

# **COVID-19 Pandemic in India:** The Right to Housing

A Briefing Paper

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International Commission of Jurists  
P.O. Box 91  
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# **COVID-19 Pandemic in India:** The Right to Housing

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## COVID-19 Pandemic Exposes India's Housing Crisis

### *Briefing Paper on India's Human Rights Obligations to Guarantee the Right to Housing During COVID-19 Pandemic*

Millions of informal sector workers in India live in informal settlements with poor infrastructure and in overcrowded living conditions. This makes maintaining physical distance during the COVID-19 pandemic difficult, if not impossible. Internal migrant workers have been stranded in informal settlements in urban locations far from their homes. During most of the lockdown period from 22 March to 29 April, these workers could not travel home where they would have had easier access to food and other basic necessities.<sup>1</sup> Although now allowed to travel home, the trains and buses are inadequate in number and the trains are charging them a fare to travel home, according to Indian railway guidelines, without possibility of waiver for those unable to pay the fee,<sup>2</sup> despite many of the migrant workers being daily wage workers who have not earned money since the lockdown. Many people, including informal sector workers have also faced the threat of eviction, despite a partial government ban.<sup>3</sup> In addition, thousands of internal migrant workers have been forced to stay in government shelter homes, which are often in poor condition and lack access to basic necessities during the lockdown.<sup>4</sup>

Sections of the Indian population are facing exacerbated threats of eviction due to discrimination based on ethnicity, place of work and ability to pay rent. Women and LGBTQ persons are at disproportionately higher risk of domestic violence in their houses during the pandemic, an already dire situation that has been made worse by the associated lockdowns.<sup>5</sup>

This Q & A sets out some of the human rights concerns that have arisen as a consequence of lack of access to adequate housing during COVID-19. It examines

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<sup>1</sup> It was only on 29 April 2020 that Government finally agreed to let stranded labourers and students who test negative for COVID-19 travel back to their homes. This is discussed further below. See, Ministry of Home Affairs, Order No. 40-3/2020-DM-I(A), available at <https://www.mha.gov.in/sites/default/files/MHA%20Order%20Dt.%2029.4.2020%20on%20movement%20of%20migrant%20workers%2C%20pilgrims%2C%20tourists%2C%20students%20and%20other%20persons.PDF>

<sup>2</sup> Guidelines for Shramik Special Trains No. DTP/2020/05/17, Ministry of Railways, Government of India, 2 May, 2020 available at [http://www.indianrailways.gov.in/railwayboard/uploads/directorate/health/COVID-19/Movement\\_020520.pdf](http://www.indianrailways.gov.in/railwayboard/uploads/directorate/health/COVID-19/Movement_020520.pdf)

<sup>3</sup> See International Commission of Jurists, "COVID-19: Indian authorities must act immediately to protect internal migrant workers stranded under intolerable conditions" April 16 2020, available at <https://www.icj.org/india-the-authorities-must-act-immediately-to-protect-internal-migrant-workers-stranded-under-intolerable-conditions/>

<sup>4</sup> Geeta Pandey, "Coronavirus in India: Migrants running away from quarantine", *BBC News*, 15 April 2020, available at <https://www.bbc.com/news/world-asia-india-52276606>

<sup>5</sup> For a detailed analysis of the discrimination and abuse faced by LGBTQ persons seeking access to housing, see the ICJ's extensive analysis in 'Living with Dignity: Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work and Public Spaces in India' (June 2019), available at: <https://www.icj.org/india-lgbtq-persons-face-discrimination-in-housing-work-and-public-spaces-despite-increased-legal-recognition-new-icj-report/>

the disproportionate impacts on those living in informal settlements and government shelter homes, as well as the discriminatory application and enforcement of COVID-19 related housing policies. Some of these policy responses have undermined the enjoyment of rights protected under both international and Indian law. The paper offers recommendations for how the Indian government can meet its obligations to guarantee the right to adequate housing for all people.

### ***What are the principal concerns regarding the right to housing in India?***

**Impacts of COVID-19 on Right to Housing in India.** In India, between 1.7 million and 3 million people are homeless,<sup>6</sup> and more than 65 million people live in informal settlements<sup>7</sup> without access to adequate housing. Informal settlements commonly lack basic amenities such as water, sanitation, cooking facilities and internet access.<sup>8</sup> Many daily wagedworkers (nearly 90% of the 400-million-person workforce), including much of the internal migrant worker population (over 120 million),<sup>9</sup> live in informal settlements. The vulnerabilities faced by these groups has been compounded by the Indian Government's inadequate response to COVID-19.

