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The Constitutional Legality of Real Estate Disputes in India and Australia: A Judicial Analysis

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ABSTRACT

Real estate disputes constitute one of the most significant areas of civil litigation in both India and Australia, yet the constitutional and regulatory frameworks governing such disputes reflect markedly different approaches to property rights, market regulation, and consumer protection. This paper undertakes a comparative constitutional analysis of real estate dispute resolution in India and Australia, examining recent legislative developments, contemporary judicial approaches, and institutional mechanisms for dispute adjudication. In India, the implementation of the Real Estate (Regulation and Development) Act, 2016 established a centralised regulatory framework with mandatory project registration, escrow requirements, and a three-tier dispute resolution mechanism, with over 148,576 complaints reported nationwide as of March 2024. The constitutional status of property rights in India, transformed from a fundamental right under Article 19(1)(f) to a constitutional right under Article 300A by the Forty-fourth Amendment, continues to shape judicial interpretation. In Australia, Section 51(xxix) of the Commonwealth Constitution provides a structural guarantee of acquisition on just terms, while property law remains substantially a State subject administered through Torrens title systems and State tribunals. The paper finds that India's centralised regulatory model prioritises consumer protection and disclosure obligations, while Australia's decentralised tribunal framework emphasises procedural accessibility and specialist adjudication. The study concludes with recommendations for cross-jurisdictional learning.

Keywords: Property Rights, RERA, Constitutional Law, Comparative Analysis, India, Australia.

I. INTRODUCTION

Real estate disputes in India and Australia occupy a critical intersection of constitutional law, consumer protection, and economic policy. As of March 2024, India's Real Estate Regulatory Authorities had registered over 114,735 projects and received 148,576 complaints from

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homebuyers, of which 60,155 remained pending.¹ These disputes engage fundamental questions about property rights, regulatory architecture, and institutional capacity to adjudicate complex, high-value disputes involving sophisticated developers and individual purchasers.

The constitutional frameworks within which these disputes arise differ substantially. India's property rights framework reflects the transformation of property from a fundamental right to a constitutional right through the Forty-fourth Amendment of 1978, while Australia's Section 51(xxxi) provides a structural federal guarantee of acquisition on just terms that constrains Commonwealth legislative power. The enactment of the Real Estate (Regulation and Development) Act in 2016 represents India's most significant statutory intervention in real estate regulation, establishing for the first time a nationally uniform framework requiring developers to deposit seventy per cent of buyer payments into escrow accounts for project-specific use.²

Recent Supreme Court decisions have reinforced the consumer-protective mandate of the Act. In *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021), the Court held that homebuyers retain statutory rights to refund with interest even where projects approach completion.³ Despite these developments, implementation challenges persist: Authority backlogs average several months per complaint, Real Estate Appellate Tribunals remain unconstituted in several States, and enforcement mechanisms remain under-resourced.

Australia's real estate dispute resolution framework operates through State and Territory legislation, supported by specialised tribunals such as the NSW Civil and Administrative Tribunal and the Victorian Civil and Administrative Tribunal, and by consumer protection provisions under the Australian Consumer Law. Recent legislative reforms, including sunset-clause protections enacted in New South Wales and Victoria between 2019 and 2022 following developer misconduct, and the Design and Building Practitioners Act 2020 enacted in response to structural failures in the Opal Tower and Mascot Towers, reflect evolving regulatory responses to high-density residential construction risks.

This paper undertakes a comparative constitutional analysis across five dimensions: the constitutional frameworks for property rights; contemporary statutory dispute-resolution mechanisms; recent judicial approaches in the Supreme Court of India and the High Court of Australia; current policy initiatives, including digital land records, affordable-housing

¹MINISTRY OF HOUSING & URBAN AFFAIRS, ANNUAL REPORT 2023-24 (Gov't of India 2024).

²The Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016 (India) [hereinafter RERA]; *id.* § 4(2)(1)(D) (escrow requirement).

³*Ireo Grace Realtech (P) Ltd. v. Abhishek Khanna*, (2021) 3 SCC 241.

programmes, and building-quality regulation; and recommendations for cross-jurisdictional learning.

