charges**

In order to promote the housing for all a pro members approach should be followed. Against cancellation order, each allottee (member) must be given a right of representation to the Board of Directors and right of approval to the regulatory and monitoring authorities. In case the cancellation of allotment is due to non-payment of price of land then at least one opportunity must be given to the allottee and in case of non-payment of development charges, two opportunities must be given to the allottee (member) for making payments. However, in case of some outstanding administrative dues, the revival of the membership should be automatic on payment of such outstanding dues.

#### **5.1.17 Penalty in Case of Failure to Pay Development Charges**

Most of the housing societies fail due to non-payment of development charges and due to this reason, the utility services are not provided and the non-development of the housing society results into a failure. Every housing society must chalk out a well thought out development programme in which the payment of amount along with time period should be mentioned very clearly and each housing society should abide by it. Predetermined penalty (surcharge) must be imposed keeping in view the severity in delay and gravity of delayed development aspect.

#### **5.1.18 Check and Balance System in The Shape of Audit of Accounts**

Most of the greedy people focus on the housing industry due to massive amounts involved in this industry. In order to keep such people away from housing

industry and to protect the rights of the members of the housing society there should be a strong system of audit by an independent firm of auditors. This audit report must be compulsory required to be published and distributed to all the members of the housing society and this task should be done by the regulatory bodies. The present law must specify annual internal / external audit system enforceable by the regulatory authority.

#### **5.1.19 Protection of Environment of The Housing Society**

Development in the housing industry has been done at the cost of environment. Special provisions should be added in the byelaws of each housing society to take care of the environment. Environment factors such as waste disposal, tree plantation, and water purification, road cleaning and anti-malaria measures must be made as an integral part of each housing society. For this purpose, explicit provisions should be added in the Legal Framework relating to housing industry of Pakistan.

#### **5.1.20 Pending of Amount of Taxes on Housing Schemes**

Taxes are collected by the Government as a result of a social contract between state and people of the state. Major portion of civic taxes collected by the Government on account of property tax/transfer fees should be reverted to the Housing Societies for spending on maintenance services as long as they manage housing schemes. As an alternative of collecting taxes Government can relax the housing industry from taxes and in consideration of it Government can take some portion of housing units in consideration of waived off taxes.

### **5.2 RECOMMENDATIONS TO STRENGTHEN THE ENACTMENTS RELATING TO HOUSING INDUSTRY IN PAKISTAN**

The relevant enactments relating to housing industry can be strengthened by incorporating these recommendations.

#### **5.2.1 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.

#### **5.2.2 Provision of Utility Services in Time to Housing Societies**

It is a major reason for the failure of most of the housing societies that utility services are not provided in time to housing societies. Due to non-provision of utility services many genuine housings schemes which have been formed after fulfilment of all cordial formalities results into failure and it gives a very negative (discouraging) message to housing developers. Special clauses should be inserted to integrate the function of utility provision agencies such as WAPDA, Sui Gas, PTCL, and WASA & TEPA for providing trunk point services simultaneously with the development work. To give a binding force to the new developers, laws over-riding clauses be inserted in the relevant statutes. Letters of censure be issued to a subordinate staff of regulatory and monitoring authorities for any laxity, delaying tactics, blackmailing and internal corruption in the development of schemes/projects launched by the authorized housing developers.

#### **5.2.3 Special Attention of The Government to Genuine Housing Societies**

Many housing societies which are law abiding and have not committed violation under any law are suffering due to non-availability of utility services, Utility services to these housing societies should be provided on emergency basis. Maintenance of utility services i.e. electricity, Sui gas, water supply, telephone service and road repairing should be done by concerned Government departments since all the related bills/taxes are collected by them. In this regard the pattern of Defence Housing Authority should be followed.

#### **5.2.4 Transfer of Ownership to New Buyer by The Housing Society**

Allotment of plots on the basis of file system should be discouraged as it is the practice being followed in the case of Defence Housing Society projects because it results into loss of revenue to the Government. Transfer of ownership of plots should be by registry as prescribe by the Registration Act 1908. The management of housing societies should coordinate the buyers and sellers of the plots to strictly follow the procedure of law. This must be done under the close watch of the regulatory authority.

#### **5.2.5 The Legal Framework Should Encourage House Building Finance Corporation and Financial Banks for Loan**

Due to job creation at massive level and economic impact of housing industry the Government should encourage house building finance corporation (HBFC) and other financial banks to provide loans to housing industry on lower mark-up rates. The rule should provide the manner of financing by banks and financial corporations in development projects of housing societies.

#### **5.2.6 Protection Against Acquisition by The Government of Housing Societies**

In order to give safety of investment an assurance should be provided under the Legal Framework to all the investors of housing industry against acquisition by the Government. There should be an adequate protection towards the investment of



developers and that of a third party against future acquisitions by the Government provided these housing societies are following the rules and regulations in letter and spirit.

#### **5.2.7 Penalty of Acquisition Against Corrupt Housing Developers**

Housing is a basic necessity and sometimes people invest the saving of their whole lives in it. Under some situations it becomes an inevitable to intervene in the larger interest of the general public at large as a last resort to take over the charge of the housing society. With an aim to protect the public interests, rule should provide an eventuality of taking over the scheme by regulatory and monitoring authorities if developers do not develop the scheme within the committed time frame or deviates from original scheme or commits misconduct or try to commit fraud to deprive the general public from their hard-earned income. But this extra ordinary step should be taken in extra ordinary circumstances in the larger interest of the masses.

#### **5.2.8 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.

### **5.2.9 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.

### **5.2.10 Acquisition of Land for Housing Developers at Market Rate**

The exploitation of the housing developers at the hands of land owners on the one hand and blackmailing at the hands of revenue officials on the other hand should be avoided. Generally, when the housing developers purchase a major portion of land from their own pockets and after getting approval of the housing schemes from the relevant authorities when they proceed to purchase the minor chunk of land 10 per cent to 20 per cent land the prices of this minor chunk of land are dictated by the owners of the this piece of land in collusion with revenue officials. This exploitation needed to be avoided by the Government. The Government should rescue these housing developers and it should ensure the delivery of this remaining piece of land at market rate.

## **5.3 RECOMMENDATIONS TO IMPROVE THE REGULATORY MECHANISM OF HOUSING INDUSTRY OF PAKISTAN**

The regulatory mechanism can be improved if the following recommendations are incorporated into the Legal Framework.

#### **5.3.1 Imposition of Penalty on The Housing Developers for Lapse on Their Part**

If there is a penalty (surcharge) on the members of the housing society the developers of the housing societies should be equally responsible for paying a penalty if there is a lapse on their part and if the developers have failed to proceed with the development work in spite of the payment of development charges by the members in due date. Penalty clause be inserted against the developers for not ensuring continues services/ maintenance of the scheme as outlined in the advertisement such as instituting security measure, sanitation service, neat/tidy out look of the surroundings, maintenance of the roads, flow of stable electric supply, repair of leaking water/sui gas lines, repair of telephone lines and ensuring a reliable / running sewerage system.

#### **5.3.2 Supervision of The Development of Utility Areas**

The developers of the housing schemes do not take interest in the development of public utility areas and give it less importance. In order to combat this situation, the development of public utility areas i.e. schools, hospital, graveyard, mosque, market should be the top most priority of the regulatory bodies of the housing industries.

#### **5.3.3 Need to Strike a Balance in The Regulatory Mechanism**

There is a need to strike a balance in the regulatory mechanism in such a manner that neither the housing developers should be allowed to do housing activity in an unbridled manner and according to their sweet will nor the regulatory mechanism should be so strict that there is undue interference on the part of regulatory authorities that nobody is willing to perform housing activity. So, there is a need to strike down a balance in these two extremes. The legal framework must dispel impression of over regulating by the Government functionaries /departments in

regulating the housing activities and it must emit a flavour of international cooperative principle.

#### **5.3.4 Role of Regulatory Bodies to Ensure Implementation of The Legal Framework in Letter and Spirit Instead of Dictation**

The regulatory authorities should work within their jurisdictions and should not dictate the housing developers to do housing activity as per their notion as developers are well versed in their field the role of the regulatory authorities should be to ensure that housing activity is done by following all the laws, rules, regulations and policies of the land relating to housing and no violation of any type is committed by the developers. The regulatory and monitoring authority should not dictate the business for the society; rather, it should ensure that the decisions of general body meeting of the Cooperative housing Societies are implemented in letter and spirit.

#### **5.3.5 Joint Task Force in The Composition of Regulatory Authorities**

There is a need of complete coordination among all the three layers of the Governments. Primarily it is the responsibility of the provincial Governments and respective local Governments concerned to regulate the activities of the housing societies but in order to achieve the goal of housing for all the Federal Government should also be taken on board as Federal Government is the principal interacting entity in UN Habitat agenda so there should be a coordinated effort of all the three Governments (Federal Government, Provincial Governments and Local Governments).

#### **5.3.6 Penalty for Illegal Extension of Housing Scheme**

In many a case a housing scheme is formed completely in a legal manner and the allotment process is also done on merit basis and without any illegality. Problem starts when after the successful completion of first phase of the housing scheme the second

phase of the scheme is started without getting approval from the relevant authorities for the start of second or third phase. Penalty clause must be inserted/ invoked against a housing society, which announces the sale of next phase without purchase of sufficient land and specific permission from regulatory authority after necessary amendment in the site plan/master development plan. It is necessary because after the successful completion of first phase of the housing society, people blindly trust such housing scheme without doing verification about next phase of the housing scheme.

#### **5.3.7 Check on The Activities of Property Dealers and Land Mafia**

When the plots are sold in a housing society in lieu of registration the file of the plots is sold many a times by the property dealers to earn abnormal profits. In order to avoid this kind of situation transfer of plots should strictly be done on the basis of registration of plot as per the law of the land (Registration Act 1908). Copy of allotment/transfer document of a plot must be submitted to the regulatory and monitoring authorities. This step would not only be helpful to generate revenue for the Government but it would also put a check on double transfers of the same plot.

### **ROLE OF VARIOUS LEVELS OF GOVERNMENTS IN THE REGULATION OF HOUSING INDUSTRY OF PAKISTAN**

The officials relating to housing industry in the Federal Government, Provincial Governments and the Local Governments, all level of Governments should perform their share of responsibility in hierarchical pattern, each accountable to its immediate superior administration. Although housing sector is essentially a provincial subject, the Ministry of Housing & Works at the Federal level needs to assert itself and provide strategic direction and policy to regulate the development and growth process.

#### **5.4 Role of Federal Government in The Regulation of Housing Industry of Pakistan**

Before the introduction of eighteenth amendment in the Constitution of Islamic Republic of Pakistan 1973, the subject of housing was included in the concurrent legislative list but after the above said amendment in the Constitution the subject of housing is a pure provincial subject. After this amendment the provinces enjoy complete authority on this subject. The Federal Government cannot directly deal with the subject of housing due to Constitutional embargo but it should play the role of a coordinator among the states on the one hand and among the provinces on the other hand. Federal Government can help the provinces to achieve the goal of housing for all as envisaged by UN Habitat agenda.

##### **5.4.1 Creation of a Conducive Environment for Housing Industry**

Demonstrate political will and leadership for creating a conducive environment for the growth of the housing industry by promoting the investment in housing industry.

##### **5.4.2 To Give Directions to The Federal Departments to Give More Preference to Housing Industry**

Provide directions to the Federal departments to accord due priority to extend services of water, power, electricity and road networks to the legitimate and cleared housing societies.

##### **5.4.3 To Provide Assistance to The Provincial Governments to Update the Legal Framework at Provincial Level**

Federal Government in order to up gradation and strengthening the Legal Framework at provincial level should provide technical assistance. It should provide broad parameters to the provincial Governments to update their legal framework for

the housing societies so that interests and investments of the stakeholders in general and the public in particular are fully protected.

#### **5.4.4 To Provide Relief to The Affected People of Land Mafia**

In the past decades there have been massive frauds by the land mafia due to weak Legal Framework. Compensation of the affected people is necessary to relieve the grievances of the victims of the land mafias. In order to achieve this purpose and to stop frauds in future, the Provincial Governments should review the existing legal process of registration, default and liquidation with a view to eliminate the delay factor in compensating affected investors (general public) of the defaulting companies /societies. Provincial and District Governments should be legally empowered to structure procedures and dedicate resources to provide quick relief to the affected people and dedicate resources to provide quick relief to the affected and punish the defaulters.

#### **5.4.5 To Hand Over the Power of Registration of Housing Companies to The Provincial Governments**

Housing is a provincial subject but housing companies are registered under Section 456 of the Companies Act 2017 with Securities and Exchange Commission of Pakistan (SECP) which is a Federal institution. The present practice is not only unconstitutional but it is also a major reason of malpractices when the regulatory bodies of the three Governments start shift the responsibilities to each other. Federal Government should review the existing legal process of registration of private housing societies by handing over all the affairs of the housing companies to the Provincial Governments. Provincial Governments can impose a precondition of ownership of land for registration by keeping in view the economic, social and geographical situation of each province. Federal Government should assist the

Provincial Governments to initiate measures to eliminate loopholes and anomalies in the Legal Framework. Federal Government should review the functions of the SECP it should take an initiative to delete the clause permitting registration of housing companies with SECP.

#### **5.4.6 Directions to The Provincial Governments to Promote Financial Transparency in The Housing Industry**

Federal Government should provide suggestions to the Provincial Governments on the financial management of the housing industry with mandatory provisions of periodic audits and scrutiny of accounts. Each housing developer should be bound to submit a by annual report to the relevant regulatory authorities.