The Government announced the first phase of the lockdown of 21 days on March 24, 2020 with a mere 4 hours' notice and the second phase on April 14 with one-day notice. The lockdown closed down all economic non- "essential" activity, and restricted people from leaving their homes.<sup>10</sup> Many of those who stayed in their cities of work – by choice or compulsion – continue to live in inadequate housing. Many face eviction or risk thereof due to an inability to pay rent. Others have lost their existing housing and have been forced into shelter homes. Many of the shelter homes lack adequate space, sanitation facilities and proper hygiene measures.<sup>11</sup>

The spread of the pandemic has also led to acts of discrimination based on place of work and ethnicity including against people from North Eastern Indian states,<sup>12</sup> where they are perceived as being of Chinese origin. Throughout the country,

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<sup>6</sup> As per Census 2011, 1.7 million were homeless, but this is recognized as a gross underestimate and also as outdated. See Housing Land Rights Network, Homelessness, available at <https://www.hlrn.org.in/homelessness>

<sup>7</sup> Office of the Registrar General and Census Commissioner, India, 2011 Census Data, Ministry of Home Affairs, Government of India, available at <http://censusindia.gov.in/2011-Common/CensusData2011.html>.

<sup>8</sup> "Report of the Working Group on Migration", Ministry of Housing and Urban Poverty Alleviation, Government of India, 2017, page 44, available at <http://mohua.gov.in/upload/uploadfiles/files/1566.pdf>

<sup>9</sup> Labour and Migration in India, Aajeevika Bureau, 2014 available at <http://www.aajeevika.org/labour-and-migration.php>

<sup>10</sup> Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 24 March, 2020 available at [https://www.mha.gov.in/sites/default/files/MHAorder%20copy\\_0.pdf](https://www.mha.gov.in/sites/default/files/MHAorder%20copy_0.pdf) See also International Commission of Jurists, "COVID-19: Indian authorities must act immediately to protect internal migrant workers stranded under intolerable conditions" April 16 2020, available at <https://www.icj.org/india-the-authorities-must-act-immediately-to-protect-internal-migrant-workers-stranded-under-intolerable-conditions/>

<sup>11</sup> PTI "Hunger, joblessness subsumes Covid-19 threat as thousands throng Delhi shelters for food", *India Today*, 28 March 2020, available at <https://www.indiatoday.in/india/story/hunger-joblessness-subsumes-covid-19-threat-thousands-throng-delhi-shelters-food-1660780-2020-03-28>; See Housing Land Rights Network, Need for Special Measures to Check Spread of COVID-19 among Homeless and Other Inadequately-housed Persons, 13 March 2020, available at [https://www.hlrn.org.in/documents/Press\\_Release\\_COVID19.pdf](https://www.hlrn.org.in/documents/Press_Release_COVID19.pdf)

<sup>12</sup> Chiranjeji Kulkarni, "COVID-19: Ten from Northeast evicted from homes", *Deccan Herald*, March 30 2020, available at <https://www.deccanherald.com/city/top-bengaluru-stories/covid-19-ten-from-northeast-evicted-from-homes-819046.html>

medical health professionals are reportedly facing eviction or threats of eviction by landlords who fear that health workers are more likely to have been infected with COVID-19. Some health workers have resorted to sleeping in the restrooms of hospitals after being evicted.<sup>13</sup>

Finally, the lockdowns have increased the risk of domestic violence to women. The number of domestic violence complaints received by the National Commission for Women doubled from the first week of March to the last week of March.<sup>14</sup>

**Indian Government Relief Measures.** Many of the nearly 600,000 migrant workers who attempted to return to their hometowns, some travelling hundreds of kilometers on foot, were required by a Government Order to abandon their efforts and quarantine in government shelter homes.<sup>15</sup> At the same time that internal migrant workers were being prevented from returning to their homes, the government continued to run chartered flights to repatriate Indian citizens from abroad, and to facilitate their travel.<sup>16</sup>

The Government Order, dated 29 March 2020, ordered the authorities to provide temporary shelter and food to “poor and needy people, including migrant workers, stranded due to lockdown measures”, and that migrants be kept in the nearest government shelter.<sup>17</sup> This has proved inadequate as many shelter homes lack basic necessities. Evictions also continue to take place.<sup>18</sup>

The 29 March Order banned forced evictions of “labourers and students” for one month. It required that landlords of properties where “workers, including the migrants are living” suspend rent demands for one month, with violations punishable by fine or imprisonment.<sup>19</sup> Furthermore, the Central Government has