II. CONSTITUTIONAL FRAMEWORK AND RECENT DEVELOPMENTS IN INDIA

The Constitution (Forty-fourth Amendment) Act, 1978 removed the right to property from the catalogue of fundamental rights protected under Part III of the Constitution, recasting Article 300A to provide that no person shall be deprived of property save by authority of law.⁴ This transformation diminished property rights from justiciable fundamental rights subject to proportionality review under Article 19(1)(f) to constitutional rights enforceable only through the limited remedy of invalidity for legislative ultra vires.

The Supreme Court has, however, developed compensatory doctrines that partially restore substantive protection. In *K.T. Plantation Pvt. Ltd. v. State of Karnataka* (2011), the Court held that Article 300A, read with rule-of-law principles and India's international obligations, implies a constitutional requirement of fair compensation for compulsory acquisition, even though no such requirement appears in the constitutional text.⁵ Simultaneously, the Court has developed a jurisprudence recognising the right to shelter and adequate housing as components of the fundamental right to life under Article 21.

In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Court held that the right to livelihood, and therefore the right to shelter as a precondition for livelihood, falls within Article 21's guarantee.⁶ This reasoning was extended in *Shantistar Builders v. Narayan Khimalal Totame* (1990)⁷ and *Chameli Singh v. State of U.P.* (1996)⁸ to recognise a constitutional right to reasonable accommodation beyond bare survival. These doctrines provide the normative foundation for the consumer-protective framework of the Act.

A. RERA Implementation, Challenges, and Jurisprudence

As of March 2024, all States and Union Territories had established Real Estate Regulatory Authorities that had registered 114,735 projects and 84,234 real estate agents and received 148,576 complaints. Implementation remained uneven: only 88,421 complaints had been disposed of, leaving 60,155 pending. Real Estate Appellate Tribunals remained unconstituted

⁴INDIA CONST. art. 300A, amended by The Constitution (Forty-fourth Amendment) Act, 1978, § 34 (India).

⁵*K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

⁶*Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545.

⁷*Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520.

⁸*Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

in West Bengal, Jharkhand, Odisha, and several north-eastern States, and enforcement of the penalty provisions under Section 63 of the Act has been inconsistent across jurisdictions.⁹

The constitutional validity of the Act, including its retroactive operation, was upheld by the Supreme Court in *Newtech Promoters & Developers (P) Ltd. v. State of U.P.* (2021), which affirmed the Authorities' power to order refunds and recoveries, the legality of single-member adjudication, and the pre-deposit condition for appeals.¹⁰ The primacy of the central Act over inconsistent State legislation was established in *Forum for People's Collective Efforts v. State of West Bengal* (2021), which struck down the West Bengal Housing Industry Regulation Act, 2017 as repugnant to the central Act under Article 254 of the Constitution.¹¹ In *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021), the Court held that homebuyers have a statutory right to seek refund with interest, or compensation for delay, under Section 18 of the Act, even where the project approaches completion and the developer offers possession.¹²

The integration of the Act with other statutory regimes has been addressed through principles of concurrent jurisdiction. In *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* (2019), the Court upheld the constitutional validity of amendments to the Insolvency and Bankruptcy Code recognising homebuyers as financial creditors, enabling allottees to initiate insolvency proceedings against defaulting developers.¹³ In *Imperia Structures Ltd. v. Anil Patni* (2020), the Court held that remedies under the Act, the Consumer Protection Act, and the Insolvency and Bankruptcy Code are concurrent and non-exclusive, permitting homebuyers to elect forums sequentially or concurrently based on the relief sought.¹⁴

B. Contemporary Policy Initiatives

India has undertaken significant digitisation of land records through the Digital India Land Records Modernisation Programme. As of 2024, land records had been computerised in 98.3 per cent of villages nationwide, and integration of registration and mutation processes had been achieved in 21 States.¹⁵ This digitisation addresses a longstanding source of title disputes and transaction costs, though the system remains registration-based rather than title-guaranteed, requiring purchasers to verify title through document chains extending over decades.

⁹RERA, *supra* note 2, § 63 (penalty provisions).

¹⁰*Newtech Promoters & Developers (P) Ltd. v. State of U.P.*, 2021 INSC 716.

