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Slums, Housing and Evictions: The Contested Domains of Law and Human Rights

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Abstract

Justice and law are often not synonymous, and even when just laws exist, they are often ignored or applied only in certain circumstances. In August 2020, the Supreme Court in M.C. Mehta v. Union of India, 2020 ordered the removal of 48,000 slum dwellings in Delhi, bringing back the discourse of "illegal encroachment" concerning slums in Indian cities. This position is in conflict with the poor's livelihoods and their right to adequate housing. The state's role is being questioned as it fails to provide basic necessities for its vulnerable citizens. This paper critically analyzes the Supreme Court's order, focusing on Human Rights Violation, lack of rehabilitation plans, elite bias, and ignorance of previous judgments. It presents the issue within the Human Rights-Based Framework of development, considering the "Right to Adequate Housing" as a human right and eviction as a violation. The paper also discusses the "public interest" discourse, which has been invoked by the middle-class or bourgeoise environmentalists to build a culture of silence and acceptance around such evictions.

Keywords: Human Rights, Slums eviction, Right to Adequate Housing, Bourgeoise environmentalist

Introduction

Although justice ought to be an integral part of the law and, unquestionably, is its goal, law and justice are, sadly, not always synonymous around the world. Even when just laws exist, they are frequently ignored or applied only in certain circumstances. There are numerous laws in India that "clear slums," zone city spaces, and control property and real estate development, but none that respect, protect, or fully realise the human right to adequate housing. In such cases, the judiciary is occasionally the only hope for the pursuit of justice for the poor and oppressed who discover that their rights are being infringed by state and non-state actors. This is even more significant in regard to India's protection of the human right to adequate housing because neither the national nor the state governments of India have laws that specifically guarantee this right. However, the recent

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order of the supreme court in *M.C. Mehta v. Union of India, 2020,* seems to have eroded this hope and belief as the order has been delivered with an understanding of slums as "illegal encroachment" and "nuisances" that pollute public spaces.

For the paper, there is a need to clarify what housing category "slum" represents. The first category is defined under the Slum Areas (Improvement and Clearance) Act, 1956, as "Residential areas where dwellings are unfit for human habitation by reasons of dilapidation, overcrowding, faulty arrangements and design of such buildings, narrowness or faulty arrangement of the street, lack of ventilation, light, or sanitation facilities or any combination of these factors which are detrimental to the safety and health". The second category of slums includes the poor forms of housing that are makeshift shelters, cramped shacks and huts called Jhuggi-Jhompris (JJ) in Delhi. The illegal nature of the occupation of land by the settlers is common across this category of housing. For the judiciary and planning agencies like the Delhi Development Authority (DDA)[1], this category forms the squatter settlements, (i.e., the land in such settlements is occupied illegally without the permission of the landowner be it private or public) which are inhabited by the poorer sections of the society and have been the target of evictions in Delhi since the 1960s and it is their eviction which forms the basis of our analysis.

To provide a context to the current order, Delhi's first Master Plan of 1962 with a stated objective of resolving the housing problems of the poor, envisaged Delhi as a model city, prosperous, hygienic, and orderly but failed to recognise that such ambitions would only be realised by labours who would migrate from labour rich states and for whom no provision of housing had been made in the plan. This was visible in the preference given to the housing for the high-, middle- and low-income groups (as per the DDA called HIG, MIG and LIG) which far outnumbered the provision for housing for the Economically Weaker Sections (EWS) (Baviskar 2020). Concerning the housing needs of the squatter settlements, since the 1950s the Delhi administration followed an approach of eviction combined with demolition and relocation in resettlement colonies. However, gradually the authorities realised that housing for all at an affordable price was not economically feasible and hence slum improvement in situ was accepted as the long-term alternative. This strategy of providing and improving the living condition of the dwellers wherever they were based, risked the chances of demolition and evictions by the DDA since it did not guarantee them the right to occupancy (Dupont 2008). This makes it pretty clear that the DDA was unable to meet the housing needs of the large section of the population which had occupied the city as a result of the large influx following independence (At an annual growth rate of 7.5% the city's population grew from 7,00,000 inhabitants in 1941 to 1.4 million in 1951). Thus, the growth of the planned Delhi was

1. The DDA was constituted in 1975 by an Act of Parliament to check the unplanned growth of Delhi.

simultaneously followed by mushrooming of the unplanned Delhi with poorer migrants occupying vacant lands, mainly public and constructing makeshift JJ, one-room huts consolidated with time, leading to the creation of slums. In addition to this, far from the attraction of investors, migrants chose sites which were dangerous (like the Yamuna River bed exposed to flooding, along the railway lines, near dumping sites among others) often lacking basic urban services like sanitation, health, and education. The development of such basti or slums according to Baviskar was then not a violation of the Plan, it was an inevitable part of it. The failure of the state to provide housing for the migrants combined with the state's monopoly over land use, make slums the only viable option for these low-income urban residents.