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<sup>13</sup> Hannah Petersen and Shaikh Rahman, “Indian doctors being evicted from homes over coronavirus fears”, *The Guardian*, 30 March 2020, available at <https://www.theguardian.com/world/2020/mar/30/indian-doctors-being-evicted-from-homes-over-coronavirus-fears>

<sup>14</sup> Dhamini Ratnam, “Domestic violence during Covid-19 lockdown emerges as serious concern” *Hindustan Times*, April 26 2020, available at <https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehqLOOPpe8J.html>

<sup>15</sup> Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 29 March, 2020 available at [https://www.mha.gov.in/sites/default/files/PR\\_MHAOrderrestrictingmovement\\_29032020.pdf](https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_29032020.pdf)

<sup>16</sup> Sanchita Nambiar, “Indian airlines operate rescue flights” *Business Traveller*, 30 March 2020, available at <https://www.businesstraveller.com/business-travel/2020/03/30/indian-airlines-operate-rescue-flights/>

<sup>17</sup> Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 29 March, 2020 available at [https://www.mha.gov.in/sites/default/files/PR\\_MHAOrderrestrictingmovement\\_29032020.pdf](https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_29032020.pdf)

<sup>18</sup> See Gautam Bhan, “View: Why the issue of migrant security should be a top priority in India's covid response” *Economic Times*, April 8 2020 available at [https://economictimes.indiatimes.com/news/politics-and-nation/view-why-the-issue-of-migrant-security-should-be-a-top-priority-in-indias-covid-response/articleshow/75054748.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/view-why-the-issue-of-migrant-security-should-be-a-top-priority-in-indias-covid-response/articleshow/75054748.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>19</sup> Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 29 March, 2020 available at [https://www.mha.gov.in/sites/default/files/PR\\_MHAOrderrestrictingmovement\\_29032020.pdf](https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_29032020.pdf)

condemned forced eviction of healthcare workers,<sup>20</sup> which have been reported throughout the country.<sup>21</sup> The Delhi Government and Karnataka Governments have issued notifications that criminal action be taken against those who evict medical professionals, although there is unevenness in actions taken by all state governments.<sup>22</sup> The central government has also made attacks on doctors a cognizable and non-bailable offence.<sup>23</sup>

A second Order issued on 29 April indicated that all “migrant workers, pilgrims, tourists, students and other persons” that are stranded will be allowed to go home, after medical screening.<sup>24</sup> However, it remains unclear how the Government intends to implement such a measure in a timely manner, as those who have been stranded are now desperate to go home and without creating additional public health risks, taking into account both the vulnerabilities of the internal migrant population and the communities to which they will be returning. In addition, migrant workers are being charged money to travel home, per the Indian railway guidelines, without the possibility of a waiver for those unable to pay the fee.<sup>25</sup>

In the context of domestic violence, several high courts have taken cognizance of the increase in cases of domestic violence. For instance, the Jammu and Kashmir high court has, on its own motion, taken cognizance of domestic violence cases and has given directions including creating a special fund, and the Karnataka and Delhi high courts have requested information from the state government about measures to protect women from domestic violence. The state governments have responded by stating that there are adequate hotlines, protection officers, and shelter homes to protect against domestic violence,<sup>26</sup> although they have not

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<sup>20</sup> “‘Gods in white coats’: PM Modi warns against harassment of doctors treating COVID-19 patients” *The Statesman*, March 25, 2020, available at <https://www.thestatesman.com/india/pm-modi-warns-harassment-doctors-treating-covid-19-patients-1502870011.html>

<sup>21</sup> Hannah Ellis-Petersen, “Indian doctors being evicted from homes over coronavirus fears” March 30, 2020, *The Guardian*, available at <https://www.theguardian.com/world/2020/mar/30/indian-doctors-being-evicted-from-homes-over-coronavirus-fears>

<sup>22</sup> Government of Karnataka, Order No. HFW 54 CGM 2020, 26 March 2020 available at <https://www.barandbench.com/news/eviction-of-doctors-paramedics-over-covid-19-scare-karnataka-orders-strict-penal-action-against-errant-landlords-read-order>; Government of Delhi, Order No.F.51/DGHS/PH-IV/COVID-19/2020/prsecyhfw/33/6-30 , 24 March, 2020 available at