#### **5.4.7 Establishment of a Taskforce at a Federal Level**

If due to Constitutional embargo the Federal Government cannot deal the subject of housing directly it can play an effective role indirectly. Federal level Ministry of Housing & Works may constitute a task force to evaluate the land factor affecting the housing industry in consultation with the stakeholders and seek recommendations. On the basis of the recommendations, issue policy directions on land acquisition, zoning of urban and rural sectors and land banking.

#### **5.4.8 Establishment of Coordination Office at Federal Level**

Ministry of Housing & Works may restructure its secretarial setup and dedicate desks to coordinate and deal with the regulatory authorities of the four provincial ministries relating to housing industry on specific issues pertaining to housing societies in all the provinces.

#### **5.4.9 Provision of Input to Standardize the Laws Relating to Cooperative Housing Societies**



Initiate measures to review the Cooperative Societies Act 1925 and remove anomalies and inconsistencies with the Provincial Ordinance on the housing schemes. Institute a process to standardize byelaws of housing societies to prevent framing and enforcement of their own arbitrary set of laws to protect their own interests. Also institute a process for standardization of rules to be followed by all regulatory authorization operating in the provinces.

## **5.5 ROLE OF PROVINCIAL GOVERNMENTS IN THE REGULATION OF HOUSING INDUSTRY OF PAKISTAN.**

The Punjab Government has already initiated elaborate measures to address the problems facing the housing industry. On the basis of strategic directions issued by the Federal Government, Provincial Government in coordination with Local Governments may focus on following areas:

### **5.5.1 Strong Legal Framework at Provincial Level to Regulate the Housing Industry**

Housing is a provincial legislative subject so each provincial Government should enact a fool proof legal framework to regulate all the activities of the housing developers from start till winding up. In the past the land mafias and files mafias have been taken benefits of the loopholes and grey areas of the legal framework relating to housing industry.

### **5.5.2 Need to Review and Strengthen the Organization Structure of Housing Industry**

Review the organization structure of monitoring mechanism at District and Tehsil level to include Registrar Cooperatives and Tehsil Municipal Authority (TMA) and representatives of all other stakeholders should be given representation including a member of the housing society concerned to represent the general public

who is the major stakeholder in the housing industry. Member from the provincial Ministry of Finance should also be included to effect necessary changes to improve the financial capacity and expertise of the regulatory bodies.

#### **5.5.3 A Restriction on The Advertisement of Incomplete Housing Societies**

At each provincial level no housing society should be allowed to advertise the plots of the housing scheme which does not fulfil all the cordial formalities prescribe by the legal framework relating to housing industry. Each provincial Government should enforce monitoring measures to effectively prevent advertisement and launching of housing schemes without fulfilling legal and cordial formalities.

#### **5.5.4 Expedite the Process of Winding Up of The Delinquent Housing Societies**

The victims of the outlaws housing societies spent their lives in contesting cases to recover the money invested by them in the housing societies. Such housing societies should be pointed out. Initiate practical administrative and legal measures to expedite the process of default declaration and liquidation of defaulted companies/ societies to compensate the affected victims of the housing societies.

#### **5.5.5 Periodic Audit of all Kinds of Housing Societies**

In order to promote fairness in the financial affairs of the housing societies it must be compulsory for all the housing societies to submit a copy of the audited accounts to the regulatory authorities concerned. For this purpose, each provincial Government should assign the district administration to monitor the financial aspects of the housing societies and exercise periodic surprise visits of the housing societies.

#### **5.5.6 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 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 PPSR 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.

#### **5.5.7 Timely Supply of Utility Services to The Housing Societies**

Those housing societies which follow all the legal formalities laid down in the legal framework relating to housing industry. The allotment of plots is done on the basis of merit. It is very unfortunate that such housing societies result into failure due to non-cooperation of the Government departments to supply utility services on time. Provincial Governments should issue directions to the district administration to extend legitimate support to the housing societies by removing impediments in acquisition of land, development works, extension of services like water, gas, electricity, telephone etc.

#### **5.5.8 Establishment of Online Portal to Redress Complaints about Housing Industry**

Measures should be taken by all the provincial Governments to redress the complaints about housing industry on preference basis. On line portal should be established by all the Provincial Governments to exclusively deal with the challenges and complaints faced by the housing industry. Provincial Governments should initiate administrative and secretarial measures to receive and process complaints to the competent authorities for decisions and follow up action through the implementation process.

#### **5.5.9 Special Attention to The Matters of The Cooperative Housing Societies**

Middle and lower middle-class citizens get housing units by forming cooperative housing societies. Special attention should be given to the affairs of the cooperative housing societies because cooperative housing societies are the last hope available to poor people to get a house. Provincial Governments should support and strengthen the functions of the Cooperative Registrars by delegating authority and powers to monitor and regulate the development process of housing societies.

#### **5.5.10 Establishment of Taskforce at Provincial Levels to Prepare Rules**

Provincial Governments should establish task forces to formulate rules and standard of procedures to effectively regulate affairs of the housing societies. A very clear-cut line should be drawn in the jurisdictions of all authorities for the registration and development at the District and Tehsil level clearly delineating their functions and responsibilities vis-à-vis housing societies. All stakeholders should be given a representation in the task force especially general public.

#### **5.5.11 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.

Task 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 process.

## **5.6 RECOMMENDATIONS TO STRENGTHEN THE LEGAL FRAMEWORK RELATING TO HOUSING INDUSTRY AT LOCAL GOVERNMENT LEVEL**

The most important role for the development of housing industry is played by the local Governments. A major role has been assigned to all the Governments of the members of UN Habitat agenda. Primarily local Governments are responsible to carry out the UN Habitat agenda. All the affairs of the housing industry from beginning till end should be regulated by the local Governments with the help and coordination of Federal and Provincial Governments to achieve the goal of housing for all. The District and Tehsil administrations, specially chosen to directly address the problems faced by the general public at the gross-root level, should be fully integrated into the monitoring mechanism.

### **5.6.1 To Put A Check on Fake Advertisement of Housing Societies**

Local Governments (District and tehsil Chairmans / Nazims along with DC/DCO) should focus on following functions with regards to the housing industry. The first trap of the housing mafias is to attract the general public to purchase the plots in the illegal housing societies by advertisement. In order to nip the evil in the bud, Local Governments should establish a monitoring / vigilance setup to verify and report advertisement of illegal and unauthorized housing schemes in their areas of jurisdiction. Local Governments should also monitor societies using dubious names to mislead general public. Initiate immediate police actions against promoters / sponsors involved in fraudulent actions. It is generally observed that these housing societies fix advertising boards by writing the anonymous names or indicate as if advertising boards were fixed by the general public. This practice is done to avoid the penalty of false advertisement and to mislead the general public.

#### **5.6.2 To Establish A Complaint Cell to Redress the Complaints**

A complaint cell should be established to redress the complaints against the revenue officials to redress the frauds committed by the housing societies in connivance with revenue officials or committed against the housing developers by the revenue officials to blackmail the housing developers. Establish an easily accessible and efficient complaints receipt and processing system. Complaints regarding housing industry and particularly against the revenue staff (Patwari / Tehsildar / DRO) be accorded highest priority for verification and follow up actions. Exemplary punitive measures should be initiated against corrupt officials. Especially those involved to change the nature of land from agriculture to revenue to increase the prices of lands to make the housing developers to pay more prices.

#### **5.6.3 To Maintain an Effective Coordination System**

All the relevant regulatory authorities should have a close coordination through a coordination centre. All the local Governments should maintain an effective liaison and coordination with the Sub-Registrar office on all matters pertaining to the housing societies. Render full administrative support to the registrar office to address complainants and reports on irregularities committed by the management and members of the housing societies.

#### **5.6.4 Submission of The Report of The Auditor of The Housing Societies Twice a Year**

Audit report of all the housing societies should be submitted twice a year to the regulatory authorities. There should be one single regulatory office at local and provincial level to monitor the process of audit and submission of audit reports to the Registrar office by the housing societies. Assign district audit authorities to carry out special audits of societies reported for mismanagement of funds.

#### **5.6.5 Upgradation of Land Record System**

For identification of parcels of lands available for housing societies and to maximum utilization of idle lands, the land record system should be updated. Institute a method of inspection and management review of the district land revenue department on a biannual basis by the team of experts and ensure a follow up process on the recommendations. Initiate a process for up gradations and restructuring of the land information system at Tehsil and District level with a view to publishing a land information gazette (complete data of brown lands for housing industry) on an annual basis at the District/Tehsil level.

#### **5.6.6 Establishment of an Arbitration Action Committee**

There is a need to establish an Arbitration Action Committee of housing societies having a representation of the Registrar Office of the area concerned,

regulatory authority and office holders of the housing societies to address any disputes within the schemes or between the members in the management committee. Byelaws or a mandate of such a body may be framed in consultation with the stakeholders.

#### **5.6.7 Computerization of all Land Record System**

In order to eliminate and minimize the frauds in the housing industry the whole land record system should be computerized. All the approvals of the housing societies should be on the basis of this land record system. The regulatory authorities should be linked to this computerized system.

### **5.7. RECOMMENDATIONS AND ACTIONS FOR THE IMPROVEMENT OF REGULATORY AUTHORITIES OF THE HOUSING INDUSTRY**

The regulatory bodies, being an important institution of the housing industry, its monitoring mechanism must possess a compatible structure to perform their functions vis-à-vis housing societies. Following actions are recommended to vitalize the regulatory functions of the authorities.

#### **5.7.1 Introduction of One Window Operation to Deal All Affairs of Housing Industry**

Organization Structure of the regulatory bodies should be restructured. The organizational structure of development and regulatory authorities should be upgraded and made sensitive to the requirement of the housing industry. It must be designed to operate and function on a one window concept having the capacity to deal with all issues related with housing societies. The revised organization should have a hierarchy of staff and technical experts, which can efficiently respond to the proposals submitted by the sponsors of housing societies and process prompt decisions.



### **5.7.2 Establishment of an Enforcement Cells**

The regulatory authorities should provide a dedicated enforcement cell assigned to monitor the stage wise development of approved projects. Enforcement Cells must devise and adopt effective monitoring measures to correct violations immediately on occurrence of any corrupt or malpractice in the housing industry.

### **5.7.3 Fixing of Responsibility of The Officials**

A clear-cut responsibility for each department/functionary should be formulated to enable all sins of omission/commission to be localized for disciplinary action and redressed.

#### **5.7.4 Mechanism to Receive the Complaints Against the Staff of The Regulatory Authorities**

The revised organization should cater for the requisite staff dealing with the complaints and suggestions of the stakeholders. All development authorities should be geared to receive complaints against its own functionaries besides the housing societies/developers. Complaints/allegations involving corruption of bigger magnitudes should be referred to regional National Accountability Bureau (NABs) for disposal.

#### **5.7.5 Coordination Between Registration and Development Authorities**

The revised structure should cater for lateral coordination between the registration authority and the development authority each dealing with their respective functions.

#### **5.7.6 Survey of The Available Land**

Regulatory authorities should carryout detailed survey of complete land in their areas of jurisdiction to prepare master plans and earmark specific areas, where cooperative housing societies and private schemes may develop their societies. The master plans should cater for town planning and phased extension of trunk infrastructure.

#### **5.7.7 Settlements of Agreements with Developers of Housing Industry**

Development proposals submitted by the developers/sponsors for clearances / NOCs should culminate into proper agreement between the development authority and the developer. These agreements should clearly spell out the specifications / standards to be achieved and the penalties (fines/demolition) to be levied for each violation.

#### **5.7.8 Establishment of Websites of The Development Authorities**

All development authorities must have their websites to share information with the general public on the status and legitimacy of each housing society in their area of jurisdiction. It would help the investors to make investment in those housing societies which are safe and genuine one.

#### **5.7.9 Exercise of Maximum Care, Caution and Due Diligence on The Part of Development Authorities**

As general public blindly relies on the housing schemes approved/sanctioned by the regulatory authorities to have housing units so they should take maximum care while granting sanction to the housing societies within their territorial jurisdictions that no sanction is granted to any housing scheme which does not fulfil the legal requirements in letter and spirit.

#### **5.7.10 Follow Up After Grant of Sanction to Check Malpractices**

After the grant of sanction to housing societies the general public should not be left to the mercy of these housing societies. The regulatory authorities and sanctioning authorities should intervene in the matters of allotment of plots in order to check that no exploitation is done by the housing societies and plots are being offered as per master plan and approved layout plan of the housing society and to the extent of land available with the housing society.

#### **5.7.11 Scrutiny of The Land to be Used for Establishment of Housing Society**

The regulatory and sanctioning authorities of the housing societies should also ensure the land proposed for the housing society is free from all kinds of encumbrances and it is not a scattered land but a consolidated piece of land.

#### **5.7.12 Examination of The Financial Capacity of The Developer**

The sanctioning and regulatory authorities must also ensure that the developer of the housing society has sufficient funds available with them so that they can complete the housing projects in time and provide all the civic amenities within time. Most of the housing societies results into a failure due to lack of funds available with the developers of the housing societies.

#### **5.7.13 To Ensure the Proposed Land for Housing Society Is Not Land Locked**

Many housing societies which are sanctioned by the regulatory authorities are genuine and established on lands which are legally sound and not subject to any kind of encumbrance but the housing society results into a failure due the location of the housing society. While granting sanction to the housing societies the sanctioning authorities must ensure that no sanction is granted to a housing society which is land locked and has no passage to link the housing society with the main road.