¹¹*Forum for People's Collective Efforts v. State of W.B.*, (2021) 8 SCC 599.

¹²*Ireo Grace Realtech*, *supra* note 3 (refund with interest under RERA § 18).

¹³*Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

¹⁴*Imperia Structures Ltd. v. Anil Patni*, (2020) 10 SCC 783.

¹⁵DEP'T OF LAND RES., DIGITAL INDIA LAND RECORDS MODERNISATION PROGRAMME: PROGRESS REPORT 2023-24 (Gov't of India 2024).

The Pradhan Mantri Awas Yojana (Urban), launched in 2015 and extended through 2024, had sanctioned 122.69 lakh houses and completed 115.33 lakh houses as of March 2024. The Union Budget 2024-25 allocated Rs. 48,000 crore to the scheme and extended the Credit-Linked Subsidy Scheme for affordable housing.¹⁶ The Model Tenancy Act, 2021, promulgated by the Ministry of Housing and Urban Affairs, provides a framework for tenancy agreements, rent regulation, and dispute resolution between landlords and tenants.¹⁷

III. CONSTITUTIONAL FRAMEWORK AND RECENT DEVELOPMENTS IN AUSTRALIA

Section 51(xxxi) of the Commonwealth Constitution confers power on the Commonwealth Parliament to make laws with respect to the acquisition of property on just terms.¹⁸ The High Court has interpreted this provision as both a grant of legislative power and a constitutional guarantee requiring just compensation for acquisition: in *Bank of New South Wales v. Commonwealth* (1948), the Bank Nationalisation Case, the Court held that legislation effecting a compulsory acquisition otherwise than on just terms was invalid.¹⁹

The scope of acquisition under Section 51(xxxi) has been refined through extensive jurisprudence. In *Newcrest Mining (WA) Ltd. v. Commonwealth* (1997), the Court held that extending a national park over mining leases constituted an acquisition requiring compensation.²⁰ In *Georgiadis v. Australian and Overseas Telecommunications Corporation* (1994), the Court held that Section 51(xxxi) applies to the acquisition of choses in action, including contractual rights, a holding with implications for real estate contracts where Commonwealth legislation extinguishes or modifies contractual entitlements.²¹

The limits of the guarantee are illustrated by *ICM Agriculture Pty Ltd. v. Commonwealth* (2009), where the High Court held that the replacement of statutory water-bore licences with reduced aquifer access entitlements did not amount to an acquisition of property attracting Section 51(xxxi), and that the guarantee did not constrain the funding arrangements made between the Commonwealth and the State under Section 96.²²

A. State Regulatory Frameworks and the Torrens System

¹⁶Ministry of Housing & Urban Affairs, *supra* note 1 (Pradhan Mantri Awas Yojana (Urban) sanctions and Union Budget 2024-25 allocation).

¹⁷The Model Tenancy Act, 2021, Ministry of Housing & Urban Affairs (India).

¹⁸AUSTL. CONST. s 51(xxxi); *see* Commonwealth of Australia Constitution Act 1900 (Imp), 63 & 64 Vict, c 12, s 9.

¹⁹*Bank of New South Wales v. Commonwealth* (1948) 76 CLR 1 (Austl.) (the Bank Nationalisation Case).

²⁰*Newcrest Mining (WA) Ltd. v. Commonwealth* (1997) 190 CLR 513 (Austl.).

²¹*Georgiadis v. Australian & Overseas Telecomms. Corp.* (1994) 179 CLR 297 (Austl.).

²²*ICM Agriculture Pty Ltd. v. Commonwealth* (2009) 240 CLR 140 (Austl.).

