

# LEGAL FRAME WORK RELATING TO REAL ESTATE SECTOR IN PAKISTAN: A CRITICAL ANALYSIS

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## Abstract

*The Following Article focuses on the problems faced by real estate (housing) developers in Pakistan in the legal framework in the real estate sector in Pakistan. The present legal framework instead of developing this sector is a major obstacle in the development of this sector. The present study will discuss the problems in the land acquisition process faced by these developers. This will also highlight the clash among various laws and the solutions, that how these laws can be harmonized and how the relevant laws should be amended for development of this sector.*

## Introduction:

Shelter is one of the basic necessities of life and occupies the biggest portion of any human settlement. Housing ownership promotes social cohesion and citizens' participation in other development activities.<sup>231</sup> Good housing and home ownership tend to produce better citizenship no single factor will do more towards maintaining a higher standard of civilization than it.<sup>232</sup>. Pakistan is signatory to habitat agenda and the Istanbul declaration on human settlements promised "The full and progressive realization of the right to adequate housing".<sup>233</sup> There is a shortfall of 4.30 million housing units in the country and there is an annual demand of 570, 000 housing units as against supply of 300 000 units. There a recurring annual shortfall of 270,000

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<sup>231</sup> Medium Term Development Framework 2005-2010.p-175.

<sup>232</sup> John M. Gries "Housing In The United States" The Journal of Land & Public Utility Economics, 1, 1925, P 23-35.

<sup>233</sup> Lou Haysom , "No place Like Home", Agenda, No. 30, Provinces in Focus, 1996, p.87-90.

housing units each year.<sup>234</sup> From this statement the potential of investment in the real estate sector of Pakistan is reflected. With immense potential excessive liquidity in the financial system of Pakistan after 9/11 incident proved fuel to the fire and the real estate market underwent an intense period of growth post September 11 when investors from the Gulf and Pakistanis in Europe pulled billions of dollars out of western markets. As a result of that development overseas remittances jumped from 1.5 billion dollars to 4 billion dollars in 2002.<sup>235</sup>

Investment by the private sector in the real estate sector also stimulated the real estate sector. The central bank's decision to reduce interest rate also took a role in promoting real estate investment because interest rate reduced to 3% from 22% resulting in greater use of credit and financing options<sup>236</sup>.

General feeling among the people to make their future secure has also driven them to invest in the real estate sector. Due to declining performance in other sectors such as manufacturing and processing the power brokers and capitalists focused on land transactions as an enterprise. Land is an immovable asset and the risk in the temporal loss of investment is limited due to this reason it became a roaring business<sup>237</sup>. The feeling among investor that in the age of hyperinflation the investment in housing and real estate was more beneficial was also another cause as it was considered in America that housing was a good investment and a best hedge against inflation and this thing increased the demand so many small investors entered the market<sup>238</sup>. The above factors contributed to diversion of funds to speculative trade in the real estate sector of Pakistan as it happened in case of America where along with other economic

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<sup>234</sup> National Housing Policy 2001, P1.

<sup>235</sup> [www.finance.gov.pk](http://www.finance.gov.pk) visited on 1<sup>st</sup> March, 2008.

<sup>236</sup> Daily, Dawn 29 December, 2007. Zahid Iqbal. "Article", "Pakistan: The Housing Market Thrives as More Pakistani Capital Returns Home".

<sup>237</sup> Daily, The News, 6th December 2007, Alludin Masood, "Article", "Housing Deficit".

<sup>238</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.

factors causing housing problems the chief factor was the belief that housing was a commodity which had speculative possibilities<sup>239</sup>. High population growth, inadequate attention toward construction of new houses, migration from rural to urban areas and break up of the traditional joint family system have largely contributed to the shortage of houses in the country.<sup>240</sup>In the above scenario there has been mushroom growth of cooperative housing societies as well as private housing companies. Most of these cooperative housing societies and private housing companies have registered themselves to registrar cooperative housing societies and with Securities and Exchange Commission of Pakistan even without having an ownership of one inch of land. These housing societies bypassed the laws, rules and regulators with impunity in inviting applications for allotment of land for housing in these societies and have deprived the genuine investors from their money. Interesting thing to note is that the above practice was done because either there was no law or law was there but there was no authority to check the mal practices. Another group of housing societies have done the same kind of practice but with different strategy by inviting applications of plots far in excess of land held by them and by issuing fake allotment letters.