#### **5.7.14 Not to Grant Sanction to Another Housing Scheme Which Causes Obstruction to An Earlier Housing Scheme**

Some times when sanction is granted to a housing society it contains a passage to link the housing society with the main road but when sanction is granted to another housing society it causes an obstruction to the first housing society. Sanctioning and regulatory authorities must take care that no such situation arises to any housing society after grant of sanction.

#### **5.7.15 Duty of The Sanctioning Authority to Ensure Provision of Sewerage Facilities**

Many housing societies do not have an arrangement to waste the sewerage waste. One of the examples is of Cantonment board Gujranwala where no system of

sewerage exists but the people dump their sewerage water after digging a hole in their houses. This kind of situation is very dangerous for the environment.

## **5.8 RECOMMENDATION AND ACTIONS FOR THE DEVELOPERS/ SPONSORS OF HOUSING SOCIETIES**

### **5.8.1 Establishment of An Internal Self-Monitoring System**

Developers / Managers of housing societies are the most valued stakeholders as their performance and credibility impacts the general public. These developers should develop an internal self-monitoring mechanism.

### **5.8.2 Association of All Developers of Housing Industry**

These developers should establish a federation of developers/ managers of housing societies to collect all functionaries on a single platform to develop a unity of thought.

### **5.8.3 Establishment of Own Constitution**

Utilizing the forum of the federation, develop and adopt a constitution for them based on sound and accepted principles of honour and commitment. This should facilitate eliminations of undesirable elements from the system.

### **5.8.4 Establishment of A Website of Each Housing Society**

Each society must have its own website to share information with the subscribers on its plans, assets, membership and details of accounts for the purpose of greater transparency.

### **5.8.5 Representation of All Developers in All Forums**

As developers of the housing industry are the major stakeholders so they should be given an opportunity to participate in all forums / committees organized by the regulatory bodies for addressing issues related to the housing industry.

## **5.9 RECOMMENDATIONS TO IMPROVE COOPERATIVE HOUSING SCHEMES.**

Cooperative housing societies are the major players in the housing industry of Pakistan. The role of the cooperative housing societies is decisive in achieving the goal of housing for all. Most of the middle class and lower middle-class people are dependent on these cooperative housing societies to have housing units.

### **5.9.1 Supervision of The Process of Purchased of Land**

Purchase of land by the society is one of the most critical tasks after its registration; irregularities in purchase of land can be committed by the Managing Committee of housing societies in terms of procedural lapses and over invoicing of land prices. A very high level of prudence and conscientiousness is required on the part of the managing committee while purchasing land for the housing society because it is the money of the members that is at stake.

Another issue related to purchase of land is that in order to get approval from the development authorities it is necessary to purchase 90 per cent land in advance. It is the major obstacle in the development of cooperative housing societies as members of the cooperative housing societies are poor people so they cannot afford to purchase land in one go especially when the tag of approval is missing. The solution is to have an enactment to regulate the housing industry including cooperative housing societies at provincial level. Each provincial Government should prescribe a precondition of land keeping in view the economic, social and political requirements of each province.

### **5.9.2 Supervision of The Process of Allotments of Plots**

Every housing society should allot plots to its members as per its byelaws and procedure on merit and without any discrimination. However, the managing

committee of cooperative housing society can manipulate the allotment process causing loss to the society and its members. In order to make the process of the allotment of the plots the relevant authorities must intervene and the developers of the housing society should not be allowed to exercise unbridled powers.

### **5.9.3 Development of Site of The Housing Scheme as Per Approved Master Plan**

After the purchase of land, the next most important and vulnerable area is development of land. At this stage various types of financial irregularities can be committed by the managing committees of societies in terms of approval of plans and awarding of contracts for civil works. It should be ensured by the regulating authorities that there is no inordinate delay in the development of the housing society and there is no deviation from the master plan.

### **5.9.4 No Cancellation of Plots Without Opportunity of Hearing**

Cancellation and re-allotment of plots have become a troublesome practice on the part of managing committees of various housing societies. Due procedure is not adopted and necessary conditions are not fulfilled in this regard which leads to numerous problems and ultimately the members have to suffer the loss. To make the process more transparent no plot of any of the members of the society should be cancelled unilaterally. If cancellation of the plot is necessary it should be done after following the due process of law.

### **5.9.5 Illegal Occupation of Plots by The Illegal Occupant and Qabza Mafia**

Some societies are facing issue of illegal occupation by Kabza Groups (illegal occupants). Some examples of such societies are Aitcheson CHS, Lahore, LDA CHS, Lahore and PISC CHS, Lahore in order to resolve this issue some housing developer take law in their own hands to take back the possession of the plots and it further

leads to litigation and further delay in the development of the housing schemes. The developers should follow the process of law and the Government should decide the cases of the housing developers on priority basis.

#### **5.9.6 Redemption of Mortgage Plots by The Regulators Without Any Delay**

While granting approval for the cooperative housing societies the development authorities and regulators requires a certain percentage of plots to be mortgaged in the name of the concerned developing authorities and regulators. It is done to keep a check and balance on the developers to develop the housing scheme within time and in accordance with approved plan. After completion of the whole process the developers face difficulties when these plots are not redeemed to the developers. Some Cooperative Housing Societies are facing problem of redemption of mortgaged plots from concerned development authorities.

#### **5.9.7 Preservation of The Amenity Plots from Sale or Misuse of Any Kind**

This is one of the major issues faced by Cooperative Housing Societies. Development authorities are pressing hard for transfer of 2% of amenity sites of the societies in their favour. As per bylaws of the societies, such plots are for the welfare of members and unlike the private housing schemes where the motive is profit earning these plots in Cooperative Housing Societies should not be transferred in the name of the regulatory authorities. It should be ensured by the regulatory authorities that no portion of the society is sold to any investor by violating the rules.

#### **5.9.8 Publication and Submission of The Brochure of The Housing Scheme**

It should be made mandatory for the cooperative housing societies to publish its brochure and provide a copy to the regulatory authority concerned. The brochure should also be made available on the website of the housing society and on the website of the concerned regulator. Members of a housing society should be provided



with this brochure in addition to the membership form. The brochure should include following information about the cooperative housing society, Names and addresses of management committee, Bye-laws, a copy of registration letter, A copy of No Objection Certificate (NOC). Any subsequent change should be made with prior permission of Registrar of the Cooperative Societies of the province concerned.

#### **5.9.9 Introduction of One Window Operation**

To facilitate the members of Cooperative Housing Societies, one window operation be introduced at Cooperative Department in the matter of sale, purchase, allotment and transfer of plots of the cooperative housing societies concerned.

#### **5.9.10 Penal Action for Allotment of Plots in Excess of Available Land**

It is a common fraud which is being done by the housing developers that, after approval of the housing schemes from the relevant authorities, these cooperative housing societies proceed to sale plots these housing societies sale plots in excess of the land available. General public blindly relies on these housing developers being approved from the relevant authorities. But these housing societies take undue advantage of the approval and sale plots in excess of available plots in this way general public is deprived of their hard-earned income. In case of over and above allotment, penal action should be initiated against such housing developers and management committee.

#### **5.9.11 Upgradation of The Bylaws of The Housing Societies**

In the present age of modernisation, the outdated bylaws of the housing societies are unable to protect the rights of the stake holders so there is a need to adopt some new and modern bylaws. It should be made mandatory for the cooperative housing societies to adopt model byelaws and model election rules with the approval of their general bodies.

#### **5.9.12 Preparation of Employees Service Rules**

It should be made mandatory for the cooperative housing societies to prepare Employees Service Rules with the approval of its General Body and Registrar of Cooperative Societies.

#### **5.9.13 Preparation and Following of Building Rules**

It should be made mandatory for the cooperative housing societies to prepare Building Regulations in the light of Building Rules of concerned development agencies with the approval of its General Body Meeting and Registrar Cooperative Societies.

#### **5.9.14 Training and Capacity Building of The New Management of Cooperative Housing Societies**

Three months mandatory training workshop for every new regime of elected Managing Committees by the Cooperatives Department on execution of business of Cooperative Housing Societies before taking charge of the office should be mandatory. It is a common problem which is being faced by the new elected body of the housing society that they lack in the basics skills to run day to day affairs of the cooperative housing society.

#### **5.9.15 Upgradation and Amendments in The Existing Legal Framework of Cooperative Housing Societies**

The present enactment relating to cooperative housing societies i.e. the Cooperative Societies Act 1925 and Cooperative Societies Rules 1927 needs to be upgraded and amended to regulate the affairs of Cooperative Housing Societies with prescribed responsibilities of all Government functionaries. The legislation must include provisions, Initiation of legal action, as prescribed in Section 62 of

Cooperative Societies Act 1925, including Registration of First Information Report (FIR) in case of serious offences like cheating, fraud etc. and Imposition of penalty / fixation of responsibility / fine against delinquents. The present mechanism under the Cooperative Laws is comprehensive however the enforcement mechanism is not available. The Cooperative Courts are quasi-judicial in nature. The assistance of law enforcement agencies (Police, ACE & NAB) should be available through necessary amendments in the relevant laws i.e. mechanism for referral of criminal cases to relevant authorities should be devised by the regulator after taking all the legal actions mandated under Cooperative Societies Act 1925.

#### **5.10 Action Under Cooperative Societies Act 1925 And Cooperative Societies Rules 1927**

Under Cooperative Societies Act 1925 and Cooperative Societies Rules 1927 the Registrars enjoy vast administrative powers as well as quasi-judicial authority to control and supervise the working of Cooperative Societies under his jurisdiction. These powers have hardly ever been exercised. A few provisions of the Cooperative Societies Act 1925 that can be helpful in nabbing the corrupt elements in the Cooperative Housing Societies are:

##### **5.10.1 Annual Audit of The Accounts of The Cooperative Housing Societies**

Annual audit of the accounts of the Cooperative Housing Societies under section 22 and 22-A should be conducted and if not, a transparent report is produced by the auditor subsequent action against those responsible for misappropriation of funds of the cooperative housing societies should be taken.

##### **5.10.2 Inquiry into Working and Financial Affairs of The Cooperative Housing Societies**

In order to promote transparency into the financial affairs of the cooperative housing societies an Inquiry should be conducted by the registrar office of the cooperative department from time to time by exercising powers under section 43,44 and 44 D and E of the Act into the constitution, working and financial condition of the societies & inspection of their record. Powers of the Registrar to issue directions and adopt specific measures;

#### **5.10.3 Winding Up of The Affairs of The Cooperative Housing Societies by The Registrar**

There is a need to exercise powers given under section 47 of the Cooperative Societies Act 1925 to the registrar to promote transparency in the affairs of cooperative housing societies. The registrar must exercise these powers when the registrar finds reasons to wind up after an inquiry under section 43 or after an inspection under section 44 or if two third majority of the members of the cooperative housing societies may desire so. Most of the investors/members of the cooperative housing societies spent their lives to recover the invested amounts. The registrar should expedite the process of winding up of the cooperative housing societies by appointing a liquidator as per law. The whole process should be done in an expedient and transparent manner.

#### **5.10.4 Power of Registrar to Assess Damage Against Delinquent Promoters**

There is a need to effectively exercise the powers available to registrar to recover any amount payable by any member of the managing committee of the cooperative housing society. Each and every rupee of the members of the cooperative housing society should be recovered from management of the cooperative housing societies if due to cooperative housing society from the promoters of the cooperative housing society. Assessment of damages against the delinquent promoters of societies

should be done under section 50-A of the Cooperative Societies Act 1925 for the benefit of the members of the housing societies.

#### **5.10.5 Attachment of The Property of The Cooperative Housing Society**

It has been observed that many people in the management of the housing societies dispose of the property of the cooperative housing societies pending arbitration proceedings or any other such like proceedings there is a need to effectively exercise the powers under Section 55 of the Cooperative Societies Act 1925 in such a manner that the rights of the members of the cooperative housing societies may be protected.

#### **5.10.6 Powers of the Registrar for recovery of the misappropriated amount of the Cooperative Housing Societies**

In order to protect the financial interest of the members of the cooperative housing societies special powers have been granted to the registrar of the cooperative department that any order passed by the registrar of the cooperative housing department would be deemed to be an order passed by the civil court. Now, there is a need to strengthen the implementation mechanism of the orders of the registrar of the cooperative housing department in such a manner that the interests of the members of the cooperative housing societies may be protected. So, the powers vested under Section 59 of the Cooperative Societies Act 1925 needs to be strengthened to protect the financial loss of the members of the cooperative housing societies.

#### **5.11 Criminal / Recovery Proceedings and Winding Up Operation**

Based on the legal framework available, a strong action is recommended to deal with the Cooperative Housing Scam, on the following lines. In order to protect

the rights of the members of the cooperative housing societies, criminal proceedings should be initiated against the office bearers of those societies that have misappropriated/embezzled public money. Recovery of the misappropriated funds from the corrupt officials and return of public money and winding up of the non-functional societies to get rid the Cooperative department from unnecessary burden.

There are over 500 Co-operative Housing Societies registered with the Cooperative Department, Punjab alone. Similarly, 195 such societies have been registered in the Islamabad Capital Territory. However, a majority of these societies could never start functioning properly. These societies can be broadly categorized into the following groups:-

#### **5.11.1 Cooperative Housing Societies Which Are Dormant Since Registration**

The societies which are dormant since their inception and exist only on paper and which are an unnecessary burden for the cooperative department should be closed after following the process of law. Such societies have hardly received any amount from their members and no member has filed any complaint against these societies. In regard to these housing societies, the cooperative departments should cancel the registration of these societies within three months, after completing all necessary formalities and after serving them a final show-cause notice to clarify their position within thirty days. Before winding up these societies under Societies Act 1925, an inspection of the record of the Societies is advisable to determine their position regarding the funds collected and utilized by the management. This exercise would rid the Departments of un-necessary burden.