Property law in Australia remains substantially a State subject, with each jurisdiction maintaining distinct property legislation. The Torrens title system, adopted across all States and Territories, provides for indefeasibility of registered title subject to limited exceptions for fraud, prior registered interests, and statutory reservations.²³ This contrasts with India's registration system under the Transfer of Property Act and the Registration Act, which registers instruments but does not guarantee title.²⁴

The Torrens system reduces title-related disputes and transaction costs by conferring unimpeachable title upon registration, though recent concerns about electronic-conveyancing fraud have prompted enhanced identity-verification requirements across Australian jurisdictions. The Building and Construction Industry Security of Payment Acts, enacted across all States and Territories between 1999 and 2017, establish statutory adjudication for payment disputes in construction contracts.²⁵

The High Court in *Probuild Constructions (Aust) Pty Ltd. v. Shade Systems Pty Ltd.* (2018) confirmed that security-of-payment adjudication provides an interim determination of payment obligations without finally resolving the parties' legal rights, preserving access to courts and arbitration for final determination.²⁶

B. Recent Legislative Reforms

The structural failure of the Opal Tower in Sydney in 2018 and the settlement issues at Mascot Towers in 2019 exposed systemic building-quality defects in high-density residential construction. In response, New South Wales enacted the Design and Building Practitioners Act 2020, establishing a statutory duty of care owed by design and building practitioners to subsequent owners, a registration scheme for practitioners, and oversight by a Building Commissioner.²⁷

The combustible-cladding crisis, triggered by the Lacrosse Tower fire in Melbourne in 2014 and amplified by the Grenfell Tower disaster in London in 2017, prompted Victoria to enact the Building Legislation Amendment (Cladding Rectification) Act 2021. The Act establishes a

²³Real Property Act 1900 (NSW) (Austl.).

²⁴The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India); The Registration Act, 1908, No. 16, Acts of Parliament, 1908 (India).

²⁵Building and Construction Industry Security of Payment Act 1999 (NSW) (Austl.) (and cognate State and Territory Acts enacted 1999-2017).

²⁶*Probuild Constructions (Aust) Pty Ltd. v. Shade Systems Pty Ltd.* (2018) 264 CLR 1 (Austl.).

²⁷Design and Building Practitioners Act 2020 (NSW) (Austl.).

framework for the identification and rectification of combustible cladding on high-risk buildings, including funding mechanisms and enforcement powers.²⁸

Sunset-clause reforms enacted in New South Wales in 2022 and in Victoria in 2019 address developer abuse of contractual provisions permitting rescission if development approval or practical completion is not achieved by a specified date. Following widespread instances of developers rescinding contracts during price rises to resell at higher prices, both States now require Supreme Court approval for developer-initiated rescission under sunset clauses, unless the homebuyer consents.²⁹

IV. STATUTORY DISPUTE RESOLUTION AND INSTITUTIONAL FRAMEWORKS

The Act establishes a three-tier dispute-resolution framework comprising complaints before State Real Estate Regulatory Authorities, appeals to Real Estate Appellate Tribunals, and further appeals to High Courts. As of March 2024, disposal rates varied significantly across States: Maharashtra documented 38,547 complaints filed and 29,221 disposed; Uttar Pradesh documented 24,139 filed and 15,882 disposed; and Karnataka documented 18,762 filed and 12,334 disposed.³⁰

Concurrent jurisdiction under the Consumer Protection Act, 2019 permits homebuyers to file complaints before Consumer Disputes Redressal Commissions for deficiency of service by developers.³¹ In *DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda* (2019), the Supreme Court held that, where the parties have agreed a contractual rate of compensation for delayed possession, consumer fora may not award compensation under multiple heads exceeding that agreed rate absent exceptional and strong reasons.³² The Insolvency and Bankruptcy Code, 2016, as amended in 2018 and 2020, recognises homebuyers as financial creditors with standing to initiate corporate insolvency resolution proceedings against defaulting developers.³³

The NSW Civil and Administrative Tribunal and the Victorian Civil and Administrative Tribunal exercise original jurisdiction over residential-tenancy disputes, home-building disputes, strata-scheme disputes, and consumer claims related to real estate transactions.³⁴

²⁸Building Legislation Amendment (Cladding Rectification) Act 2021 (Vic) (Austl.).

²⁹Sale of Land Amendment Act 2019 (Vic) (Austl.); Conveyancing (Sale of Land) Regulation 2022 (NSW) cll 10A-10D (Austl.).

³⁰Ministry of Housing & Urban Affairs, *supra* note 1 (State-wise filing and disposal figures).

³¹The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

³²*DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda*, (2020) 4 SCC 522.