### **Research Questions:**

The present study mainly focuses on three legal aspects of this topic

1. Whether the present process of land acquisition followed by the real estate (housing) developers need some suitable amendments or not?
2. Whether the present legal framework relating to registration of real estate housing developers is constitutional or not?

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<sup>239</sup> Bernard J Newman, "Factors in the Housing Problem", *Annals of the American Academy of Political and Social Science*, 190, 1937, P1-6.

<sup>240</sup> *ibid*

3. Whether housing should be declared a profit making venture (trading activity) or a non profit (non-trading activity)?

#### **Acquisition of Land against the Intention of Legislatures of Land Acquisition Act 1894:**

The first step to launch housing scheme is the acquisition of land, and the Land Acquisition Act encourages the housing companies for carrying out the housing activity as it is clear from the preamble of the Land Acquisition Act 1894. The *Land Acquisition Act* mentions the acquisition of land needed for public purposes and for companies.<sup>241</sup> There is no dichotomy between need and public purpose or a company. There is no justification for making such a dichotomy. By making so the purpose of the law will be stultified. The expression must be regarded as one whole and the declaration held to be with respect to both the elements of the expression. The Land Acquisition Act in Pakistan does not incorporate the land needed for housing within the definition of public purpose as is the case in India. The public purpose can be equated with any welfare contributing objective such as construction of road, railways, port, dam, school and the construction of houses for the poor. Such public welfare activity can be undertaken by the public sector as well as by the private sector. The inclusion of the words and for the companies connotes the intention of the law makers to encourage private sector to make investment in such schemes and projects which are beneficial to the public i.e. construction of houses for the poor. For the acquisition of land there has to be some public purpose and it must appear from preamble or may otherwise be clearly incorporated in the body of the Act itself, requirement of a public purpose in a statute cannot be merely added on by subsequent averments or affidavits by its authors it is something which must spring from or be inherent in the statute itself.<sup>242</sup> Land

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<sup>241</sup> C.M. Yasin, *Land Acquisition Act 1894*, preamble, 3rd Edition, Khyber law publications, 2005.

<sup>242</sup> A.B.Puranik, *Land Acquisition Act 1894*, 2<sup>nd</sup> Edition, C.T.J. publications, 1994, p-198.

acquisition is founded upon the doctrine of *salus populi suprema lex*.<sup>243</sup> The expression public purpose is elastic and takes its colour from the stature in which it occurs; the concept varies with the time and state of society and its need.<sup>244</sup> Due to this reason the Indian legislatures have made in the Land Acquisition Act. The concept of public interest has been further elaborated by the judgment of Lahore High Court, purpose furthering general interest of community as opposed to particular interest of individuals and to be construed according to the spirit of times in which legislation enacted. It is not possible to define what a public purpose is but there can be no doubt that when there is acute shortage of houses and accommodation the provision of housing sites for relieving congestion is a public purpose.<sup>245</sup> But it is not necessary to prove public purpose that each and every person of the society is benefited even when a section of the public only is benefited still the purpose does not cease to be a public purpose.<sup>246</sup> Due to this reason the court had to say that public purpose cannot be defined strictly.<sup>247</sup>

When proposed acquisition was intended to serve a public purpose in the generic sense the acquisition primarily for a company will not affect the validity of its acquisition.<sup>248</sup> Indian legislators by expressly recognizing the housing as a public purpose activity have made amendment in the Act by incorporating the provision of land for residential purpose to the poor or landless within the definition of public purpose<sup>249</sup>. In the case of Pakistan it is the need of the hour to amend the law in order to declare the acquisition of land for housing within the definition of public purpose and for the encouragement of the housing companies because the public purpose is an elastic concept which varies with the needs of the society, Indian

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<sup>243</sup>Islamia University Bahawalpur Vs. Khadam Hussain & Five Others. MLD 1990, 258

<sup>244</sup>Hari Hara Prasad vs. Jagenadham. AIR, 1955, Andhra 184.

<sup>245</sup>Sardar Mohammad Iqbal Khan Mokhal, Land acquisition Act 1894, 1st Edition, Law publishing company, 1979, p-54

<sup>246</sup>Veeraraghava Chariar and others Vs. The Secretary of State for India, AIR 1925 Mad 837.

<sup>247</sup> Mullah Ghulam Ali and 3 others Vs. Commissioner of Karachi and 3 others PLD 1983 Kar 87.