#### **5.11.2 Those Cooperative Housing Societies Which Have Collected Only Membership Fee**

This category includes cooperative housing societies which invited a considerable number of people to associate with the housing society as members. However, after collecting the basic membership fee and share capital, no serious attempts were made to launch a housing project. The public money collected by these societies is still utilized by these non-functional entities. These societies should be placed under liquidation and their record may be collected through the field staff of the respecting Cooperative Department. After the return of the public money to the members proportionately, these societies should be wound up under Section 47 of Cooperative Societies Act 1925.

#### **5.11.3 Those Cooperative Housing Societies Which Have Collected Only Cost of Land but No Land Has Been Purchased**

There are many cooperative housing societies which have collected funds from the members for purchase of land. However, the funds have been misappropriated and no land has been purchased. In order to solve the problem of this kind of cooperative housing societies the respective Cooperative Departments should furnish copies of Awards passed by the Registrar or his Nominee, against the delinquent promoters of such societies, under Section 50-A of Cooperative Societies Act 1925. These Awards are executable as decrees of Court and law enforcement agencies should recover the amount from the promoters of such societies, commensurate with the liability assessed against them. In cases where the concerned Registrar or his nominee has so far fixed no liability, inquiries under Section 43 should be conducted and cases under Section 50-A of the Cooperative Societies Act 1925 should be decided within six months.

#### **5.11.4 Those Cooperative Housing Societies Which Have Purchased Disputed and Bad Title Lands**

There are many cooperative housing societies which have collecting funds and after collecting funds have purchased lands with bad title. Due to this bad title the possession/development has become almost impossible due to the incorrect decisions and malafide of the managing committees. In most of the cases, the land purchased by these societies is not contiguous and is scattered over a very large area. Such type of cooperative housing societies have hardly obtained an NOC from the concerned development authority for laundering a housing project. The Cooperative Department concerned should look into the possibility of consolidating/clearing the society's land and assess the viability of launching a housing project. If prospects are bright, every effort should be made to consolidate the society's land within six months otherwise the society may be placed under Liquidation and cases under Section 50-A of Cooperative Societies Act 1925 may be initiated and final liability determined by the Registrars within six months. Revenue Departments may also be consulted in this respect to determine the extent of over-invoicing done by management in purchase of land.

#### **5.11.5 Those Cooperative Housing Societies Which Have Collected Development Charges but They Have Not Done Any Development**

The societies which have got deposits on account of development charges but the development has not been undertaken commensurate with the deposits and development charges thus collected have been utilized for purchase of land, with a view to getting commission in such transaction. A special audit of the accounts of such societies should be conducted since their inception, through a reputed Chartered Accountant firm to judge the extent of damage done to the society and cases under Section 22-A and 50-A may be finalized by the Registrars within six months to enable law enforcement agencies i.e. police recover the misappropriated amounts from the



culprits. All such sums due to Government may be recovered as arrears of land revenue under Section 65 of Cooperative Societies Act 1925.

#### **5.11.6 Those Cooperative Housing Societies Which Have Done Development Work but No Allotment of Plots Have Been Done**

The societies, which have launched housing projects and considerable developments work has also been undertaken, however, the management has failed to make allotments and hand over actual possession of plots to the public. In order to tackle the issue of such housing societies a final show-cause notice should be issued by the Registrar to such societies for handing over possession for developed plots to the public within six months, as promised by them from time to time, otherwise Administrators may be appointed to run the affairs of these societies under Rule 48 of Cooperative Societies Rules 1927. Specific tasks may be assigned to these Administrators of expediting the allotment process. The tenure of these Administrators should not exceed one year in any case.

#### **5.11.7 Those Cooperative Housing Societies Which Have Made Allotment of Plots by Violating the By Laws of The Housing Society Concerned**

The societies where allotment of plots has also been completed however the management has been reported to be involved in allotments in violation of their byelaws, on the basis of favouritism and other considerations. An inspection of Inquiry into the record of these societies should be conducted by the Cooperative departments concerned under Section 43 and Section 44 of Cooperative Societies Act 1925 and a report to be furnished to law enforcement agencies about all such allotments made in violation of rules/byelaws. Simultaneously, cases for recovery under Section 50-A may be decided within six months in such cases.

#### **5.11.8 Those Cooperative Housing Societies Which Are Developed but Are Facing Minor Problems**

The societies, which have launched their housing projects quite successfully, and plots have launched their housing projects quite successfully and plots have been handed over to the public to their satisfaction. Some of these societies are, however, facing difficulties in providing civic amenities to their members owing to limited sources. Such housing societies should be encouraged and assisted in providing civic amenities/municipal of facilities to the public through the local municipal corporation/body. These societies may be advised to approach the concerned authorities for settlement of disputes specially those relating to issuance of NOC for launching a housing project.

#### **5.12 Strengthening Institutional Regulatory Framework of The Cooperative Housing Societies**

In order to strengthen the institutional framework of the cooperative housing societies following measures needs to be taken.

##### **5.12.1 Activation and Strengthening of The Institution of Annual General Meeting (AGM)**

Most of the Managing Committees (MCS) of the Coop Housing Societies do not hold Annual General Meetings on time as required under Section 12 of the Cooperative Societies Act 1925. A large majority of member's problems can be solved and their grievances redressed if the institution of AGM is regularized and strengthened. The Registrars should issue instructions to all the housing societies within the time frame enunciated in the Act. Management of the societies that fail to hold Annual General Meeting on time should be served show cause notices under Rule 48 of the Cooperative Societies Rule 1927. Simultaneously, the Registrars

should arrange holding of special general meetings in such housing societies under Section 13 of the Act. The Management Committees should be bound to present before the general house, copies of the audited accounts of their societies for approval annually. The quantum of AGMs should not be less than thirty percent of the total membership of the society. A representative of cooperative department (not below the rank of Inspector) should attend the Annual General Meeting of every society in his jurisdiction and submit a report to the Deputy Registrar about the issues discussed in the meeting.

#### **5.12.2 Periodic Inspection of The Cooperative Housing Societies**

The record/projects of the housing societies should be inspected by the Cooperative Department periodically, under Section 44 of Cooperative Societies Act 1925. As practiced in the Punjab, the assistant registrar/inspectors should carry out inspection of all the housing societies situated within their territorial jurisdiction, the Circle registrars fifty per cent and the Deputy Registrar twenty per cent annually. If required, inquiries may also be conducted into the constitution, working and financial condition of societies, under Section 43 of the Cooperative Societies Act 1925. Action, under Section 54 of the Cooperative Societies Act 1925 can also be initiated against the consultants and contractors and other concerned parties, in case of damaged done to the societies owing to their negligence.

#### **5.12.3 Conduct of On Time Elections of The Cooperative Housing Societies**

Most of the housing societies do not hold election on time, as prescribed in their bylaws and election rules. Even if elections are held, the same people, somehow, manage to get themselves re-elected unopposed. The registrar should direct these kind of housing societies under their control to strictly observe the following instructions to be issued under Section 44 D and E of Cooperative Societies Act 1925. The tenure of

office of the managing committees of all the societies should be two years in future. The quorum of AGM /General meeting for holding election will be thirty per cent of the total membership of the housing society; it should also be incorporated in the byelaws of every society that the Management Committees are bound to arrange holding of elections before the date of expiry of its term. In case of their failure in this connection, the Management Committee should stand dissolved automatically. No one will be eligible to contest election for more than two terms in office; Elections should be held through Secret ballot and not through show of hands, An Election Commission should consist of three members of the housing society concerned, who are not contesting election themselves and election commissioner nominated by the Department should ensure that the election is held strictly in accordance with their bye laws/election rules/these instructions.

#### **5.12.4 Resolution of Disputes Through Arbitration**

Disputes between members and past members, between members and society, between society and past or present members should be settled through arbitration under Section 54 of the Cooperative Societies Act 1925. Arbitration can help to resolve such cases which remain pending in courts of registrar or his nominees for years. All such cases should be decided within the time frame prescribed in cooperative societies Act 1925 and the rules made there under. The societies should also make use of this forum and file cases under Section 54 against the members for resolution of disputes especially where the management feels that the development works is suffering due to shortage of funds, arising out of dues outstanding against members. Recovery can also be made from defaulting members through arbitration.

**5.12.5 Embargo on The Use of Luxury Vehicles and Mobile Phones by The Members of The Management Committee of The Cooperative Housing Societies At the Expense of Cooperative Housing Societies.**

Members of the Management Committee play havoc with the funds of the housing society by purchasing/maintaining vehicles/mobile phones from the hardened money of the members. This practice should be discouraged and the societies should be allowed only to keep one vehicle while no mobile phone should be permitted (Note:Members can have as many vehicles and cell phones as they want from their own resources but from the finds of the cooperative housing society only one cell phone and one vehicle should be allowed). All other vehicles should be disposed of immediately through open auction under the supervision of the cooperative societies department and the funds collected should be used for the benefit of the cooperative housing society.

**5.12.6 Conduct of Annual Audit of The Cooperative Housing Societies Regularly**

Annual audit of the accounts of the societies needs to be regularized. The competent authority should allow the audit to be conducted by the reputed chartered accountant firm as required under Section 22 of Cooperative Societies Act 1925 and auditor should be bound to submit audit report latest before the conduct of Annual General Meeting, so, that the same may be submitted before the Annual General Meeting. An auditor should not be allowed audit of a particular society more than two consecutive times. A copy of the balance sheet should be sent to all the members of the housing society by the Management Committee regularly.

**5.13 RECOMMENDATIONS TO IMPROVE THE KACHI ABBADIS**

Following are the recommendations to improve the system of kachi abadis (Slums) in Pakistan.

#### **5.13.1 Regularization of Katchi Abadis To Achieve Housing for All**

Regularization of Katchi Abadis (Slums) established before 31.12.2011 that is yet pending and the regularization of Katchi Abadis (Slums) established after the cut-off date is one of the major issues at the hands of directorate of Katchi Abadis (Slums). The Government of Pakistan should take a bold step and after following the cordial legal formalities it should regularize all the Kachi Abadis (Slums) because it would be major step towards housing for all as envisaged under UN Habitat agenda.

#### **5.13.2 Check Against New Encroachment of State Lands**

The on-going encroachment on state land and emergence of new Katchi Abadis (Slums) is one of the main concerns before the regulators. It is imperative that measures may be devised to prevent further encroachment on state lands. This would help the Government to stop the establishment of new kachi abadis (Slums).

#### **5.13.3 Resettlement Schemes of Existing Kachi Abbadis**

There are some Katchi Abadis (Slums) which meet the requirement of minimum dwelling units but they cannot be regularized due to some other reasons e.g. they are either established on hazardous areas or amenity plots or the land-owning department refuses to provide No Objection Certificate (NOC) for any other reason. Resettlement of people occupying such land is a challenge which should be solved /settled on priority basis.

#### **5.13.4 Stoppage of Mushroom Growth of Katchi Abadis (Slums) Near Cities**

People have occupied land wherever it was available which has led to the mushroom growth of Katchi Abadis(slums). These scattered settlements need to be integrated in order to appropriately merge them in the existing city infrastructure.

#### **5.13.5 Development and Regularized Katchi Abadis (Slums)**

Infrastructure development and provision of civic amenities through formal procedure is only possible when the Katchi Abadi is regularized. Katchi Abadis are usually regularized when the occupants are already living there. There is no prior planning of roads streets and open spaces. The development authorities face the challenge of ensuring the development of these slum areas. So, those Kachi Abbadis which are not threat to the state should be regularized.

#### **5.13.6 Revision of Zoning and Building Regulations**

Long and medium term strategic plans-reflecting a shared vision of the citizens in the city should be formulated at the city level with citizen participation and public hearings. On the basis of these strategic plans detailed infrastructure and land use plans for the city need to be developed. It is imperative that current procedures and regulations be revised when formulating these plans, and, feedback from citizens, interest groups and communities be elicited during the process of formulation and prior to finalization. A panel of experts should be established at the provincial level to revise zoning and building regulations / byelaws. Local Governments should review and adopt these regulations and by-laws based on the peculiar conditions in their areas.

#### **5.13.7 Role of Local Governments in Regularization of Kachi Abbadis**

Local Government needs to integrate upgrade and regularize Katchi Abadis in the city system. Procedural improvements preferably on the pattern of Sindh Katchi Abadis Authority (SKAA) model, to expedite regularization and upgrading work is a good approach in this regard. Development of alternative land and housing schemes for the urban poor should be kept in view. Guiding future development through recognition of the informal process of their development and appropriate planning and byelaws is the need of the hour.

#### **5.13.8 Role of Federal Government Vis- A- Vis Kachi Abbadis (Slums)**

Federal Government should coordinate with the provincial and local Governments. Federal Government should take the necessary steps related to ensuring the release of land by land-owning agencies; Take policy decision on the anomalies and discrepancies; fix, in consultation with the provincial Government the transfer price of federal land for regularization; It is better that the state land should not be transferred in the name of the katchi abadi (slums) dwellers; rather it should only be provided to the occupants on a lease agreement. The land use of the land provided to the katchi abadis should not be altered.