³³The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

³⁴NSW Civil and Administrative Tribunal Act 2013 (NSW) s 36 (Austl.); Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 40 (Austl.).

These tribunals provide accessible, low-cost dispute resolution with specialist members possessing technical expertise in construction, property valuation, and building regulation.

The Australian Consumer Law, codified in Schedule 2 of the Competition and Consumer Act 2010, prohibits misleading or deceptive conduct in trade or commerce; Section 18 has been widely applied to real estate transactions, particularly to off-the-plan sales.³⁵ In *Brookfield Multiplex Ltd. v. Owners Corporation Strata Plan 61288* (2014), the High Court held that a builder owes no common-law duty of care to an owners corporation or subsequent owners to avoid pure economic loss from latent defects, leaving such recovery to the statutory warranty regimes under home-building legislation.³⁶

V. CONTEMPORARY JUDICIAL APPROACHES

The Supreme Court of India has adopted a purposive, consumer-protective approach to real estate disputes. In *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021), the Court held that the Act must be interpreted to protect homebuyers against structural information asymmetries and bargaining-power imbalances, rejecting formalistic interpretations that would limit statutory remedies.³⁷

The Court's approach to developer liability reflects constitutional values of fairness and accountability. In *Supertech Ltd. v. Emerald Court Owner Resident Welfare Association* (2021), the Court ordered demolition of twin forty-storey residential towers constructed in violation of building regulations, prioritising regulatory compliance and resident safety over developer investment.³⁸

The High Court of Australia's approach to real estate disputes emphasises constitutional structure and freedom of contract. As *ICM Agriculture Pty Ltd. v. Commonwealth* (2009) illustrates, a statutory entitlement that is inherently susceptible to regulatory variation may be reduced without attracting the just-terms guarantee of Section 51(xxxi).³⁹

VI. COMPARATIVE ANALYSIS AND INSTITUTIONAL DESIGN

The most fundamental structural difference between Indian and Australian real estate regulation is the degree of centralisation. The Act establishes a nationally uniform framework with mandatory provisions from which States cannot derogate, as confirmed in *Forum for People's*

³⁵Competition and Consumer Act 2010 (Cth) sch 2 (Austl.) (Australian Consumer Law), s 18.

³⁶*Brookfield Multiplex Ltd. v. Owners Corp. Strata Plan 61288* (2014) 254 CLR 185 (Austl.).

³⁷*Ireo Grace Realtech*, *supra* note 3.

³⁸*Supertech Ltd. v. Emerald Court Owner Resident Welfare Ass'n*, 2021 SCC OnLine SC 648.

³⁹*ICM Agriculture*, *supra* note 22.

Collective Efforts v. State of West Bengal (2021) and *Newtech Promoters & Developers (P) Ltd. v. State of U.P.* (2021).⁴⁰ This centralisation aims to overcome fragmentation and ensure minimum standards nationwide, though implementation capacity varies significantly across States.

Australia's framework remains decentralised, with property law as a State subject and the Commonwealth's role limited to constitutional constraints under Section 51(xxxi) and consumer protection under the corporations power. This produces jurisdictional variation: New South Wales and Victoria have enacted comprehensive building-quality reforms following structural failures, while Queensland has pursued different approaches emphasising project bank accounts and subcontractor protection.⁴¹

A. Consumer Protection Mechanisms

The mandatory escrow requirement of seventy per cent of buyer payments deposited in project-specific accounts represents a structural consumer protection absent from Australian regulation. This mechanism addresses the risk that developers divert buyer funds to other projects or purposes, leaving incomplete projects in the event of insolvency. Australia has not adopted comparable escrow requirements despite recurring developer insolvencies affecting off-the-plan purchasers.

Australia's sunset-clause reforms, by contrast, provide contractual protections that the Indian framework does not explicitly address. New South Wales and Victoria now prohibit developer rescission based on sunset clauses without Supreme Court approval or buyer consent, and both jurisdictions have strengthened building-quality regulation following high-profile structural failures.