<sup>248</sup> S. Somawanti and others Vs. The Secretary of Punjab and others. AIR 1963, SC 151.

<sup>249</sup> Indian Land Acquisition Act 1894. Section 3 (f) (v), 2<sup>nd</sup> Edition, CTJ publications, 1994.

Legislatures have realized this thing ,now it is the time for our parliament to think over this aspect.

Term market value is not defined in Land Acquisition Act but 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>250</sup>

In order to obviate the difficulties faced in the acquisition of land for public purpose amendments have been carried out by each provincial government in the Act according to its requirements. Out of these amendments the most important amendment was carried out by the West Pakistan so as to amplify the core bone of contention, relating to determination of the market value by adding an explanation .i.e. for the purpose of determining the market value the court shall take into account transfers of lands similarly situated and in similar use .The potential value of 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 in similar use has before the date of notification under section 4 has been transferred with a view to be put to the purpose relied upon as effecting the value of the land to be acquired. The most contentious point which has been subject to litigation in the courts is regarding criteria used by the collector in determining compensation. The term market value is not defined and it has led to a lot of litigation. It was held by the court that the best method to work out the market value is the practical method of prudent man of section 3 of the Evidence Act to examine and analyze all the material and evidence available on the point and to determine the price which a willing purchaser would pay to a willing seller for purchase of acquired land in the prevailing normal circumstance without bargain being influence by an any extra news consideration.<sup>251</sup> Market value of land is to be taken as existing on the date of publication of the notification under section 4(1). Price in preceding year instead of 6/7 years

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<sup>250</sup> M.A. Malik ,The land Acquisition Act 1894,1<sup>st</sup> Edition,P.L.DPublishers,1995 , p-40.

<sup>251</sup> Sheikh ManzoorHussain Vs. The Multan Improvement Trust and others PLD 1972, Lah. 225 .

will be considered along with potential value of land.<sup>252</sup> In awarding compensation for land the court has to determine the market value of the land in question on the basis that all the interests in that land have combined. In other words valuation is to be put in that piece of land; irrespective of the different interests which several persons might possess in regard to any portion of the concerned piece of land.<sup>253</sup> Factors to be taken into account for assessment of compensation includes the nature of land its present use and capacity for a higher potential, its location and impact of such use on the land.<sup>254</sup> Compensation to be paid to land owners for their acquired land would be determined on the basis of one year average sale in the vicinity to the date of notification.<sup>255</sup>

Court is to consider evidence brought on record by the parties and the land acquisition collector while determining compensation of acquired land in addition to one year average price.<sup>256</sup> Under the land acquisition the market value which has to be determined for purpose of compensation include estimate of actual speculative advances in the values of lands in consequence of improvement, already made in the locality are in consequence of opportunity for any purpose. The market value in villages, takes into account the use already made up of similar lands in the locality. If the land has further potentialities, the market value includes the value of such further potentialities.<sup>257</sup> Mere past sales could not legitimately form basis for calculating compensation, landowner were bound to satisfactorily establish the potential value and use to which such land could be put in near future so that real value could be appropriately ascertained.<sup>258</sup> Due to these

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<sup>252</sup> Land Acquisition Collector Abbottabad and others Vs Muhammad Iqbal and Others SCMR1992, SC 1245.

<sup>253</sup> Shrimati Kusumguri Ray Munshi and others Vs. The Special Land Acquisition Officer. AIR 1963, Gujrat , 92.

<sup>254</sup> Adusumilli Gopal Kirishna vs. Deputy Collector Land Acquisition. AIR 1980 , SC , 187.

<sup>255</sup> Govt. of Pakistan through Secretary Ministry of Defense and others Vs. Sardar Muhammad Sons and others. PLD 1987, Peshawar, 77.

<sup>256</sup> Muhammad Saeed vs. Collector Land Acquisition and others. , SCMR2002, SC, 407.

<sup>257</sup> Yeshwantrao Govindrao Vs. The Collector of Nagpur. AIR 1961, Bom, 129.