#### **5.13.9 Role of Provincial Governments Vis- A- Vis Kachi Abbadis (Slums)**

Provincial Governments should amend rules, regulations and bye-laws with regard to Katchi Abadis, low-income settlements and areas requiring urban renewal and upgrading. Local Governments should be assigned the role of implementation agency and make it responsible for documentation. Ensure that the size of the population living in Katchi Abadis, low/under-serviced settlements and areas requiring urban renewal and upgrading is a criteria in the proposed Provincial Finance Commission. There is a need to fix in consultation with the local Governments a land transfer price; notify and implement a new urban land disposal policy; work on documenting the extent and nature of Katchi Abadis low and under-serviced settlements and areas requiring urban renewal, and share this information with the Federal Government on a regular basis.

#### **5.13.10 Preparation of Exact Data on Kachi Abbadis (Slums)**

For training, planning and policy formulation access to information regarding the extent, spatial location and trends of Katchi Abadis, low/under-serviced settlements and areas requiring urban renewal and upgrading is required. It is better,



that this information be shared with Federal and Provincial Government departments, land-owning agencies of the state, professional institutions and academia, and to Local Government authorities.

#### **5.13.11 Training and Capacity Building of The Authorities Dealing with Kachi Abbadis (Slums)**

The directorate of Katchi Abadis needs to be equipped with sufficient logistic support and human resource necessary for the disposal of its affairs. The field staffs of local Government at Tehsil and District level needs to be equipped with proper training to conduct surveys in a systematic manner.

### **5.14 RECOMMENDATIONS TO IMPROVE THE LAND RECORD SYSTEM**

The most important issues faced by the housing industry of Pakistan are the issues regarding land record. There are few areas which need to be improved for the development of housing industry of Pakistan.

#### **5.14.1 Preparation of Land Record of The State to Prevent New Encroachment**

In order to stop fresh cases of encroachment, state land inventory should be maintained and proper in vigilance should be done. Compilation of inventories at the city and provincial level, and land assets, by agencies; and Enforcement of existing anti-encroachment laws and vigilance through improved monitoring to avoid squatting in the future is the need of the hour.

#### **5.14.2 Improvement of Land Development and Provision of Housing for All**

A number of procedural actions need to be taken to improve the planning of land and housing for the urban poor public land disposal, incremental housing

schemes, small plots, affordable and manageable standards, prioritizing expenditure on trunk and main systems and micro credit for housing and infrastructure.

#### **5.14.3 Disposal of Urban State Land by The Other Provinces on The Pattern of Sindh**

In order to achieve the goal of housing for all as envisaged by the UN Habitat agenda the province of Punjab, Baluchistan and Khyber Pakhtunkhwa should follow the approach adopted by the Government of Sindh. Sindh Government has taken a very positive step towards housing for all by providing lands to the homeless people. Revising Ordinances in other provinces for disposal of state land in line with the Sindh Disposal of Urban Land Ordinance (1999); and providing legislative cover to this Ordinance in all the provinces of Pakistan is the need of the hour.

#### **5.15 ESTABLISHMENT OF RESEARCH AND DEVELOPMENT CENTRES ON HOUSING FOR ALL**

There has been little research (Note: this thesis is a pioneer effort on this subject in Pakistan) on the challenges faced by the urban poor when they move to cities, the problems faced by the urban citizens by the unplanned and haphazard growth of slum areas around their properties and the challenges of the state that has to accommodate the people moving towards the cities. Documentation, generation of learning, and analysis of issues related to the urban poor on a systematic basis should be encouraged. In order to achieve the goal of housing for all research centres should be established in all the universities of Pakistan.

##### **5.15.1 Recommendations for The Improvement of The Role of Media to Regulate Housing Industry of Pakistan**

Media may be called the fourth pillar of the state. If media is not playing its positive role it means media is playing its negative role for the housing industry of

Pakistan. As fake housing developers are using media as a tool to promote their unlawful business. There is a need for a positive role to be played for the improvement of housing industry of Pakistan.

#### **5.15.2 Coordination Between Pakistan Electronic Media Regulatory Authority (PEMRA) And Regulatory Authorities of The Housing Industry of Pakistan**

To control unauthorized Media Campaign, a Memorandum of Understanding should be signed between Pakistan Electronic Media and Regulatory Authority (PEMRA) and the Regulators of housing industry. PEMRA should ensure that any housing scheme, which applies for advertisement must have a valid No Objection Certificate (NOC), issued by the regulator of the housing industry of the area concerned. PEMRA should also inform the regulator when a housing society applies for advertisement without having a valid NOC. To control unauthorized Media Campaign, a Memorandum of Understanding (MOU) should be signed between PEMRA and the regulators of the housing industry concerned.

#### **5.16 CONTROL OF HOUSING SOCIETIES INTRODUCED BY THE PRIVATE SECTOR**

This sector comprises of the Private Housing Schemes launched by Private land owners, builders and developers. A very large number of our citizens rely on this sector for their accommodation needs. Most of the malpractices have been observed from this area of housing industry. This sector is highly prone to fraud and corruption. In Punjab the private housing schemes are regulated by the development authorities i.e. Lahore Development Authority (LDA), Gujranwala Development Authority (GDA), Faisalabad Development Authority (FDA), Multan Development Authority (MDA) and Rawalpindi Development Authority (RDA). All these development

authorities are working under the Housing and Urban Development & Public Health Engineering Department. The Private Housing Schemes that are launched in the areas that do not fall within the jurisdiction of any of these development authorities are regulated by the Local Government and Community Development Department through Tehsil Municipal Administrations. The study of the private housing industry has revealed that according to the nature of violations and frauds, the private housing schemes can be grouped into following categories.

#### **5.16.1 Housing Societies Formed Without Getting Necessary Approval**

This category comprises of the housing schemes or the extensions of already approved housing schemes which start advertisement, sale / purchase of plots or execution of development works at site without seeking necessary approval from the concerned regulator. This category is further sub divided into following two kinds.

#### **5.16.2 Housing Societies Which Are Illegal from Ab Initio**

There are many housing societies which are collecting money to offer plots to the general public. These housing societies are void and illegal from very start as these housing societies have not obtained any permission from the relevant housing authorities.

#### **5.16.3 Housing Societies Which Are Formed in A Legal Manner but Which Extends Further Phases Without Getting Legal Permission**

Many housing societies are formed after following the legal formalities and issue plots as per law problem arises when these housing societies after successful completion of first phase start second and third phase of housing societies without getting approval from the relevant housing regulatory authorities. General public become prey to these kinds of housing societies due to trust built up after the successful completion of first phase of the housing societies, people invest money

under the impression that second and third phase of the housing society is also approved from the regulatory authority concerned.

#### **5.17 Private Housing Societies Which Commit Violations After Being Validly Formed**

This category comprises of the approved housing schemes which have been launched with prior approval of the regulator but later on these schemes violate the terms and conditions of the approval, fail to complete development work in stipulated time frame, violate the approved layout plan or default in delivering the plots to the rightful owners on time. One or more of the following issues exist in the approved housing schemes grouped under this category. Non fulfilment of terms and conditions of the approval of scheme by the developer comprising:

##### **5.17.1 These Housing Societies Do Not Mortgage and Transfer Land in The Name of Regulatory Authority**

In order to put a check on the development of housing societies, the housing societies are required to mortgage a certain portion of the land of the housing societies in the name of regulatory authorities till a certain extent of development level is obtained.

##### **5.17.2 Most of The Housing Societies Do Not Get Approval for The Designs of The Services**

Many housing societies commit malpractice by not getting the approvals for the design of the services to be supplied in the housing societies. The general public loses their hard-earned income due to the negligence of the developers of the private housing societies.

##### **5.17.3 Housing Societies Do Not Complete Development Work Within the Time Frame and Delay It**

Most of the housing societies do not provide the necessary basic necessities to the housing societies. Due to this reason most of the housing societies which are formed after fulfilment of legal formalities but these results into failure due to non-provision of electricity, gas and water facilities.

#### **5.17.4 Sale of Land Reserved for Common Use**

As general public is unaware of the scheme of the allotment of plots, so, the developers of the housing schemes take undue advantage of this ignorance and commit these illegalities and malpractices. Illegal sale of areas including public utility areas like land for parks, public buildings, roads, graveyards, illegal sale of mortgage plots and illegal constructions / encroachments on these sites / mortgage plots.

#### **5.17.5 Non-Provision of Plots to The Owners on Time**

Most of the housing societies do not handover the possession of the plots to the members of the housing society and delay it due to these reasons which includes entitlement Issues which includes Failure of handing over possession of plots and constructed houses to the members (plot holders), disputes about development charges and increase in prices and cancellation of plots without following the legal provisions.

### **5.18 Housing Societies Which Exist Only on Papers**

There are many housing schemes which do not exist on the ground. The plots being offered to the general public are not in the ownership of the developer. These developers operate through the marketing office while there is no land and no development work on site. The public is cheated upon by colourful brochures and luring advertisements and looted of their hard-earned money. This category can be sub-divided into these kinds.

#### **5.18.1 Housing Societies Which Exist Only on Papers Only.**

There are many housing societies which exist only on papers. Most of the housing societies were able to do it due to absence of a clear-cut jurisdiction among the three tiers of the Governments. As housing is purely a provincial subject so only Provincial Governments should deal it but Contrary to the theory the practice is that still housing companies are registered under Section 456 of the Companies Act 2017 with Securities and Exchange Commission of Pakistan (SECP) which is a federal institution. After the registration of housing companies SECP has no mechanism to check the malpractices being done in the housing company. Most of such housing companies deceive the general public, when these housing companies are asked to show any proof of their genuineness. These housing companies deceived the general public by showing these registration certificates, as the general public do not know the difference between permission to start a company and permission to do housing activity. It is recommended that all the affairs of the developers of the housing societies should be dealt with by the Provincial and Local Governments and the Federal Government should play the role of a facilitator only.

#### **5.18.2 Sale of Plots in Excess of Available Plots**

Numerous housing societies did the fraud in the housing industry by committing a fraud at another level. These housing societies are formed in a legal manner after fulfilment of all legal formalities. These housing societies proceed to make allotment of plots these housing societies' sale plots in excess of land available with these housing societies. This is done because the plots are sold in the shape of selling files. Excess and Illegal allotment above the available plots in the approved scheme by the development authorities is a common practice the solution is to put a check on this practice and sale of plots on the ground instead of file system.

### **5.19 RECOMMENDATIONS OF THE MISLANEOUS NATURE**

Following are the recommendation of the general nature for the overall development and improvement of the Legal Framework relating to housing industry of Pakistan.

**15.19.1      AWARENESS AND EDUCATION OF THE GENERAL PUBLIC.**

There is a need to create awareness among the general public. Awareness and Prevention should be created by the Provincial Government as well as by the Local Governments in their respective areas against corruption among the masses through effective communication channels and devising efficient preventive measures to root out corruption from public and private housing schemes.

**15.19.2      REFORMATION AND STRENGTHENING OF THE LEGAL FRAMEWORK RELATING TO HOUSING INDUSTRY.**

Housing industry is one of the areas which are highly prone to corruption. Almost every household in one or the other way interacts with the law enforcement agencies or with courts for remedy of their problems. Due to increasing number of frauds in the housing industry it is need of the hour that reforms are brought in the regulatory framework to make it more effective, efficient and less vulnerable to the fraudulent practices.

**15.19.3      INTRODUCTION OF NEW HOUSING SCHEMES BY THE GOVERNMENTS IN PROPORTION TO INCREASE IN POPULATION.**

With the growing population in the country, failure of the Government in developing proportionate housing units and lack of vision and direction the land mafias are spreading like a disease all over Pakistan. Land mafia is launching housing societies for elite class in particular. Due to this reason housing for low income people has become a dream. During recent years there has been boom of unregulated property and mushroom growth of housing societies all over Pakistan.



#### **15.19.4 EFFECTIVE CHECK AND BALANCE ON FALSE ADVERTISEMENT OF HOUSING SOCIETIES.**

Private housing societies make claims about provision of state-of-the-art facilities in housing societies in order to persuade people to invest in the scheme in order to stop such kind of activities there should be a precondition to get No Objection Certificate (NOC) from the relevant development authorities before advertisement on media. Majority of housing societies lure investors with false promises, false facts and figures, and once the sale has been made; they leave their residents high and dry on one pretext or the other. The cooperative Housing Societies which are primarily formed to provide housing units to poor people are no exceptions. At the inception of the society, the members are lured for a very dreamy scheme with excellent facilities and in the end the members seldom get even the basic facilities and amenities.

#### **15.19.5 STRICT APPLICATION OF RELEVANT LAWS, RULES AND REGULATIONS.**

Overall, the housing industry in Pakistan is facing with numerous problems especially intentional fraud to the general public, looting them of their hard-earned money, corruption and fraudulent practices by the housing society managements, failure of concerned regulators either due to non-availability of fool proof stringent rules or proper enforcement, implementation and monitoring of applicable housing laws.

#### **15.19.6 CONSTITUTION OF A HIGH-LEVEL FACT-FINDING COMMITTEE.**

As housing is a devolved function of the local government and the local governments lack funds and expertise so a high-level committee should be constituted which includes experts from the relevant departments of the Federal Government, Provincial Governments and local governments. That committee should analyse all existing laws, rules and regulations related to housing industry, study of regulatory framework of housing industry, identification of irregularities, structural weaknesses and other grey areas, analysis of internal controls and accountability mechanisms and recommending improvements in the working of the concerned departments.