B. Institutional Architecture

Australia's tribunal-based dispute resolution model, operating through the NSW Civil and Administrative Tribunal and the Victorian Civil and Administrative Tribunal, provides procedural accessibility, specialist adjudication, and relatively low costs. India's Regulatory Authorities employ similar specialist adjudication in principle, but implementation challenges, including staffing shortfalls, procedural delays, and uneven funding, limit effectiveness. The 60,155 pending complaints and delayed Appellate Tribunal constitutions across multiple States indicate systemic capacity constraints.

⁴⁰*Forum for People's Collective Efforts*, *supra* note 11; *Newtech Promoters*, *supra* note 10.

⁴¹QUEENSLAND BUILDING & CONSTRUCTION COMM'N, BUILDING INDUSTRY REVIEW: FINAL REPORT (Queensland Gov't 2023).

India's concurrent jurisdiction model permits homebuyers to elect among the Act, the Consumer Protection Act, and the Insolvency and Bankruptcy Code remedies, as clarified in *Imperia Structures Ltd. v. Anil Patni* (2020).⁴² This flexibility addresses the reality that different forums offer varying levels of relief.

VII. CONTEMPORARY POLICY CONTEXT

India's Pradhan Mantri Awas Yojana and Credit-Linked Subsidy Scheme reflect explicit constitutional and policy commitments to housing access as a component of the right to life under Article 21. These programmes aim to address the estimated housing shortage of over two crore units in urban areas. Australia's housing policy operates through different mechanisms, including negative-gearing tax treatment, first-home-buyer grants, and State-based social-housing programmes. The Australian Bureau of Statistics reports a home ownership rate of approximately sixty-seven per cent, though affordability challenges in major cities have intensified.⁴³

India's Digital India Land Records Modernisation Programme and the Smart Cities Mission's integration of GIS-based property mapping represent significant improvements in transparency. Australia's electronic-conveyancing platforms enable digital settlement of property transactions with real-time integration of land registries and financial institutions.

VIII. EVIDENCE-BASED RECOMMENDATIONS

First, India should consider transitioning toward a Torrens-style title-guarantee system, replacing the current registration-based regime that requires multi-decade title verification. Such a transition would require the establishment of State-level assurance funds to compensate parties suffering loss from registration errors or fraud, enhanced surveying accuracy and cadastral mapping integrated with digital land records, legislative amendments to confer indefeasibility on registered title subject to limited exceptions, and phased implementation beginning with major urban areas.

Second, India must address institutional capacity constraints in implementation. With over 60,000 pending complaints and Appellate Tribunals unconstituted in multiple States, the dispute-resolution framework operates far below intended capacity. Required interventions include adequate staffing and funding for the Regulatory Authorities, mandatory constitution of

⁴²*Imperia Structures*, *supra* note 14.

⁴³AUSTL. BUREAU OF STATISTICS, HOUSING: CENSUS 2021 DATA SUMMARY (Commonwealth of Australia 2022).

Appellate Tribunals in all States within a defined period, and case-management systems modelled on the NSW and Victorian tribunal practices.

Turning to Australia, it should consider introducing mandatory project-specific escrow requirements for residential-construction deposits, modelled on the seventy-per-cent escrow mandate in India. Comprehensive legislation at the State or Commonwealth level would provide uniform protection against developer insolvency. Australia should also harmonise real-estate-agent licensing and disclosure requirements across States and Territories, since current jurisdictional variation creates compliance complexity for national firms and reduces transparency for interstate purchasers.

Finally, both jurisdictions should develop specialised judicial and tribunal training programmes in construction technology, property valuation, and building regulation, and should enhance data collection and analysis on real estate disputes, enforcement outcomes, and market impacts. Standardised reporting frameworks would support evidence-based policy development and enable rigorous assessment of regulatory effectiveness.

IX. CONCLUSION

The constitutional legality of real estate disputes in India and Australia reflects fundamentally different approaches to property rights, regulatory architecture, and institutional design, yet both jurisdictions confront shared challenges of market failure, information asymmetry, and consumer vulnerability in high-density residential development. India's transformation of property rights from fundamental to constitutional status through the Forty-fourth Amendment, counterbalanced by judicial development of the right to shelter under Article 21, creates a distinctive constitutional architecture that shapes the consumer-protective orientation of its real estate statute.