<sup>258</sup> Water and Sanitation Authority Quetta through M .D and another Vs. Niaz Muhammad and 7 others. PLD 1992 Quetta 75.

problems the procedural and legal bottlenecks in the acquisition process shall be removed and land acquisition laws shall be suitably amended to make provision for unified, transparent and market value oriented systems and procedures which would also minimize litigation.<sup>259</sup> Along with this ambiguous criterion for determination of market value the position has become more complex because land revenue department officials are involved in underhand dealings for arranging conversion of agricultural land to housing or other uses. Due to this reason court had to say that entry in the revenue record as to the nature of the land was not conclusive.<sup>260</sup> Developers are required to submit layout plan for the whole land of the scheme including land yet to be acquired provided it is up to maximum limit of twenty percent. After grant of sanction from development authority when the developer proceed to purchase the twenty percent portion of land the owners of the land charge exceptionally high prices as the developer is bound to purchase that piece of land at any cost. Constitution of Pakistan guarantees that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.<sup>261</sup>

The owners of the land by exercising the right provided by the constitution make reference to the court if the amount of compensation is less.<sup>262</sup> But the aggrieved housing company or the cooperative society has no remedy if the amount of compensation is high because the reference by a beneficiary is not allowed.<sup>263</sup>

The apex court of Pakistan has declared that a reference under section 18 of the Land Acquisition Act 1894 before the court by a beneficiary is not competent.<sup>264</sup> A contrary view

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<sup>259</sup> National Housing policy 2001, p-15.

<sup>260</sup> Project Director vs. Murad Ali and Company, 1999 SCMR 125.

<sup>261</sup> Constitution of Islamic Republic of Pakistan 1973, Article 4 (2) (a), 4th Edition, Pakistan law times, 2002.

<sup>262</sup> The Land Acquisition Act 1894, Section 18, 1<sup>st</sup> Edition, P.L.D Publishers, 1995.

<sup>263</sup> Pakistan vs. Abdul Hayee Khan, PLD1995, SC 418.

<sup>264</sup> Defense Department of Pakistan versus Province of Punjab, 2006 SCMR 402.



taken by the apex court of India is very important. It declared that the definition of person interested given in section 18 of Land Acquisition Act 1894 is an inclusive one and must be liberally constructed so as to embrace all persons who may be directly or indirectly interested either in the title of the land or in the question of compensation. It is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the government after acquisition it stood transferred to the company under the agreement entered into between the company and the government. Then it cannot be said that the company had no claim or title to the land at all. Secondly under the agreement the company has to pay compensation, it was most certainly interested in seeing that a proper compensation was fixed so that the company had not to pay a very heavy amount of money.

How it can be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested. Company was thus held to be person interested within the meaning of sections 18 of the Act.<sup>265</sup> The position in Pakistan is that the acquisition of land for companies including housing companies has become an elusive exercise.

Universal declaration of Human rights declared Adequate Shelter for all and it was subsequently reaffirmation in 1996 at Habitat conference<sup>266</sup>. Shelter is one of the basic necessities of life and occupies the biggest portion of any human settlement<sup>267</sup>. There is a backlog of 270,000 housing units each year the demand in 2010 will be 8, 00,000 housing units per year.<sup>268</sup> Meeting the backlog in housing is beyond the financial resources of the government. This necessitates putting in place a framework to facilitate financing in the sector by the private sector and for the mobilization of non-government resources. An investment of rupees Rs.950 billion is envisaged

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<sup>265</sup> Indo Swiss Time Ltd. vs. Umro and others. AIR 1981, HAD 213.

<sup>266</sup> [www.unhabitat.org](http://www.unhabitat.org) visited on 15<sup>th</sup> August, 2008.

<sup>267</sup> Medium Term Development Framework 2005-10, p-175.

<sup>268</sup> National Housing Policy 2001, p-1.

in the Medium Term Development Framework for the development of housing including 920 billion investment by the private sector and rupees 30 billion in the public sector<sup>269</sup> Government alone cannot meet the housing shortfall so government will Act as a facilitator instead of a developer.<sup>270</sup>

The Land Acquisition Act does not provide for prior possession of land by private housing company as reflected by the preamble of the Act as declared by the court that the preamble of the statute has been set to be a good means of finding out its meaning as it is a key to the understanding of it and it usually states or profess to state the general object, any intention of the legislature in passing the enactment.<sup>271</sup>

However the development authorities in the provinces have been applying different rules for issue of no objection certificate to these housing companies. The condition of possession of at least 80% possession of land before grant of no objection certificate is mandatory. There is a dichotomy in the Land Acquisition Act and Punjab Private Site Regulations 2005. Under these rules the developers are bound to own 80% land and submit layout and location map of 100% scheme before grant of sanction for the scheme. As a result of this clash between these two enactments the developers are bound to purchase a major portion of land before sanction of the scheme and as a result of it the prices of land has increased many fold. Housing companies can afford to purchase a major portion of land before sanction of the scheme but cooperative societies cannot afford to purchase it due to its members of modest means. As layout plan of 100% land is submitted in advance for the grant of sanction and the remaining 20% land is acquired under Land Acquisition Act.<sup>272</sup> The acquisition of this 20% land becomes very difficult

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<sup>269</sup> Ibid , p183.