#### **15.19.7 CREATION OF A COORDINATION COMMITTEE.**

The process of diagnosis should be done by the high level committee and then the outcomes of the high level committee should be advanced by the coordination committee to educate and advise public authorities, holders of public office on measures to combat corruption and corrupt practices and, to examine the laws in force and also rules and regulations relating to the practice and procedures pertaining to housing authorities and regulatory bodies at Provincial level so as to recommend amendments in such laws, rules and regulations in order to prevent corruption and corrupt practices, Instruct relevant regulators and authorities to implement the amended rules and regulations so as to make the system transparent pertaining to all housing societies and authorities and activities related to builders involved in residential and commercial activities involving public at large and, monitor the implementation of the instructions issued in order to assess and evaluate success of such instructions and advise on the prevention of corruption and corrupt practices.

**15.19.8 AREAS TO BE FOCUSSED BY THE HIGH LEVEL COMMITTEE.**

Housing units are created by various actors including housing schemes launched by Punjab Housing and Town Planning Agency (PHATA), which are being controlled and regulated by PHATA in a manner that leaves minimal chances for the general public of being cheated. The most important area to be focussed is the housing schemes introduced by private housing companies, cooperative housing societies and Katchi Abadis (slums).

**15.19.9 SHIFTING OF RESPONSIBILITIES DUE TO OVERLAPPING JURISDICTIONS OF REGULATORS OF HOUSING INDUSTRY:**

After the eighteenth amendment in the constitution of Islamic Republic of Pakistan 1973, housing is a devolved function of the Provincial Governments. There are more than one regulatory authorities looking over the affairs of the private housing societies in Punjab. In certain areas these authorities have overlapping functions. Overlapping jurisdictions of regulatory bodies create numerous problems in the smooth disposal of the responsibilities of any of these regulators. It also makes it difficult to fix the responsibility on a specific regulator in case of any criminal negligence. These challenges indicate that there is a need for the establishment of a single regulatory authority for the effective regulation of the housing industry in general and private housing schemes in particular.

**15.19.10 INTRODUCTION OF A MONITORING MECHANISM TO REGULATE THE ACTIVITIES OF PROPERTY DEALERS.**

Another reason for committing frauds in the housing industry of Pakistan is that a person sets up a marketing office and starts luring the general public into investing their hard earned money into housing projects which do not exist on ground. These agents and dealers go unchecked as they do not approach any regulatory authority for any approvals. The regulators need to develop a mechanism to identify such cases and take appropriate and timely action against them. There is a strong need for proper registration and scrutiny of the conduct and affairs of property dealers and estate agents to minimize the chances of fraud in the housing industry of Pakistan.

**15.19.11      MECHANISM TO CHECK AND CONTROL INORDINATE  
DELAY      IN      THE      DEVELOPMENT      OF      HOUSING  
SCHEMES.**

Many genuine housing schemes results into a failure due to inordinate delay in the development of housing schemes. Apart from the default by the developer or sponsor of a private housing scheme which remains the main reason of such delay there are some other factor which can be responsible for the failure of a private housing scheme to complete the development work on time. Representatives from the service providers of Sui gas, electricity and water should be taken on board by the development authorities.

**15.19.12      NEED FOR THE ENHANCEMENT OF THE EFFICENCY AND  
RESOURCES OF TEHSIL MUNICIPAL ADMINISTRATIONS  
(TMAs).**

In the areas where the private housing schemes are being regulated by TMAs the main problem is observed that there is a need for training and hiring of technical experts and surveyors. Due to limited resources, it is difficult for the Local

Governments and community development departments to perform the regulatory functions efficiently with the existing technical and human resource. Many problems arise due to the delegation of approving authority to the Town Committees as there are increased chances of manoeuvrability at the Town Committee's level. Although it will be beneficial to build the capacity of Tehsil Municipal Administrations but the approvals should be kept centralized at the district or division level. Composition of the committee and the authority competent for granting approvals needs to be defined clearly for all kind of approvals. Under the latest legal framework, Tehsil Municipal Administrations are now defunct and are currently working under the office of deputy director local government under the Amended Punjab Local Government Act of 2019. So; there is a need to conduct local bodies' election to have a proper machinery to regulate the affairs of the housing industry in a proper manner.

#### **15.19.13      INTRODUCTION OF MANAGEMENT COMMITTEE TO MANAGE AFFAIRS OF A PRIVATE HOUSING SOCIETY.**

After the formation of a private housing society once the sponsor or developer has sold the plots the disposal of on-going administrative function of the private housing society becomes an issue because once the sponsor disposes off the land the concept of management committees may be introduced in the private housing scheme for its complete operation and maintenance. The concept of management committees already prevails in the cooperative housing societies but this concept does not exist in the private housing society this institution would help to run the affairs of the housing society in a smooth manner.

#### **15.19.14      CHECK AND BALANCE ON FALSE ADVERTISEMENT TO MISLEAD PUBLIC.**

In order to protect the general public the housing society should publish brochure including following mandatory information, names and official addresses of management / management committee by-laws of the society, a copy of final registration letter from the regulator, a copy of No Objection Certificate from the regulator containing permission for advertisement, a copy of the brochure should be submitted to the regulator with official letter by the housing society, In case any subsequent change is required to be made in the Brochure, prior permission of regulator should be sought. If these steps are taken it would help to protect the general public from the false propaganda of the land mafia in Pakistan.

**15.19.15      CONTROL ON UNDRIDLED USE OF MEDIA TO ADVERTISE  
HOUSING SCHEMES.**

These days media is a double-edged sword if it is not controlled in advertising housing schemes instead of beneficial to the public it can be harmful for the general public so it should be mandatory for the housing society to publish following information in its public advertisements. Names and official addresses of management committee , number and date of sanction letter and final approval and No Objection Certificate containing permission for advertisement, Exact location and address of the land purchased containing exact number of mouza, khewat and khasra numbers, total area of approved scheme with numbers and sizes of total plots and details of mortgaged plots, development schedule and timeline, all charges due which includes cost of land and development charges at the time of purchase of land, refund schedule for not-Interested members and unsuccessful applicants as is the case in Defence Housing Societies, with one exception DHA policy of non-refund of amounts to unsuccessful applicants is not good, and information about any deduction in case of refund.

**15.19.16 EASE OF DOING HOUSING ACTIVITY BY INTRODUCING ONE WINDOW OPERATION.**

Housing is called mother of all industries as it engages more than forty industries so in order to create the ease the doing of housing activity one window operation should be introduced at the office of regulators to facilitate the developers. The regulators should create, implement and maintain database management system for the proper control and management of all of housing schemes. For access of information to general public, each private housing society must computerize the record of plots and display the status of the sold, vacant, commercial, residential, mortgaged or pledged plots on its website. All regulators and housing societies should maintain and update on regular basis, the websites containing following mandatory information, reports of periodic audits, inspections, progress reports on development work, scanned copies of all relevant documents, certificates and No Objection Certificates for maintaining transparency and awareness of the members.

**15.19.17 MAINTAINANCE OF RECORD OF PROPRTY DEALERS.**

The property dealers should be regulated with their proper registration on the lines of Defence Housing Authority model. All the development authorities of the provinces should constitute a committee comprising of representatives from private housing societies, estate agencies, and officers from Defence Housing Authority and finalize the process of property dealers.

**15.19.18 PRPARATION OF MASTER PLANS ON URGENT BASIS.**

All the under-process Master plans / ODPs / Peri-Urban structure plans of all the cities and towns should be finalized as early as possible because the position of

master plan is just like constitution vis a vis housing laws. Due to non-availability of the modern master plans the planning issues have become very serious.

**15.19.19      FIXATION OF RESPONSIBILITY FOR THE VIOLATION OF MASTER PLANS.**

The regulatory authorities should be responsible for non-implementation of master plans in cities and towns. The heads of the regulatory authorities should take all remedial actions available in their law to avoid violations of master plans and should otherwise report in writing to relevant law enforcement agencies against violators for penal action.

**15.19.20      ISSUANCE OF MASTER PLANS IN ACCORDANCE WITH LATEST MASTER PLANS.**

Revenue Officials should issue Fard (a document to indicate the ownership of land in land revenue record) and mutation only in accordance with the latest master plans. For this purpose, necessary steps may be taken as early as possible. After that the officer/ official issuing Fard and mutation in violation to the final approved master plan should be held liable for penal action by relevant authorities.

**15.19.21      UPDATED RECORD OF THE APPROVED HOUSING SCHEMES.**

Revenue department should update its record about approved housing schemes immediately and the transfer of properties should not be executed on sites reserved for open spaces, parks, public buildings, graveyard and mortgaged plots and revenue department should not execute registries in cases of illegal housing schemes and land sub division.

**15.19.22      PREPARATION OF MASTER PLANS AT DIFFERENT LEVELS.**



Provincial, divisional and district level Master Plans should be prepared in a hierarchy. The housing policies should be prepared in the light of approved master plans at each level so that cities are extended according to approved master plans.

**15.19.23 NON-ISSUANCE OF DEMAND NOTICES TO NOT APPROVED HOUSING SCHEMES.**

Utility services like electricity, Sui gas and water providing departments (WAPDA, SNGPL, and WASA) should not issue demand notices for utility connections until and unless they are provided with final approval letter from the authority concerned. However, if they are using water and sewerage services, they should be charged for the services, even if formal approval of the relevant Authority is pending to increase revenue.

**15.19.24 PROVISION OF UTILITY SERVICE BY THE DEPARTMENTS WITHOUT ANY DELAY.**

Those utility companies which provide facilities inside the housing societies must collect utility fees only when they have sufficient resources, homework completed, to provide services in that specific society. Moreover, once a fee is taken, there should be timeline within which they must provide facility. If utility companies do not provide the services after receiving requisite fees then a punitive action should be taken against utility company and not against the developer of the housing schemes.

**15.19.25 COORDINATION OF HOUSING SOCIETIES WITH WATER SUPPLY AUTHORITY.**

Water supply agency, on the other hand, does not provide developing infrastructure within the scheme. Sewerage lines are installed by developers

themselves. Until and unless there is a disposal point available, no scheme should be approved. Moreover, developer only starts a housing scheme where sewerage trunk is already available. Therefore, Water and Sanitation Agency (WASA), to the exclusion of other utility service providers, must be given exception and they should be allowed to collect utility charges. WASA needs this money for further development of trunk infrastructure and treatment (affluent) plants in other areas.

**15.19.26      AUDIT OF AVAILABLE LAND ON PERIODICAL BASIS.**

Land audit may be introduced as a regular practice on yearly basis. A land audit of all existing schemes should be carried out and violations should be rectified or case be registered in respective areas by the relevant authorities.

**15.19.27      TIME LINE FOR THE APPROVAL OF TECHNICAL APPROVAL.**

Timeline for issuance of Preliminary Planning Permission is defined in Lahore Development Authority's Private Housing and Land Sub Division Rules 2014 but there is no defined timeline for the sanction of technical approval. This ambiguity in the rules opens door for corruption. Timeline for the sanction of technical approval should be defined in detail by mentioning number of days required to process the application at each step, in this regard the example of Defence Housing Society can be adopted. The rules of DHA are exhaustive on each and every question of law.

**15.19.28      SIMULTANEOUS PROCESS OF THE APPLICATION.**

The following steps that are now being done in a series should be carried out parallel to each other to save time required to process the application for technical approval.

**15.19.29 VERIFICATION OF DOCUMENTS OF OWNERSHIP OF LAND.**

Verification and checking of documents of the housing society should be done at the same time. Timely completion of the housing society would be beneficial for all the stakeholders of the housing industry of Pakistan. So, the scrutiny of land ownership documents should be done at the same time.

**15.19.30 RESPONSE OF THE GENERAL PUBLIC AND INVITING OF OBJECTIONS.**

It is very important to give an opportunity to the general public to raise objections about the proposed housing society. The advertisement calling objections from the general public should include the exact khasra numbers and khewat numbers to enable the general public to know the exact location of the proposed housing society so that anybody from the general public whose rights are likely to be affected may raise an objection against the new housing society.

**15.19.31 SIMULTANEOUS VERIFICATION OF TECHNICAL ASPECTS OF THE LAYOUT PLAN OF THE HOUSING SOCIETIES.**

At the same time the technical scrutiny of layout plan of the housing societies should be done by the development authorities. This move would save the precious time of the developers of the housing societies and with the rapid increase in population housing units can be provided to meet the needs of the society.

**15.19.32 ALL OTHER FORMALTIES TO BE PERFORMED SIMULTANEOUSLY.**

All the other remaining formalities and requirements which are necessary for the formation of housing societies should be performed at the same time so that the timely completion of the housing societies may be possible. This step would help to achieve the goal of housing for all as envisaged by the UN Habitat agenda in a short span of time.

**15.19.33      CONSTANT CHECK AND BALANCE ON DEVELOPMENT PROCESS.**

Regulators should ensure that an approved housing society is completed within stipulated time frame after issuance of No Objection Certificate and the concerned regulator to obtain phase-wise completion report from the housing society concerned.

**15.19.34      ESTABLISHMENT OF A SINGLE PLANNING AND ENFORCEMENT INSTITUTION.**

As housing is a provincial subject and Provincial Governments lacks funds and furthermore there is shifting of responsibilities among three governments i.e. Federal Government, Provincial Governments and Local Governments. The Government should establish of a single planning and enforcement authority in every major city to resolve the issues of overlapping of jurisdictions by different authorities. Lahore Develop Authority is the single regulatory authority in most of the regulatory functions within Lahore division. There is overlapping of jurisdiction only regarding building control. To resolve the issue of overlapping jurisdictions building control may also be transferred to Lahore Development Authority. On the same analogy the powers should be transferred to other development authorities in other areas of Pakistan.