Implementation since 2016 demonstrates both the potential and the limitations of centralised regulatory intervention. Over 114,735 registered projects and 148,576 complaints filed evidence the statute's reach, while the pending complaints and delayed Appellate Tribunal constitution reveal persistent institutional capacity challenges. Recent Supreme Court decisions reinforcing purposive, consumer-protective interpretation, together with Australia's reforms on sunset clauses, design-and-building practitioner duties, and cladding rectification, demonstrate regulatory responsiveness to market failures and building-quality crises.

The comparative constitutional method reveals that effective real estate dispute resolution requires not merely sound substantive law but adequate institutional capacity, accessible

forums, technical expertise among adjudicators, and enforcement mechanisms that translate legal rights into practical remedies.

X. REFERENCES

Cases

- *Bank of New South Wales v. Commonwealth*, (1948) 76 CLR 1 (Austl.).
- *Brookfield Multiplex Ltd. v. Owners Corp. Strata Plan 61288*, (2014) 254 CLR 185 (Austl.).
- *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.
- *DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda*, (2020) 4 SCC 522.
- *Forum for People's Collective Efforts v. State of West Bengal*, (2021) 8 SCC 599.
- *Georgiadis v. Australian & Overseas Telecommunications Corp.*, (1994) 179 CLR 297 (Austl.).
- *ICM Agriculture Pty Ltd. v. Commonwealth*, (2009) 240 CLR 140 (Austl.).
- *Imperia Structures Ltd. v. Anil Patni*, (2020) 10 SCC 783.
- *Ireo Grace Realtech (P) Ltd. v. Abhishek Khanna*, (2021) 3 SCC 241.
- *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1.
- *Newcrest Mining (WA) Ltd. v. Commonwealth*, (1997) 190 CLR 513 (Austl.).
- *Newtech Promoters & Developers (P) Ltd. v. State of U.P.*, 2021 INSC 716.
- *Olga Tellis v. Bombay Municipal Corp.*, (1985) 3 SCC 545.
- *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.
- *Probuild Constructions (Aust) Pty Ltd. v. Shade Systems Pty Ltd.*, (2018) 264 CLR 1 (Austl.).
- *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520.
- *Supertech Ltd. v. Emerald Court Owner Resident Welfare Ass'n*, 2021 SCC OnLine SC 648.

Legislation

- Building and Construction Industry Security of Payment Act 1999 (NSW) (Austl.).
- Building Legislation Amendment (Cladding Rectification) Act 2021 (Vic) (Austl.).
- Commonwealth of Australia Constitution Act 1900 (Imp), s 51(xxxi).
- Competition and Consumer Act 2010 (Cth) sch 2 (Austl.).

- Conveyancing (Sale of Land) Regulation 2022 (NSW) cll 10A-10D (Austl.).
- Design and Building Practitioners Act 2020 (NSW) (Austl.).
- NSW Civil and Administrative Tribunal Act 2013 (NSW) (Austl.).
- Real Property Act 1900 (NSW) (Austl.).
- Sale of Land Amendment Act 2019 (Vic) (Austl.).
- The Constitution (Forty-fourth Amendment) Act, 1978 (India).
- The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).
- The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
- The Model Tenancy Act, 2021, Ministry of Housing & Urban Affairs (India).
- The Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016 (India).
- The Registration Act, 1908, No. 16, Acts of Parliament, 1908 (India).
- The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882 (India).
- Victorian Civil and Administrative Tribunal Act 1998 (Vic) (Austl.).

Reports and Other Sources

- AUSTL. BUREAU OF STATISTICS, HOUSING: CENSUS 2021 DATA SUMMARY (COMMONWEALTH OF AUSTRALIA 2022).
- DEP'T OF LAND RES., DIGITAL INDIA LAND RECORDS MODERNISATION PROGRAMME: PROGRESS REPORT 2023-24 (GOV'T OF INDIA 2024).
- MINISTRY OF HOUSING & URBAN AFFAIRS, ANNUAL REPORT 2023-24 (GOV'T OF INDIA 2024).
- QUEENSLAND BUILDING & CONSTRUCTION COMM'N, BUILDING INDUSTRY REVIEW: FINAL REPORT (QUEENSLAND GOV'T 2023).