[https://images.assettype.com/barandbench/2020-03/649eebb8-2b1f-4b93-9ac0-981d6c407ef4/order\\_Land\\_lords\\_house\\_owners\\_24\\_03\\_2020\\_pdf.pdf](https://images.assettype.com/barandbench/2020-03/649eebb8-2b1f-4b93-9ac0-981d6c407ef4/order_Land_lords_house_owners_24_03_2020_pdf.pdf)

<sup>23</sup> The Epidemic Diseases (Amendment) Ordinance, 2020, available at [https://images.assettype.com/barandbench/2020-04/4949800f-ae27-442b-90ff-00df0f9940d4/The\\_Epidemic\\_Diseases\\_Amendment\\_Ordinance\\_2020.pdf](https://images.assettype.com/barandbench/2020-04/4949800f-ae27-442b-90ff-00df0f9940d4/The_Epidemic_Diseases_Amendment_Ordinance_2020.pdf)

<sup>24</sup> Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 29 April, 2020 available at

This was further clarified by Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 3 May, 2020 available at <https://www.mha.gov.in/sites/default/files/MHA%20DO%20Lr.%20Dt.%203.5.2020%20to%20Chief%20Secretaries%20and%20Administrators%20clarifying%20movement%20of%20distressed%20stranded%20persons.pdf>

<sup>25</sup> Guidelines for Shramik Special Trains No. DTP/2020/05/17, Ministry of Railways, Government of India, 2 May, 2020 available at [http://www.indianrailways.gov.in/railwayboard/uploads/directorate/health/COVID-19/Movement\\_020520.pdf](http://www.indianrailways.gov.in/railwayboard/uploads/directorate/health/COVID-19/Movement_020520.pdf)

<sup>26</sup> Dhamini Ratnam, “Domestic violence during Covid-19 lockdown emerges as serious concern” *Hindustan Times*, April 26 2020, available at <https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehqLOOPpe8J.html>



provided evidence of the effectiveness of these measures.

### ***What are India's legal obligations to guarantee the right to housing?***

**International Law.** The right to adequate housing is recognized in the Universal Declaration of Human Rights,<sup>27</sup> as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), as one element of the right to an adequate standard of living.<sup>28</sup> The ESCR Committee has clarified that the right to adequate housing is not merely a right to basic shelter but a "right to live somewhere in security, peace and dignity".<sup>29</sup> Under Article 11 of the ICESCR, States have an obligation to respect, protect and fulfil individuals' right to adequate housing.

The ESCR Committee and the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living have identified certain minimum core obligations of States under various provisions of the ICESCR. In relation to Article 11, the minimum core obligations include:

- **protect individuals' right to equality** in "all policies related to access, availability and affordability of housing and related-services" <sup>30</sup> without discrimination. This includes taking legislative and other measures to prevent human rights abuses, including discrimination, by private actors;<sup>31</sup>
- **protect security of tenure**, which includes protection from forced evictions,<sup>32</sup> including from informal settlements;<sup>33</sup> and

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<sup>27</sup> Art 25(1), UDHR- "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, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

<sup>28</sup> Article 11(1), ICESCR. The ICESCR is a legally-binding international treaty to which India has been a party since 1979.

<sup>29</sup> ESCR Committee, General Comment No. 4: The right to adequate housing (article 11(1) of the Covenant), UN Doc. E/1992/23, (1991), para. 7

<sup>30</sup> Leilani Farha, Report of the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/70/270, (2015), para. 21

<sup>31</sup> ICESCR, article 2(2) read with article 11(1); ESCR Committee, General comment No. 20: Non-discrimination in economic, social, and cultural rights, UN Doc. E/C.12/GC/20, (2009), para. 11 states that "Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds."

<sup>32</sup> A "forced eviction" is the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. ESCR Committee, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, UN Doc. E/1998/22, (1997), para 3.

<sup>33</sup> CESCR has clarified that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It has emphasized that a State Party in whose jurisdiction "any significant number of individuals is deprived of ... basic shelter and housing... is failing to discharge its obligations under the Covenant" OHCHR, Fact Sheet No. 21/ Rev.1: The Human Right to Adequate Housing, (2008), p. 8. Also see, Raquel Rolnik, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 'Guiding Principles on Security of Tenure for the Urban Poor', UN Doc. A/HRC/25/54, (2013), pp. 3- 6.