<sup>270</sup> Ibid , p-9.

<sup>271</sup> Mohammad Asim vs. Collector of Land Acquisition Act, PLD1964B.J.30

<sup>272</sup> Local Government Ordinance 2001, Section 3(2) (g), 1<sup>st</sup> Edition, Mansoor Book House, 2007.

because the owners of this 20% land take full undue advantage of the weakness of land owners and charge very high prices. Under the above scenario when the companies and cooperative societies are forced to acquire remaining 20% land on very high prices and they have no recourse to the court the private sector is being discouraged so the apex court of Pakistan by looking into the ground realities and bitter truths in housing sector must take a sympathetic view as Indian courts are providing relief to developers in India.

In the case of America when housing companies are faced with the problem of land acquisition these companies adopt any of these three ways these companies either refuse to pay high prices to land owners and seek land elsewhere or pay the price or request the government to take the land from unsympathetic owners.<sup>273</sup>

In India a very good approach is used to tackle the problem of acquisition of land all the land on the undeveloped growing city are notified at an early stage and acquired by public authority at the prevailing agricultural prices. This would prevent the undesirable speculation that would otherwise occur in situation of lands changing from agriculture to non-agriculture nature.<sup>274</sup> To make the land revenue record foolproof the whole record of land revenue must be computerized. As a short term measure to combat this issue of conversion of nature of land by land revenues department, before the issuance of notification under section 4 of the land acquisition Act, the record of the concerned area should be sealed to stop the Patwaris from making unauthorized changes in the record. The most suitable time to take this step is when the collector is of the view that the land be acquired by the acquiring agency after examination of feasibility.<sup>275</sup> Pages

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<sup>273</sup> Arthur C. Holden, "The Land Problems in relation to Housing", *Annals of American academy of political and social science*, 190, 1937, p-50-59.

<sup>274</sup> Rakesh Mohan, "Housing and Urban Development", *Economic and Political Weekly*, 27, 1992, p-1990-1996.

<sup>275</sup> C.M. Yasin, *Punjab Land Acquisition Rules 1983*. Section 5, 1<sup>st</sup> edition, Khyber law publications, 2005.

of mutation must be signed in order to stop the practice of replacing and adjusting the pages containing unauthorized entries in the record.

Description of property sufficient to identify the property is the only condition for the registration of the non-testamentary document relating to immovable property.<sup>276</sup> Similarly true copy of the map or plan and of the property if the land is situated in more than one district copies equal to that number of districts are provided for registration of a non-testamentary document pertaining to map or plan of any property.<sup>277</sup>

The above two sections of Registration Act need to be amended in such a way that revenue department is no more permitted to change in land use without reference to the authorities interested with the responsibility of town planning.

### **Lacuna in the Pre requisite conditions for the Registration of Developers of Housing Societies:**

The fundamental purpose of the government is to protect the health, safety, and general welfare of the public .Whenever there arises in the state a condition of a substantial menace to public health, safety or general welfare, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it.<sup>278</sup> Supreme Court of Pakistan in the case of Shehla Zia versus WAPDA held that it is the duty of the government to ensure that all Pakistanis are provided with all amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. It is well recognized that the owner of a house enjoys a sense of security from the fact that he has a permanent residence that he is proud of his

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<sup>276</sup> Registration Act 1908, Section 21(1), B to Z printers Lahore,2008

<sup>277</sup> Ibid ,Section 21(4) .

<sup>278</sup> Philip H.Hill, “Housing Legislative Proposals”, Law and Contemporary Problems, 12, 1947, p173-185.

status as a property holder, and he cherishes the independence and the privacy it gives to his personal life.<sup>279</sup>

Shelter is one of the basic necessities of life<sup>280</sup> but in this regard the situation in Pakistan is very poor and can be seen from the below figures.