**15.19.35 ESTABLISHMENT OF A CENTRALIZED AUTHORITY TO GRANT APPROVAL.**

Tehsil Municipal Administrations (TMAs) have limited capacity and delegation of authority to the TMAs to grant approvals gives rise to a number of problems. In order to solve this issue, the authority for granting approvals should be kept centralized at the division or district level. Composition of the committees authorized for granting approvals should be clearly defined in the rules.

**15.19.36 SPECIFICATIONS OF AREAS NOT SUITABLE FOR HOUSING PROJECTS.**

The regulators of the housing industry must play a proactive role so they must in advance, identify areas not feasible for housing activity to ban and prohibited for housing activity for the development of housing projects by some agencies departments. Most of the time for processing of the cases is consumed for seeking No Objection Certificates from PAEC, Irrigation Department, Water and Sanitation Authority or Army Authorities. The concerned authorities may declare the clear area in all respects where housing schemes can be launched legally. This development would not only save rich agricultural lands but it would save the general public from living at lands containing polluted water.

**15.19.37 EQUALITY BEFORE LAW AND APPLICATION OF SAME RULES.**

Transparency in the housing industry can only be achieved when same rules are applied cross the board to all private as well as public housing developers without any discrimination. In the cases where the regulator is also a developer i.e. Punjab Housing and Town Planning Agency and Lahore Development Authority same rules shall be applicable to the regulator as they are applicable on any other developer.

**15.19.38      CONSTITUTION OF MONITORING AND VIGILANCE  
TEAMS TO HAVE CHECK AND BALANCE.**

It is a major problem faced by the housing industry of Pakistan that once a housing scheme is approved by following the rules in true letter and spirit but the physical conditions of the housing schemes do not match with approved plan. Regulators should maintain vigilance teams and should carry rigorous annual inspection by physically checking the housing schemes site to ensure that on ground there is no change from approved plan.

**15.19.39      FIXATION OF BOARDS AT CONPICUAOS PLACEES TO  
INDICATE UNDEVELOPED PLOTS.**

In order to stop the practice of defrauding the new customers and for the purpose of creating transparency in the allotment process Regulators may ensure that managements of societies have fixed boards of reasonable size at plot and areas reserved for amenities and public uses which are not yet developed and constructed.

**15.19.40      RULES FOR THE TRANSFER OF PLOTS IN THE HOUSING  
SOCIETY.**

Regulators may ensure that managements of societies have displayed instructions regarding guiding members of public about rules and procedures for transfer of plots and approval of plans and such matters in society's office.

**15.19.41      ONLINE LAND RECORD OF THE HOUSING SITES.**

Regulators should ensure that an approved housing society is completed within stipulated time frame after issuance of No Objection Certificate and the regulator concern to obtain phase-wise completion report from the housing society. The Government should check the possibility of establishment of a single planning

and enforcement authority in every District and Division to resolve the issues of overlapping of jurisdictions by different authorities. Lahore Development Authority is the single Regulatory Authority in most of the regulatory functions within Lahore Division. There is overlapping of jurisdiction only regarding building control. To resolve the issue of overlapping jurisdictions building control may also be transferred to Lahore Development Authority.

For access of information to general public, each cooperative housing society must computerize the record of plots and display the status of the sold, vacant, commercial residential, mortgaged or pledged plots on its website. All regulators and housing Societies shall maintain and update on regular basis, the websites containing following mandatory information among other details, including, Reports of periodic audits, inspections, and Progress reports on development work and work schedule for completion of development works.

#### **15.19.42      MAINTANCE OF RECORD AND REGISTRATION OF THE PROPERTY DEALERS.**

Housing is a basic necessity but it is out of range of the general public because it has been made a most profit-making activity by the property dealers. The greedy property dealers are doing it and there is no institution to check the malpractices committed by the property dealers. A setup, like Defence Housing Authority, may be devised for the regulation of estate agents and property dealers with their proper registration and management under some body.

#### **15.19.43      INTRODUCTION OF THE SYSTEM OF LAND AUDIT AFTER EVERY SIX MONTHS.**

Land Audit may be introduced as a regular practice on yearly basis. A land audit of all existing schemes should be carried out and violations should be rectified

or case be registered in respective LEAs. Reports of periodic audits and inspections of each housing society should be available on the website of the Regulators and the society. This development would help to identify the problems and land frauds at an initial stage.

**15.19.44 CHECK AND BALANCE AND LIMITING THE TENURE OF THE MANAGEMENT STAFF.**

In order to keep a check and balance on the management of the housing committee the long tenures of the management should be confined up to four years only and then the whole management should be changed.

**15.19.45 CONSTANT CHECK AND BALANCE ON SALE, PURCHASE, AND TRANSFER OF PLOTS.**

No sale, transfer or lease of mortgaged and pledged plots would be permitted and executed in any situation. No sale or transfer of amenity plots would be permitted and executed except in force majeure situation. No sale, transfer or alteration of green belts and utility areas would be permitted and executed except in force majeure situation.

**15.19.46 REGISTRATION OF DEVELOPERS OF THE HOUSING INDUSTRY.**

It should be mandatory for every developer / owner of housing society to first register them with the regulatory authority concerned in order to ensure that the final product i.e. plot is delivered to the public as per approved Town Planning standard of the Development Authority.

**5.19.47 Responsibilities of Regulators of The Housing Schemes**



In order to create ease and to encourage the investment in the housing industry, the issuance of Preliminary Planning Permission (PPP) should be reduced to shorten the process. Following timeline is can be followed for each step:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Existing Timeline</b>	<b>Proposed Timeline</b>
<b>1.</b>	Forwarding the application to concerned departments for issuance of NOCs	7 days	4 days
<b>2.</b>	Issuance of NOCs by the concerned departments	10 days	6 days
<b>3.</b>	Scrutiny of the case by Director Metropolitan Planning if any observations are received from the NOC issuing agencies and departments	10 days	3 days
<b>4.</b>	Submission of the case for approval before Chief Metropolitan Planning and its further submission before the Director General	7 days	2 days
<b>5</b>	Issue Preliminary Planning Permission or convey observations, in any to the sponsor	7 days	2 days
<b>6</b>	After issuance, intimation of PPP to the sponsor	7 days	1days

#### **15.19.48 Reduction of Rate of Scrutiny Fee to Encourage Housing Industry**

The scrutiny fee (non-refundable) at the rate of 1000 rupees per kanal is being charged from all the developers regardless of their scheme being approved or rejected. Approval fee at the rate of 10000 rupees per kanal is charged from the scheme before the issuance of final approval letter which is unreasonably high. At the stage of technical approval, the scheme has to get the service design approved from Lahore Development Authority's engineering department, WASA, TEPA and LESCO where

again 1000 per kanal is charged as scrutiny fee by each agency. Keeping in view that only about 50% of the area is left for sale with the developer after leaving roads, amenities and open spaces, it adds approximately 30000 per kanal in the cost of land being offered to the general public. In order to encourage the housing developers, the rate of fees these fees should be reconsidered rationally and reduced to the minimum as it has to be paid by the general public in the end.

**Fee Schedule:**

Sr. No.	Particulars	Existing Fee	Proposed Fee
1.	Scrutiny Fee	1000 per kanal	300 per kanal
2.	Layout plan approval fee	10000 per kanal	4000 per kanal
3.	Service design approval fee: WASA    LESCO    TEPA	1000 kanal each	400 per kanal each.

**15.19.49      Specifications of Areas Not Suitable for Housing Projects**

The regulators of the housing industry must play a proactive role so they must in advance, identify areas not feasible for housing activity to ban and prohibited for housing activity for the development of housing projects by some agencies departments. Most of the time for processing of the cases is consumed for seeking No Objection Certificates from PAEC, Irrigation Department, Water and Sanitation Authority or Army Authorities. The concerned authorities may declare the clear area in all respects where housing schemes can be launched legally. This development would not only save rich agricultural lands but it would save the general public from living at lands containing polluted water.

**5.19.50      Housing Should Be Declared as A Poverty Alleviation Measure**

At this moment the situation is not clear whether housing should be a purely business activity and to have a right is the only right of those who can afford it or housing should be a welfare activity. Keeping in view the situation of housing shortfall and situation of large number of slums if the Government of Pakistan is really serious to achieve the goal of Housing for all as envisaged by the UN Habitat agenda, housing should be declared as a basic necessity and a welfare contributing activity instead of a pure business activity.

#### **5.19.51 Elimination of One Side Agreements**

There is a need to eliminate one sided agreement from the housing industry of Pakistan and to replace it with an agreement the terms and conditions of which are settled by the both sides i.e. buyer and seller of house, apartment, or a plot for housing. The present practice is that a buyer/investor is compelled to sign a unilateral redrafted agreement. Supreme Court of India in the case of Pioneer Urban Land Infrastructure Limited vs. Govindan Raghavan has declared one sided agreement against Section 2 of Consumer Protection Act 1986. This one-sided agreement is void if the terms of the agreement are harsh, oppressive and unconscionable to one of the parties to the agreement. There is a need to take such an initiative by the Government of Pakistan to save the general public from the clutches of developers of housing industry in Pakistan.

#### **5.19.52 Suitable Amendment in The Cooperative Societies Act 1925**

Cooperative Societies Act 1925: the following amendment in sub-clause 1 of Section-3 of the Cooperative Societies Act 1925 is proposed in order to give legal sanctity to Para 4(3) of the Model Byelaws of the Cooperative Housing Society Limited which deals with establishment and maintaining a residential colony for its members Para 4(3) of Model Bye-Laws of Cooperative Housing Society Ltd.

To being into existence and to construct, manage and maintain works i.e. roads, water supply, sewerage, electricity, sui gas, telephone services and other construction of various kinds like schools, dispensary, mosque, amusement parks, civic centers, provision of transport, graveyard etc. for the benefit and convenience of the members residing in the colony. These will be subject to regulation of local Development Authorities and at par or better than their standard.

**5.19.53            Amendment in The Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002**

The following amendments is proposed in Section 2(a) of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 to save the general public from the highhandedness of the developer and also to save the media becoming an effective instrument in propagating developers' bad intentions:

**Proposed:**

“After the word “effects” the following may be added, “except the message which is unapproved, unregistered or violative of any law, rule, policy or instructions of the Government, a Statutory Body, Authority or Administration of the area etc”.

**5.19.54            Amendment in The Punjab Development of Cities Act 1976**

In section 32 of the Punjab Development of Cities Act 1976, contravention of the provisions of the Act have been made punishable with simple imprisonment for a term which may extend to one month or with fine or with both. In order to impose a strict building and regulatory control on the illegal and unapproved housing schemes, it is proposed that Section-32 of the act may be amendment by adding a new sub clause (1) of section (32) as under:-

**Proposed:**

Whoever develops any housing, commercial or industrial scheme etc. and enters into sale and purchase of plots/shop etc. without the approval of the Development Authorities in its area of jurisdiction for one year or with a fine of Rs. 50 lac or with both.

## **CONCLUSION**

Whether housing should be a fundamental right under the Constitution of Islamic Republic of Pakistan 1973? If right to housing is included in the list of fundamental rights it would be mandatory for the state to provide housing unit to each and every citizen of Pakistan. If any citizen has not been provided a housing unit he or she can file a writ petition in the Constitutional courts under Article 199 and 184(3) of the Constitution of Islamic Republic of Pakistan 1973. Factual position is that it is near to impossible to provide housing unit to each and every citizen of Pakistan it is neither economically possible nor legally possible for the Government of Pakistan. On the economic side the revenue collected by the Federal Governments and Provincial Governments is to be spent for the common benefit of all citizens i.e. construction of hospitals, construction of roads and construction of schools etc. So, if the money collected from the citizens is used by the Government for the construction of housing units for a segment of the society it would ire the taxpayers. Another aspect of economic constraint is that the Government has so much on its shoulders that it has to perform many other important tasks i.e. defence budget and payment of loans. On the legal side if housing is declared as a fundamental right, every homeless person would file a Writ petition against the Government for the provision of housing unit in this way the business of the Government would be stopped. Government is bound to provide housing unit if property is acquired/taken by the Government under this situation Government is duty bound to provide compensation or to provide a substitute housing unit to make good the loss. According to Salins, Government guaranteed right to inexpensive, high quality housing is a terrible idea even if it were

achievable. It fails because it does not make economic sense.<sup>647</sup> Respect for private and family life does not require the state to provide every one of its citizens with a house.<sup>648</sup> The Council of Europe's approach to housing rights, with a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the parties undertake to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty as well as their families to in particular employment, housing, education and medical assistance.<sup>649</sup> The approach of the members of the council of Europe with respect to provision of housing units is that the parties undertake to take measures to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination and to make the price of housing accessible to those without adequate resources.<sup>650</sup>

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.

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<sup>647</sup> Salinas, P. D, the case for a right to housing: Housing is a right? Wrong! Housing policy Debate, 1998, Pages, 259-266.

<sup>648</sup> Botta Vs Italy, (1998)26 Eur. CT. H. R. 241.

<sup>649</sup> Housing Rights-The New Benchmarks for Housing Policy in Europe? Padraic Kenna, The Urban Lawyer, Volume37, No.1, 2005, Pages 87-111.

<sup>650</sup> Council of Europe, European Social Charter, CETS NO.1163, Strasbourg (May5, 1996).