- **utilize the maximum available resources** to realize every individual's right,<sup>34</sup> to at least minimum essential levels of adequate housing,<sup>35</sup> which includes the right to shelter.<sup>36</sup>

States are obligated to prioritize disadvantaged groups in fulfilling the right to adequate housing, in particular those who are disproportionately affected by inadequate housing and homelessness.<sup>37</sup> On 17 April 2020, the ESCR Committee issued a statement highlighting State parties' obligations in the context of COVID-19, including a recommendation to undertake special targeted measures to protect vulnerable groups. It indicated that States must take measures such as:

- "imposing a moratorium on evictions";
- "protect[ing] the health and livelihoods of vulnerable minority groups";
- ensuring "[a]ccurate and accessible information ... to protect the population against dangerous disinformation"; and
- ensuring that law enforcement officials respond to cases of domestic violence and the government provides operational domestic violence hotlines.<sup>38</sup>

Independent experts appointed by the UN Human Rights Council have given additional guidance. The UN Special Rapporteur on the Right to Housing, calling for a global ban on evictions, has stated that: "[t]here must be no evictions of anyone, anywhere, for any reason. Simply put: a global ban on evictions will save lives".<sup>39</sup> She has also described housing as "the front line defence against the coronavirus", and expressed concern about those living in emergency shelters, homelessness, and informal settlements, and those facing job loss and economic hardship.<sup>40</sup>

The UN Special Rapporteur on Adequate Housing has also indicated that "**security of the home**" must form part of adequate housing which would include "privacy

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<sup>34</sup> Art 2(1) of ICESCR uses "all appropriate means".

<sup>35</sup> GC 3. CESCR suggests that States have a "minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" and says "a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant."

<sup>36</sup> International Commission of Jurists, "Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India ", 2019, page 31, available at <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>

<sup>37</sup> A/HRC/31/54 (30 December 2015). The SR has recognized the link between homelessness and social exclusion. UNHABITAT underscores the importance of understanding homelessness as 'belonging nowhere' rather than simply having nowhere to sleep. UN HABITAT and OHCHR, The Right to Adequate Housing: Fact Sheet 21/ Rev. 1, available at <https://unhabitat.org/the-right-to-adequate-housing-fact-sheet-no-21rev-1/>. See also SR in her mission to Indonesia report. Also, A/69/274 (7 August 2014), A/70/270 (4 August 2015)

<sup>38</sup> ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1.

<sup>39</sup> <https://www.youtube.com/watch?v=EMvySuJ1t4k&feature=youtu.be&fbclid=IwAR18OEBjNHJSh5fSEaNZi4-3HSN5qbQbD3pnkHJTDxTi42XA5IkDanwzAJ8&app=desktop>

<sup>40</sup> "Housing, the front line defence against the COVID-19 outbreak," says UN expert, March 18, 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>

and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered."<sup>41</sup>

**Domestic Law:** Although the right to adequate housing is not expressly recognized in the Indian Constitution, the Indian Supreme Court has affirmed that the Constitution implicitly protects a "right to shelter", and has interpreted the right to shelter as a fundamental right of all persons included in right to life with dignity (Art. 21).<sup>42</sup> The Court defined the right shelter to include "adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities" within the state's resources.<sup>43</sup>

In *People's Union for Civil Liberties v. Union of India and Others*, the Court went a step further to require that state governments construct permanent shelters and provide information to the Court about homelessness, the availability and occupancy of night shelters with basic amenities, and the measures that they have taken to inform the public.<sup>44</sup> In *Shantistar Builders v. Narayan Khimalal Totame* the Court also found that people belonging to what it refers to as the "economically weaker section"<sup>45</sup> should be accorded priority in the construction of houses.<sup>46</sup>

In the context of security of tenure, in *Olga Tellis*, the Supreme Court held that eviction of dwellers from pavements by the State requires prior notice because evictions, infringe upon the right to life. The Court found that alternative accommodation should be made available to those who are homeless or at threat of eviction.<sup>47</sup> In *Ajay Maken*, the Delhi High Court also emphasised that: "[p]rioritising the housing needs of [marginalized communities] should be imperative for a state committed to social welfare and to its obligations flowing from the ICESCR and the Indian Constitution."<sup>48</sup>

Further there are some legal protections available to tenants under various state laws wherein evictions are strictly regulated, a minimum notice period for termination of lease agreement is required and landlords are prohibited from using force, such as locking the tenant out of the premises or removing their belongings from the property, or disconnecting essential services.<sup>49</sup>

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<sup>41</sup> Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, implementation of General Assembly Resolution 60/251 of 15 March 2006, entitled "Human Rights Council," UN Doc. A/HRC/4/18 (2007), p. 23.