**Demand and Supply NHA's estimate upon the basis of 1998 census.<sup>281</sup>**

Years	Population	Required Housing Units	Total house Unite Million	Backlog
1996	13.05	23.7	19.3	4.4
1999	13.39	24.3	19.6	4.7
2000	13.74	24.9	19.9	5
2001	14.10	25.6	20.2	5.4
2002	14.47	26.3	20.5	5.8
2003	14.85	27	20.8	6.2
2004	15.24	27.7	21.1	6.66
2005	15.63	28.4	21.4	7
2006	16.4	29.1	21.7	7.4
2007	16.46	29.9	22	7.9
2008	16.89	30.7	22.3	8.4

There are many factors due to which there is a huge gap in demand and supply side among these high population growth, inadequate attention toward construction of new houses, migration and breakup of the traditional joint family system are important<sup>282</sup>. Historically land was considered as a communal asset and was safeguarded and carefully distributed according to the needs of the people. Gradually this trend has changed in Pakistan due to dealing performance in other sectors such as manufacturing and processing the power brokers and capitalists focused on land transactions as an enterprise<sup>283</sup>

<sup>279</sup> Ira S. Robbins, "Methods of Holding Residential Property", 190, 1937, p109-119.

<sup>280</sup> Medium Term Development Framework 2005-10p-175.

<sup>281</sup> www.nha.gov.pk visited on 1<sup>st</sup> April 2008.

<sup>282</sup> Daily, The News, 6th December 2007, Alluding Masood, "Article" ", "Housing deficit".

<sup>283</sup> Daily, The News, 16th December 2007, Dr. Noman Ahmad, Article, "Nothing for the Masses".

Real estate sector was further accelerated after the incident of 9/11 when overseas remittance jumped from 1.5 billion to 4 billion in 2002<sup>284</sup>. The decision of lowering the interest rate from 22 % to 3 % was also a reason to increase the speculation in real estate sector<sup>285</sup>

Due to these factors housing societies have been formed at large scale and these housing societies have offered plots to the applicants for in excess of the land in their possession. The aim was to collect as much money as possible from the public. The practice was endemic and went unchecked on account of loopholes in the registration laws. Cooperative societies are registered under Cooperatives Societies Act 1925. It prescribe the condition that no society should be registered under the Act unless it consist of at least ten persons and if it has object to raise funds from its members the n then the persons who want to form cooperative society must reside in the same town or village, tribe, class, caste, or occupation and no society can use the word bank or can conduct banking unless it is registered under this Act and has a paid up capital of rupees 20,000 or more and societies with limited liability should use limited as a last word of their names.<sup>286</sup> Similarly Cooperative Societies Rues 1927 prescribe that every application for the registration of a society should contain, name, address, liability clause, area of operation, objects, par value of share, leverage scheme along with three copies of the bye laws. Furthermore if a member of the proposed society is a society an authorized member of the society must sign the application for the registration of the cooperative society.<sup>287</sup>

It is very very interesting to note that a cooperative housing society can be registered even without having an inch of land.

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<sup>284</sup> [www.finance.gov.pk](http://www.finance.gov.pk) visited on 1<sup>st</sup> March, 2008

<sup>285</sup> Daily Dawn 29 December, 2007. ZahidIqbal. "Article", "Pakistan: The Housing Market Thrives as More Pakistani Capital Returns Home".

<sup>286</sup> Cooperator Societies Act 1925, Section 7, 1<sup>st</sup> Edition, New Fine Printing Press, 2008.

<sup>287</sup> Cooperative Societies Rules 1927, Section 2, 1<sup>st</sup> Edition, New Fine Printing Press, 2008.

Similarly, private housing companies are registered under the companies' ordinance 1984. For registration of a housing company *Memorandums of Association* and *Articles of Association* are filed with the registrar along with the declaration by the proposed director in the Articles of Association that all the requirements of the Ordinance and rules have been complied with. If the registrar is satisfied that the company is being formed for a lawful profession, objects are not inappropriate, or deceptive or insufficiently expressed and all the requirements of the Ordinance and rules have been complied with in respect of registration of the company.<sup>288</sup> Similarly, Companies General Provisions and Forms Rules 1985 prescribe that three copies of Memorandum and Articles of Association duly subscribed and witnessed should be stamped as per Stamp Act along with the declaration made by an advocate of high court or supreme court or a member of institute of chartered accountant of Pakistan or a member of institute of cost management and accounts of Pakistan and proposed director in the articles. Out of these persons the registrar can demand from any person a clarification or document to satisfy him.<sup>289</sup>