In the recent order in *M.C. Mehta v. Union of India, 2020*, the judiciary has viewed these low-income urban residents as "encroachers" or "trespassers, which ignores not just the positive duties of the state to ensure inclusive urban planning and provide affordable housing for all but also violates the fundamental constitutional principle of Right to housing. Ghertner (2008) notes that almost all of Delhi violates some planning or building law, so much of the city's buildings can be considered "unauthorized." He raises the crucial question of why some of these areas are labelled as illegal and deserving demolition, while others are covered and formalized. To strengthen this argument, the paper in the subsequent section presents the Delhi High Court's 2004 order of removing Yamuna Pushta (an open plain along the western embankment of Yamuna) bastis[2] built on the Yamuna Floodplains on the grounds of polluting the river and encroaching the riverbed and then it discusses the current order in detail in the following sections.

"Cleaning up" of the city replaced the "cleaning" of the city: The case of Yamuna Pushta

The period from 1957-1977, famously known as the Emergency which was imposed by the Indira Gandhi-led government, saw forced slum clearance in Delhi. An estimated 7,00,000 people were forced to leave their homes and resettle in far-off colonies. The Asian Games of 1982 which was to be held in Delhi, brought back an estimated one million labourers to Delhi. For the games, a part of the Yamuna flood plain was diverted for the construction of the Player's building, Indraprastha Stadium and a hostel for athletes. Lacking any housing facilities, the labourers who were involved in construction settled down in the Pushta. During that time, it is alleged that the owner of both Kutcha and Pucca houses had to bribe the DDA officials for constructing their homes (PUDR,2004). This along with political patronage which helped the residents secure individual water and power connections, saw sprawling of settlements on strips of land on both sides of the river. By 2004, almost 3,50,000 squatters lived along the Yamuna

2. A basti is identified as a cluster or conglomerate of kutcha huts or shacks of tin or wood, built on any conceivable open piece of land and almost always in an unauthorized manner (DDA 1957)

in Delhi (Baviskar 2020). Suddenly in 2004, the Delhi High Court ordered the removal of Yamuna Pushta Bastis on the grounds of polluting the river and encroaching on the river bed. An analysis of the first argument brings out the deep-seated bias toward the squatter settlements. The Hazards Centre, an organization working on urban issues, in 2004 brought out that the Yamuna Pushta Bastis contributed less than 0.1% to the total waste flowing in the river. Yet the High Court targeted the Pushta settlements for eviction while the pucca neighbourhood which generated the bulk of domestic sewage was left untouched. To the second argument, the same tracts of Yamuna floodplains were used over time since the 1980s to build sports facilities for the Asian Games, a Metro Depot, Akshardham Temple Complex and the 2010 Commonwealth Games Village with high-rise luxury apartments. All these superstructures which violated the Master Plans of Delhi by encroaching on the ecological zones, were with time legalised by the judgements from the High Court and Supreme Court with the latter emphasizing in the case of Commonwealth Games Village that "the place was not a river bed or floodplain". According to Amita Baviskar "In retrospect, it became evident that the hostile manoeuvres of demolition and displacement were a necessary precondition for the transformation of the riverfront as a place of value". Hence in its objective of cleaning up the city (through cleaning the river), the court ordered the cleaning of the city by displacing 3,50,000 people from the Yamuna Pushta with fewer being resettled thereafter. The current order in M.*C. Mehta v. Union of India, 2020,* follows the same template with the slum dwelling community along the Northern Railways targeted for dumping waste (without any proof) in the vicinity of railway tracks despite the residential buildings also contributing to the waste problem.

Order of the Supreme Court

In its report dated July 9, 2020, the Environment Pollution (Prevention & Control) Authority (EPCA) pointed out to the Supreme Court that since Railways is a bulk waste generator, it must comply with the Municipal Solid Waste Management Rules,2016 and requested the Supreme Court to direct the Railways to present a time-bound plan for the inventory of all solid waste generated in the Northern Region. These directions did not establish any relationship of waste being dumped with the slums in the vicinity of the railway tracks. However, the court taking cognisance of the non-compliance of the Municipal Solid Waste Management Rules,2016 by the Railways, the court drew a relationship between the waste and the human habitation that had come up around the same area and ordered the removal of about 48,000 slum dwellings located along the 140 km length of the railway tracks in North Delhi within three months. The current order (*M.C. Mehta v. Union of India, 2020)* has become contentious because of the following reasons-

1. **Human Rights Violation**- The order fails to recognise the well-established principle of the Right to Adequate Housing by previous judgements (discussed in detail in the subsequent section)