<sup>42</sup> See Supreme Court of India, *Chameli Singh v. Union of India*, (1996)2SCC549, para. 4-8; Supreme Court of India, *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520, (at para 9; Supreme Court of India, *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors.* 1980 SCC (2) 275, para. 8; Supreme Court of India, *Olga Tellis v. Bombay Municipal Corporation*, (1985)3SCC545, para 46.

<sup>43</sup> *Chameli Singh v. Union of India*, (1996)2SCC549, para. 8 Supreme Court of India, *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997)11SCC121, para. 12.

<sup>44</sup> *PUCL v. UOI*, (2013) 14 SCC 368.

<sup>45</sup> 'Economically weaker sections' is defined by the Indian government from time to time on the basis of family income and other indicators of economic disadvantage.

<sup>46</sup> Supreme Court of India, *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520, para 21

<sup>47</sup> Supreme Court of India, *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*, 1986 AIR 180

<sup>48</sup> High Court of Delhi, *Ajay Maken v Union of India*, W.P.(C) 11616/2015; Also, see, Housing and Land Rights Network, "Adjudicating the Human Right to Adequate Housing: Analysis of Important Judgments from Indian High Courts," (2019), [https://www.hlrn.org.in/documents/Housing\\_Judgments\\_India.pdf](https://www.hlrn.org.in/documents/Housing_Judgments_India.pdf)

<sup>49</sup> See for example, Delhi Rent Act 1995, Sections 21 and 22; Punjab Rent Act 1995, Sections 19 and 20; Karnataka Rent Act 1999, Sections 27 and 49.

Despite these State laws and a strong Supreme Court jurisprudence, access to a remedy when there is a violation of the right to housing, or related violations such as domestic violence, is difficult even during the best of times.

In principle, both cis-gendered women and transgender persons with a government approved female identity document can access a range of civil remedies under the domestic violence law, the Protection of Women from Domestic Violence Act, 2005 (PWDVA).<sup>50</sup> Unfortunately, accessing these remedies has not been easy in practice, and the COVID19 context is likely to have made the obstacles to access to justice even more acute.

### ***What actions must the Government take to fulfill its obligation to guarantee the right to housing during COVID-19?***

In terms of international human rights law, the Government of India is obliged to *respect, protect* and *fulfill* the right to housing.<sup>51</sup> The Government of India has the further obligation to realize the right to housing, as with other human rights, “without discrimination of any kind.”<sup>52</sup>

The **obligation to respect** means that the Government in discharging public powers must refrain from itself interfering with the existing enjoyment of a right by rights-holders.<sup>53</sup> In relation to the right to housing, for instance, this includes obligations not to destroy existing housing or to obstruct efforts by individuals or communities to rebuild lost homes.<sup>54</sup> The **obligation to fulfill** the right to adequate housing “involves establishment by a State of institutional machinery essential for the realization of rights” and the direct provision of housing for those who cannot provide for their own housing needs.<sup>55</sup> This requires, for example, the establishment of a sufficient number of adequately resourced shelter homes for those who do not have access to housing and basic services including sanitation water and food. However, India has inadequate numbers of shelters for homeless people and stranded migrant workers. Those that they do have are crowded and often lack basic facilities.<sup>56</sup>

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<sup>50</sup> PWDVA is a female victim-centered federal civil law which provides a gamut of civil remedies to women victims of domestic violence. It has a wide ambit, covering a broad range of abuses or threats of abuse – physical, sexual, verbal, economic and emotional. PWDVA, Sections 2 and 3; Pursuant to the PWDVA, perpetrators of domestic violence may include any person the female victim is related to by “consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

<sup>51</sup> For a detailed explanation of these terms and their application in the context of the right to housing, see International Commission of Jurists, “Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India”, 2019, page 21, available at <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>

<sup>52</sup> ICESCR, article 2.

<sup>53</sup> International Commission of Jurists, “Practitioners Guide 8: Adjudicating Economic, Social and Cultural Rights at the National Level: A Practitioner’s Guide” (2014), <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf> at page 57.

<sup>54</sup> Ibid page 58.

<sup>55</sup> International Commission of Jurists, “Practitioners Guide 8: Adjudicating Economic, Social and Cultural Rights at the National Level: A Practitioner’s Guide” (2014), <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf> at page 61.