From the above two sections of the companies laws it is very clear that there is no condition of land for the registration of a housing company. A housing company without having any piece of land can be incorporated under the prevailing legal frame work of registration of companies. In the past private housing companies and cooperative housing societies took advantage of these loopholes in the registration process of housing societies and they offered plots without having any piece of land. As most of the people in Pakistan are simple and uneducated only few have knowledge of law. When people demanded a proof of the genuineness from these housing societies they were shown registration certificate issued under the registration laws and the people became satisfied as they did not understand the difference between permission to

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<sup>288</sup> Companies Ordinance 1984, section 30, 3rd edition, Federal law house, 2007.

<sup>289</sup> Companies General Provisions and Forms Rules 1985, Section 2, 3<sup>rd</sup> Edition, Awaiz publications, 2003.

incorporate housing company and permission granted to start housing society. As a result of that a lot of people were deprived of their hard earned income. This practice is still going on because legal framework is still very poor.

These registration laws needed to be amended on urgent basis and no housing society should be registered without having possession of land. The next step is how these provisions of law should be amended because making possession of land as a pre-requisite for registration is of paramount importance due to two reasons. Firstly this new development will help to confine registration to the extent of genuine private housing companies and cooperative housing societies. Secondly the registration laws being very liberal it will close the door of registration of housing societies by spurious sponsor. If the condition of possession of land as a pre condition for registration is made a new issue raises what should be the percentage of land whether 80% as prescribe by the law<sup>290</sup> There is a need to struck a balance between these two extremes in such a way that fake and greedy developers are discouraged and genuine and fair developers are encouraged. The provision 80 % possession of land by housing societies before the registration is not in the best interest for a number of reasons.

Firstly housing has been accorded a top priority for its beneficial effects on economic growth and employment generation, housing activities boost the economic activity in 40 allied industries.<sup>291</sup> Affordable housing for low income groups contribute to poverty alleviation measure.<sup>292</sup>

Real estate and construction industry can be called the mother of all industries as it triggers activities in the supporting industries.<sup>293</sup> Due to investment in real estate state sector Gross

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<sup>290</sup> Punjab Private Site Regulation 2005, Section (3)(2) (g), 1st Edition, Mansoor Book House, 2007.

<sup>291</sup> National Housing Policy 2001, preface.

<sup>292</sup> Medium Term Development Framework 2005-10,p-177.

<sup>293</sup> Ibid ,p-17.



Domestic Product increased to 5 % in 2006.<sup>294</sup> Housing and construction sector have been notified by the government as a priority industry in “C” Category<sup>295</sup>. Thus this condition in the law is against the national policy as Medium Term Development Framework is prepared after consultation of the four provinces. The success to any policy lies in the unidirectional proceeding for the achievement of a settled goal. So the above condition is a deviation from the mainstream policy.

Secondly, the private sector is assigned the main role in the development of housing sector for public welfare. Pakistan is also a party to Habitat agenda in which private sector is identified as backbone of “Shelter for All” policy<sup>296</sup>. The inclusion of the words and for the companies in the preamble of the Land Acquisition Act connotes the intention of law makes to encourage the private sector to make investment in the projects and schemes which are beneficial to the public i.e. construction of roads, schools , health facilities and housing.

**Total amount allocated for housing and physical planning in the public sectors development program (PSDP) is as under<sup>297</sup>**

<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>	<b>44.1</b>

<sup>294</sup> [www.finance.gov.pk](http://www.finance.gov.pk) visited on 1<sup>st</sup> March 2008.

<sup>295</sup> Ibid ,p-2.

<sup>296</sup> [www.un.org](http://www.un.org) visited on 16<sup>th</sup> August 2008.

<sup>297</sup> [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk) visited on 17<sup>th</sup> August 2008.