Housing has been acknowledged as a right under the Legal Framework of Pakistan. Right to housing or accommodation is included in right to life provided under Article 9 of the Constitution of Islamic Republic of Pakistan 1973.<sup>651</sup>

Right to live with dignity is the fundamental right of every citizen of Pakistan under Article 9 of the Constitution of Islamic Republic of Pakistan 1973. In order to perform its duties in the provision of this right the state should formulate such housing schemes through which this right can be realised.<sup>652</sup> Right to life includes right to livelihood, right to acquire, hold and dispose of property and right to acquire suitable accommodation. Right to life includes food, water, healthy environment to spend life and shelter (housing).<sup>653</sup>

Article 31 of the Constitution of Islamic Republic of Pakistan 1973, state is required to make efforts to promote observance of Islamic Moral standards and as per Article 38 of the Constitution of Islamic Republic of Pakistan 1973, the state should make efforts to secure the wellbeing of the citizens of Pakistan by preventing concentration of wealth in the hands of few people to the detriment of general public of Pakistan.

Provisions of law especially Articles 3, 37, and 38 of the Constitution of Islamic Republic of Pakistan 1973, which contains socio-economic principles. These provisions are in an indirect sense enforceable by law and bring about a phenomenal change in the idea of correlation of Fundamental Rights and directive principles given under the Constitution of Islamic Republic of Pakistan 1973. The rule of law must

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<sup>651</sup> Muhammad Afsar Vs Malik Muhammad Farooq, 2012SCMR 274.

<sup>652</sup> T.M.A Samundri through Administrator and 3 others Vs Abdul Ghafur, 2013 CLC(Lahore)333.

<sup>653</sup> Maulvi Iqbal Haider Vs Capital Development Authority through Chairman, PLD 2006 SC 394.



make for the establishing of social, economic and cultural conditions which promote men to live in dignity and to live with aspirations.<sup>654</sup> It is the prime duty of the higher judiciary to preserve and protect the objectives of the Islamic Welfare State like Pakistan as described by the supreme law of the land.<sup>655</sup>

As per National Housing Policy 2001 Government of Pakistan is unable to provide housing units to all citizens it should encourage to perform this task. The general trend is privatization of public housing with the indirect role of the Government in provision of housing units.<sup>656</sup> There is a need for a major change in the strategy to provide housing. In the third world countries the approach of providing housing units to the general public by the Governments of the third world countries has miserably failed.<sup>657</sup> The assignment of providing housing units has been left to the private sector. The major portion of the capital of the developers of the housing industry in Pakistan is spent on purchasing of land for the housing societies.<sup>658</sup> Here a question arises when private developers would purchase lands at very high prices how they should sell it to general public (poor class) on less profit when they are not getting any subsidy or benefit from the Government side. This fact necessitates introducing such kind of pattern of housing activity which contains a convergence of interest of Government as well as of the developers of the housing industry. A similar kind of concept can be found in the shape of principle of *ihya al mawat* as per this concept of shariah land doesnot belongs to a person, land belongs to Islamic ststand

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<sup>654</sup> Employees of Pakistan Law Commission Islamabad Vs Secretary Ministry of Works, 1994 SCMR 1548.

<sup>655</sup> Fazal Hussain Vs Chief Commissioner Islamabad and others, PLD 2013 Islamabad 18.

<sup>656</sup> Dimensions of Social Housing Policy: An Introduction, Azra Churchman and Yona Ginsberg, Journal of Architectural and Planning Research, Volume 8, No.4, 1991, Pages 271-275.

<sup>657</sup> The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach, Human Rights Quarterly, Volume 11, NO.4, 1989, Pages 522-560.

<sup>658</sup> [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm), Visited on 12-05-2020.

unoccupied land known as dead land may be cultivated and the person who works on it would retain it subject to a condition that the occupier would pay ushr on the produce to the Islamic Government.<sup>659</sup>

The major problem the root cause of the homelessness and non-provision of housing units and not achieving the goal of housing for all is not following the natural process (flow of resources of as per need). Housing units are available to only those who can afford it and those who cannot afford cannot have it. Pakistan is an Islamic welfare state and as per supreme law of Pakistan sovereignty belongs to Allah and the Government in the hands of the elected people is a sacred trust which should be used by the Government as per principles of Sharia.

One of the suggestions to achieve the goal of housing for all can be to devise the legal framework relating to housing industry in such a manner that state provides lands to the homeless persons to construct their houses on it. Lands, mines, minerals and gas are ownership of the people of Pakistan.<sup>660</sup> But this legal regime cannot prove effective due to number of reasons. Firstly, the principle of optimum utilization of land demands vertical pattern of housing not the horizontal model of housing. Secondly, as per prevailing law, public functionaries including Chief Ministers of the Provinces could deal/dispose of public property only in a prescribe manner.<sup>661</sup> As per Notification number 918-2013/933-CL(2) dated 26-11-2013, Governor by using powers under subsection(2) of Section 10 of the Colonization of Governments Lands(Punjab),Act 1912 and in supersession of all previous Notifications issued this

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<sup>659</sup> Squatters and Affordable Houses in Urban Areas: Law and Policy in Malaysia, Azlinor Sufi an and Nor Asiah Mohammad, Theoretical and Empirical Researchers in Urban Management, Volume 4, No.4 2009, Pages 108-124.

<sup>660</sup> Suo Motu Case No. 10 of 2009,2010 SCMR 885.

<sup>661</sup> Iqbal Hussain Vs Govt. of Sindh ,2008 SCMR 105.

notification for disposal of state lands for various purposes including for housing purpose. Whenever state land is to be provided for construction of housing it would be sold (auction) on market rate and would not be leased out and public path may be mutated only for public purpose and not in favour of housing societies. As per Punjab Privatization Board Act 2010, disposal of state land is allowed only by way of open auction.<sup>662</sup>

Disposal of state land to the developers of the housing industry after creating a competition among the developers is the valid mode of disposal of land. Grant of land for housing scheme would not amount to public interest if land is given without auction.<sup>663</sup>

The best method to achieve the goal of housing for all including poor people of Pakistan can be to follow an approach of convergences of interest of Governments (All the three tiers of Governments and the interests of developers of the housing industry of Pakistan. The inspiration for this suggestion/solution has been taken from the ayat number 22 of Surat Al Bakra of the Holy Quran in which Allah says He (Allah) has created this universe for all the people of this universe (meaning of the ayah). Now the meaning of the ayah (verse) is clear that this this world and everything in this world is for every one including rich as well as poor people. Now the next question arises if the world is for the whole people of the world then what the share of a person in this distribution of resources. The answer to this question can be inferred from the process of nature that there should be a flow of resources as per need. This process is followed by human body when we breathe oxygen is distributed by lungs to

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<sup>662</sup> Province of Punjab through Secretary Revenue Vs Districy Bar Association Khanpur, 2014 SCMR 1611.

<sup>663</sup> Jaffar Ali Vs Station House Officer, PLD 2016 Sindh 31.

all organs of the body as per need. This process of flow of resources is also followed by plants when glucose (sugar) is produced by the leaves of the plant and the surplus/excess sugar produced by this process is made available to others in the shape of fruit of the plant for the use of others.

The legal framework relating to housing industry of Pakistan should be amended to introduce a method in the shape of provision of state land(spare) by the Government to developers of the housing industry as a consideration for 30 per cent(or some other percentage calculated on the basis of price of the land determined on the basis of auction of the land)area constructed in the shape of flats eight to ten storey(all expenditures born by the developers of the private housing societies) and the remaining area can be sold by the private housing developers in the shape of plots of 8 kanals, 4 kanals,2 kanals 1 kanals and ten marlas to recover the expenditures incurred on the construction of flats. Planning of the housing projects should only be granted subject to fulfilment of this condition. In fact, it is the planning regime which confers value to a housing society. Government can recover the price (cost of the land provided for project) of the land provided to the developers of the housing industry by selling of flats to poor class people on monthly instalment basis in 20 years. In this way the potential and energies of the housing developers can be channelized to provide housing units to all people (rich as well as poor class).<sup>664</sup> This suggestion is in line with the minimum criteria to be met for housing to be adequate which includes increase in the supply of affordable housing for all especially for the poor and vulnerable groups. Housing is an important entry point for addressing and reducing

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<sup>664</sup> M Oxley, The Gain from the Planning Gain Supplement: A consideration of the Proposal for a new tax to boost housing supply in the UK, *European Journal of Housing Policy*, 6(1), 2006, Pages 101-113.

poverty and the mechanism for the provision of housing subsidies for poor people.<sup>665</sup> This mechanism can prove useful to meet the housing needs of all categories (rich, middle class and poor class) of population of Pakistan. The above mentioned suggestion is also in line with the UN Habitat vision to promote partnerships among different social groups, human rights activists and officials and non officials bodies to make a combine efforts to achieve the goal of housing for all.<sup>666</sup> Malaysian Government is working under vision 2020 to achieve the goal of housing for all people that all people of the society rich as well as poor can have their housing units.<sup>667</sup> In the last twenty years housing strategies have been designed in such a manner that a share is reserved in the housing societies to accommodate low income and poor segment of the society.<sup>668</sup> Since the introduction of National Housing Policy 1994 the focus of the Government of India has shifted to a programme that both housing developers and the rulers can pool their resources and energies together to provide housing units to the poor people of India.<sup>669</sup> Disposal of state land to the developers of the housing industry after creating a competition among the developers is the valid mode of disposal of land. Grant of land for housing scheme would not amount to public interest if land is given without auction.<sup>670</sup> So, Government of Pakistan if it is unable to provide housing units directly it should not leave it to the unbridled private sector. The present Legal Framework should be strengthened in

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<sup>665</sup> Executive Summary, Human Rights in Cities Handbook Series, Volume 1, The Human Rights Based Approach to Housing and Slum Upgrading, UN HABITAT, Page 22.

<sup>666</sup> [www.unhabitat.org/declarations/habitat-agenda.htm](http://www.unhabitat.org/declarations/habitat-agenda.htm). Visited on 10-05-2020.

<sup>667</sup> Squatters and Affordable Houses in Urban Areas: Law and Policy in Malaysia, Azlinor Sufian and Asiah Mohammad, Theoretical and Empirical Researchers in Urban Management, Volume 4, No. 4, 2009, Pages 108-124.

<sup>668</sup> Calavita, N & Mallach, A, Inclusionary housing in International Perspective: Affordable Housing, Inclusion and Land Value Receptive, Cambridge, MA: Lincoln Institute of Land Policy, 2010, Pages 423-438.

<sup>669</sup> [www.academia.edu/Government-intervention-and-public-private-partnerships-in-housing-delivery-in-Kolkata](http://www.academia.edu/Government-intervention-and-public-private-partnerships-in-housing-delivery-in-Kolkata).

<sup>670</sup> Jaffar Ali Vs Station House Officer, PLD 2016 Sindh 31.

such a manner that private sector is not able to exploit the general public under the cover of providing housing units. It is need of the hour to study the entire system afresh in order to find out the weaknesses and to provide for corrective measures. Another important decision which needs to be taken by the Government of Pakistan before formulating future strategies is to decide whether housing should be a poverty alleviation measure and a welfare activity or a nasty business? Keeping in view the factual situation of Pakistan the scholar is of the view that housing should not be considered as merely a nasty business but a welfare-oriented activity. Speculation in the housing industry is another obstacle in the way of housing for all. Housing societies should be developed keeping in view the social groups of the society i.e., poor, middle class and upper class. The plots reserved for the poor class should be allotted by expressly mentioning a condition of not transferable/resalable for twenty years. This condition would help to create an artificial inflation. In Singapore the Government has rigidly controlled speculation to which eighty per cent of the population enjoys housing facilities at an affordable price.<sup>671</sup> Another good thing which has helped the Government of Singapore to achieve the goal of housing for all at a satisfactory level is the strict policy of getting land by the state which is also a major reason not to use the land as a purely business commodity in Singapore.<sup>672</sup>

The present Legal Framework i.e. regulatory mechanism has not been able to effectively regulate the working of the housing industry to control malpractice. However, a large number of illegal housing societies, are operating which are not proving helpful to achieve the goal of housing for all rather these housing societies

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<sup>671</sup> Where do tigers sleep at night? The state's role in housing policy in South Korea and Singapore, Bae-Gyoon Park, *Economic Geography*, Volume 74, No 3, 1998, Pages 272-288.  
<sup>672</sup> Castells, M; Goh, L and Knok, R. Y-M, *The shek kip mei syndrome*, London 1990.

have made the goal of housing for all more difficult. These housing societies have defrauded innocent public by depriving it of billions of rupees. This does show that perhaps all is not well in the regulatory mechanism. The regulatory bodies are to be made responsible for transparent approval & effective monitoring of schemes to safeguard public interest by strengthening the present regulatory Legal Framework in the light of above-mentioned recommendations.

Government of Pakistan is appearing to be fully committed to give a boost to housing industry of Pakistan. The present regime (PTI Government) 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. In this context Naya Pakistan Housing Scheme is a very welcome step. A new enactment under the name and style of Naya Pakistan Housing and Development Authority Act 2020 has been promulgated. The concept of Federal Land Bank has been introduced under Section 16 of the above said Act. This development is in line with the suggestion of the scholar the land should be provided by the Government to the developers of the housing industry by the Government to do joint ventures in the housing industry of Pakistan. Hopefully soon the goal of housing for all can be achieved by eliminating all the malpractices by strengthen the Legal Framework and by effective application of this Legal Framework.

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