<sup>56</sup> “The Coronavirus Pandemic and State Response in India” Housing and Land Rights Network, page 2, available at [https://www.hlrn.org.in/documents/HLRN\\_COVID19\\_State\\_Response\\_India.pdf](https://www.hlrn.org.in/documents/HLRN_COVID19_State_Response_India.pdf)

The measures adopted by the Government of India in relation to COVID-19 seem not to have properly considered the right to adequate housing, and consequently did not fully meet the obligations to respect and fulfill it, particularly for those belonging to what the Supreme Court and the legislature has described as “economically weaker sections”. An initial lockdown was announced on March 24 with four hours’ notice. A second lockdown that took effect on March 29 was announced with one-day notice. A 29 April Order lifts the travel restrictions for those stranded.<sup>57</sup>

The Ministry of Home Affairs first Order, on March 24, prevented internal migrant workers from traveling back to their permanent homes.<sup>58</sup> The existing temporary housing in their places of their work, most often crowded and lacking in basic necessities, was rendered even more unsuitable in light of the COVID-19 pandemic. The effect was to on the one hand prevent them from returning to their permanent homes, and on the other to not give them adequate time to make plans to secure a more appropriate place to live where they were temporarily located (or providing such accommodation directly).

On March 29, five days after the first order, the second Order required internal migrant workers to stay in government shelter homes located closest to them, including by forcing the many who had started their journey back to their homes to stay in the closest government shelter; these government shelter homes often lacked basic necessities.<sup>59</sup>

The Government of India further has the **obligation to protect** the right to adequate housing. This obligation means that it is required to prevent third parties from interfering with individuals’ right to housing. Thus, the duty to protect often requires States to enact legislation and policy proactively and ensure its implementation to prevent violation of the right to housing.<sup>60</sup> At present, vulnerable persons are facing eviction as a result of: rental arrears; religious and ethnicity-based discrimination; and other prejudice based on fear of COVID-19 transmission. In addition, women are at increased risk of domestic violence in their homes.

Although under the Disaster Management Act, penalties of up to one year of imprisonment can be levied for failure to follow government orders including the order to ban evictions of “labourers and students”, the law is not enforceable as 90% of rent agreements are without a written contract.<sup>61</sup> Most state laws require

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<sup>57</sup> Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 29 April, 2020 available at

<https://www.mha.gov.in/sites/default/files/MHA%20Order%20Dt.%2029.4.2020%20on%20movement%20of%20migrant%20workers%2C%20pilgrims%2C%20tourists%2C%20students%20and%20other%20persons.PDF>

<sup>58</sup> See International Commission of Jurists, “COVID-19: Indian authorities must act immediately to protect internal migrant workers stranded under intolerable conditions” April 16 2020, available at <https://www.icj.org/india-the-authorities-must-act-immediately-to-protect-internal-migrant-workers-stranded-under-intolerable-conditions/>

<sup>59</sup> See Housing Land Rights Network, Need for Special Measures to Check Spread of COVID-19 among Homeless and Other Inadequately-housed Persons, 13 March 2020, available at

[https://www.hlrn.org.in/documents/Press\\_Release\\_COVID19.pdf](https://www.hlrn.org.in/documents/Press_Release_COVID19.pdf)

<sup>60</sup> International Commission of Jurists, “Practitioners Guide 8: Adjudicating Economic, Social and Cultural Rights at the National Level: A Practitioner’s Guide” (2014) pages 59-61 , <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf>

<sup>61</sup> Gautam Bhan, “View: Why the issue of migrant security should be a top priority in India's covid response” Economic Times, April 8 2020 available at <https://economictimes.indiatimes.com/news/politics-and-nation/view-why-the-issue-of->



rental agreements to be in writing.<sup>62</sup> Further, the ban on evictions is incomplete. For instance, the order does not apply to evictions of persons other than labourers and students and therefore excludes protection of many who have been subject to evictions including large numbers of people in the North East of India and healthcare workers, among others.

The central government has condemned the eviction of healthcare workers and some state governments such as Delhi<sup>63</sup> and Karnataka<sup>64</sup> have taken action to prevent such evictions. Nevertheless, there is no central government order banning evictions of health care workers or others facing discrimination and states have not uniformly acted to protect people from forced evictions. Moreover, even the Government's order penalizing forced evictions of workers and students and requiring landlords to forgo rent for a month has not been fully enforced.