If the entire budget of the current annual public sector development by leaving no money for other Public Sector Development Product projects is used for housing even then housing back lock can not be achieved. This necessitates putting in place a framework to facilitate financing in the private sector and mobilize non-government resources.<sup>298</sup> When the acquisition of land is for a public purpose the consideration that the state has undertaken the task at the instance of a private entrepreneur or agency or a private institution is not germane. If the acquisition of land could materially help the national economy or the promotion of public health, or the furtherance of general welfare of the community or something of the like the acquisition will be deemed to be for a public purpose.<sup>299</sup> Land required by the company for public purpose is served when land is acquired by the company of building or work which would serve public purpose.<sup>300</sup> Acquisition of land by the government on the expense of the society for construction of residential accommodation for defense and civilian personal is for public purpose.<sup>301</sup>

Where the notification not only state that the land is to be acquired for a company but the purpose is also expressly mentioned the notification cannot be said to be contrary to the provisions of section 4 of the land acquisition Act.<sup>302</sup> Where there is a public purpose the powers of the government to acquire land are not excluded because acquisition is for the benefit of the company.<sup>303</sup> It is the opinion of the provisional government that land is acquired for the public purpose by the company.<sup>304</sup>

Allah Abad High Court went on to this extent that it declared that if land is required by the company for the construction of houses produces in part VII of the Act need not to be

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<sup>298</sup> National Housing Policy 2001, p-17.

<sup>299</sup> Ram Narain Singh and others Vs. The State Behar and others. AIR 1978 Pat 136.

<sup>300</sup> State of West Bangal and another Vs. SurendraNathBhattacharya and another. AIR 1980 SC 1316.

<sup>301</sup> Dr. Muhammad NaseemJavidVs. Cantonment Housing Society Limited through the Secretary Foretress Stadium, Lahore Cantt. and 2 others. PLD1983LAH 552.

<sup>302</sup> R.L. Aurora Ram Ditta Mal vs. State of Utter Pradesh and others. AIR 1958 All 126.

<sup>303</sup> A. NatesAsari vs. State of Madras and another AIR 1954 MOD 481.

<sup>304</sup> R.A Aurora vs. State of Utter Pradesh and others AIR 1958 All 872.

followed.<sup>305</sup> The condition of 80% possession of land and submission of site development plan for the entire housing scheme makes the society captive of 20 % land which is yet to be acquired under Land Acquisition Act. The price of this 20% land is dictated by the owners in collusion with the officials of revenue department. The condition of 80%possession of land is against the intention of the legislatures of Land Acquisition Act 1894 which aims at encouragement of companies and cooperative societies in the economic activities for public welfare such as housing. The condition of prescribing 80 % ownership of land is also in utter disregard of ground realities in Pakistan. The members of the cooperative society are generally poor people and lower grade officials and due to low income they cannot afford to purchase land for their houses in defense housing authority or in a private housing companies the only way left for them is to have a house through cooperative housing society. The condition of 80% which is very high will close the last door open for the poor because they can not afford to accumulate so much funds from their own resources. It is inequitable as it will only encourage members with adequate financial means to form cooperative societies and discourage under privileged classes. Lastly it is also against the spirit of the Medium Term Development Framework 2005-10 passed by the planning commission in which all for provinces are parties and which is prepared after a detailed consultation by the Federal Government. So this condition is a divergence from the national policy.

A separate law for registration of private housing companies should be enacted for each province in which each province can prescribe a pre-condition of land for registration of housing companies by keeping in view its local conditions and development priority as each province as its own development propriety due to its specific geographic, economic and social differences with respect to other provinces.

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<sup>305</sup>BhagwatDeyal and another Vs. Union of India and others AIR 1959 Pun 544.

Revenue department is empowered to permit change in land use from agriculture to industrial, commercial or housing purpose without intervention of development authorities<sup>306</sup>. As a result of that when information leaks out that housing society is being launched in the particular area the inhabitant of the adjoining lands do the above practice with the help of Patwaris. All land record must be computerized because poor land record system is the major cause of litigation in our country.<sup>307</sup> As a short term measure when notification under section 4 of the Land Acquisition Act is issued on the same time the land record of that particular area should be sealed to stop the revenue department from doing this practice

### **Conclusions**

From the above said discussion it is very much clear that the present process for the acquisition of land needs to be changed and the role of the government should be like a facilitator in the land acquisition process. Furthermore, each provincial government should legislate a separate law because housing is purely a provisional subject, in which each government can impose a pre-condition to start a housing scheme according to its own financial, geographical, political and cultural environment. The present legal framework for the registration of housing developers is unconstitutional and each provincial government should legislate its own legal framework relating to registration of real estate (housing) developers keeping in view its own peculiar circumstances.

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<sup>306</sup> Registration Act 1908, Section 21(1), B to Z Publishers, Lahore, Edition 2008.

<sup>307</sup> KASB Securities Limited, December 2005, "Research Paper on Real Estate Investment Trust".