In addition, the National Commission for Women (NCW) has reported that several states have seen an upsurge in domestic violence incidents despite the fact that the cases remain underreported. Although, states have in place measures such as hotlines, shelter homes, counselors and protection officers and have submitted status reports to high courts regarding the same, state authorities have not provided publicly available data on the effectiveness of these actions.<sup>65</sup>

Civil society organizations have expressed concerns that only the most serious cases are being heard by courts, as travel is restricted and police are overburdened with COVID-19 cases.<sup>66</sup> States are also unable to effectively implement laws such as Protection of Women from Domestic Violence Act in this context.<sup>67</sup> The Executive Director of UN Women has called the situation "a perfect storm for controlling, violent behaviour behind closed doors," and the UN Secretary General has tasked states with ensuring access to justice and remedies for domestic violence.<sup>68</sup>

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[migrant-security-should-be-a-top-priority-in-indias-covid-response/articleshow/75054748.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://www.barandbench.com/news/eviction-of-doctors-paramedics-over-covid-19-scare-karnataka-orders-strict-penal-action-against-errant-landlords-read-order)

<sup>62</sup> The Delhi Rent Act, Section 4(1) states "Notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (4 of 1882), no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing;" The Punjab Rent Act, Section 4(1); The Karnataka Rent Act, Section 4(1)

<sup>63</sup> "Eviction of doctors/paramedics over COVID-19 scare: Karnataka orders strict penal action against errant landlords", *Bar and Bench*, 26 March 2020, available at <https://www.barandbench.com/news/eviction-of-doctors-paramedics-over-covid-19-scare-karnataka-orders-strict-penal-action-against-errant-landlords-read-order>

<sup>64</sup> "Eviction of doctors/medical professionals over COVID-19 scare: Delhi Govt orders strict action against errant landlords" *Bar and Bench*, 25 March 2020, available at <https://www.barandbench.com/news/eviction-of-doctorsmedical-professionals-over-covid-19-scare-delhi-govt-orders-strict-action-against-errant-landlords-read-order>

<sup>65</sup> Dhamini Ratnam, "Domestic violence during Covid-19 lockdown emerges as serious concern" *Hindustan Times*, April 26 2020, available at <https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehqLOOPpe8J.html>

<sup>66</sup> Dhamini Ratnam, "Domestic violence during Covid-19 lockdown emerges as serious concern" *Hindustan Times*, April 26 2020, available at <https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehqLOOPpe8J.html>

<sup>67</sup> Dhamini Ratnam, "Domestic violence during Covid-19 lockdown emerges as serious concern" *Hindustan Times*, April 26 2020, available at <https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehqLOOPpe8J.html>

<sup>68</sup> "UN chief calls for domestic violence 'ceasefire' amid 'horrifying global surge'", UN News, 6 April 2020, available at <https://news.un.org/en/story/2020/04/1061052>

### ***What does the International Commission of Jurists recommend?***

The Indian Government has taken some positive measures to protect people belonging to economically weaker sections such as banning evictions of “labourers and students”, and collection of rent for a month from migrant workers and other labourers. In addition, the decision to allow migrant workers to return to their homes is to be welcomed. While these are important measures, they remain insufficient to guarantee the right to housing.

In view of the analysis above, the ICJ urges the authorities to:

#### ***1. Direct provision and facilitation of accessing to housing***

- Increase the number of shelters with appropriate facilities to accommodate homeless persons and informal sector workers who find themselves without accommodation during lockdown;
- Provide adequate emergency housing for homeless persons and daily wage workers who find themselves without accommodation, considering for instance use of vacant government buildings, community halls or other buildings with adequate space and services, including water, sanitation, and clean bedding; and
- Extend the rent moratorium at least until the lockdown ends and undertake other measures such as providing financial assistance to landlords and property owners to ensure that the moratorium is implemented.

#### ***2. Housing policy adjustments***

- Immediately enact a moratorium on **all** forced evictions until at very least the end of the lockdown and other measures taken pursuant to the Disaster Management Act to combat COVID-19. No forced evictions of people from their homes should occur under any circumstances, regardless of who is being evicted or why.

#### ***3. Legal enforcement of the right to housing***

- Ensure that those students and labourers who are unlawfully evicted in violation of lockdown orders have recourse to legal remedies including compensation, reparation, and where necessary, provision of alternative accommodation;
- Make public information about hotlines, shelter homes, and other mechanisms made available for domestic violence and respond promptly and effectively to every case of domestic violence; and
- Enforce applicable laws on domestic violence and non-discrimination in access to housing.





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Prof. Rodrigo Uprimny Yepes, Colombia



**International  
Commission  
of Jurists**

P.O. Box 91  
Rue des Bains 33  
CH 1211 Geneva 8  
Switzerland

**t** +41 22 979 38 00

**f** +41 22 979 38 01

[www.icj.org](http://www.icj.org)