2. **Elite Bias**- Despite there being residential buildings too that throw waste on such tracks the Court ordered for the eviction of jhuggies alone, which reveals a deep-rooted bias. This elite bias is against the slums that according to Ghertner (2008) are declared as illegal and polluting based on a judge's subjective view of "clean" whereas developments like the Delhi Commonwealth Games Village despite violating laws and bye-laws are granted amnesty and heralded as monuments of modernity.
3. **No Rehabilitation**- The bench does not refer to the rehabilitation of those residents who are likely to be evicted from their jhuggis. This was even though in Ajay Maken v. Union of India, the High Court of Delhi had held that forced eviction of settlement dwellers, without adequate notice, adherence to the due process established in Sudama Singh v. Government of Delhi, 2010, and without adequate rehabilitation would be considered illegal. Further, the Master Plan for Delhi 2021 also envisages rehabilitation or relocation of the existing jhuggi dwellers. It provides for the relocation of the jhuggi dwellers if the land on which their jhuggies exist is required for a public purpose, in which case, the jhuggi dwellers should be relocated/ resettled and provided alternative accommodation.
4. **Ignorance of previous judgements**- The order also fails to acknowledge the established precedent set by past judgements. In 1985, the Supreme Court in *Olga Tellis* had held that the "Right to Life" under Article 21 includes the "Right to Livelihood and Housing "which also entitles the right-holder to a right to notice and hearing before evictions and access to rehabilitation. Further, In *Ajay Maken v. Union of India, 2019* Delhi High Court **held that "**People living in urban settlements should not be viewed as "illegal encroachers and those living in slums continue to contribute to the social and economic life of a city which is acknowledged by "Right To The City (RTTC)"[3].

Though there has been a stay on the demolition orders by the Supreme Court, there is a need to critically analyse such hasty orders in the wider context of the Human Rights-Based Framework which includes the "Right to Adequate Housing" as an indivisible, interdependent, and inter-related human right.

Human Rights-Based Framework and the Right to Adequate Housing

According to the United Nations, "Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status". They are vital because they set the basic standards that are required for people to live with freedom, equality, and dignity. They grant freedom of choice and speech to all and the rights to

3 The right to the city is defined as the right of all inhabitants present and future, to occupy, use and produce just, inclusive, and sustainable cities, defined as a common good essential to the quality of life. The right to the city further implies responsibilities on governments and people to claim, defend, and promote this right." (Habitat III, 2016)

basic needs required for their full development including access to education, water, sanitation, food, health, and housing. The fulfilment of human rights, based on international law, is legally binding for states upon adoption of human rights instruments like the International Covenant on Civil and Political Rights (the "ICCPR") and International Covenant on Economic, Social and Cultural Rights (the "ICESCR"). This requires the respect, protection and compliance of the rights enshrined in the Treaty and the prevention of violations of human rights and the complete enjoyment of human rights.

A Human Rights-Based Approach (HRBA) is a human development mechanism normatively based on international principles of human rights aimed at promoting and securing human rights. These principles are:

1. **Participation**: Everyone is entitled to take part in choices that have an impact on their human rights. Participation must be active, free, and meaningful, with an emphasis on having access to information in a format and language that is understandable.
2. **Accountability**: Effective monitoring of adherence to human rights norms, accomplishment of human rights objectives, and efficient redress for human rights violations are all necessary components of accountability. In order to protect human rights, there must be the proper laws, policies, institutions, administrative procedures, and redress mechanisms for accountability to work. Development and use of appropriate human rights indicators are also necessary for monitoring compliance with and fulfilment of human rights objectives.
3. **Non-discrimination**: All types of discrimination in the pursuit of rights must be outlawed, prevented, and eliminated according to a human rights-based perspective. Additionally, it means that those who are most disadvantaged or marginalised and experience the greatest obstacles to exercising their rights should be given precedence.
4. **Empowerment**: Everyone has the right to assert and use their freedoms. Communities and individuals must be able to comprehend their rights and actively participate in the creation of laws and regulations that have an impact on their daily life.
5. **Legality and operationally**: A human rights-based approach necessitates that the law itself be in accordance with human rights principles and that it recognises human rights and freedoms as legally enforceable entitlements.

HRBA seeks to analyse discriminatory practices and unjust distributions of power (structures) that impede development progress and ways to address them. It is a two-way relationship between the Rightsholders (women, children, elderly, LGBTQI+, differently abled and other such groups) and the duty bearers (parliament, local governments, judiciary, police and bureaucracy) where the duty bearers fulfil their obligation to provide rights based on the human rights framework and the rights holders hold the duty bearers accountable to provide such rights. According to the UN-Habitat

fact sheet No. 21, the right to adequate housing covers steps required to avoid homelessness, prohibit forced evictions, tackle discrimination, target the most disadvantaged and oppressed communities, ensure the security of tenure for all and ensure adequate housing for all. Under international human rights laws and standards, a human rights-based approach to housing requires the recognition of adequate housing as universal and autonomous, but also indivisible, interdependent, and interrelated human rights (related to all other human rights). This means that the violation of the right to adequate housing can affect the enjoyment, and vice versa, of a wide range of other human rights. Access to adequate housing can be a prerequisite for the enjoyment of several human rights, including those relating to employment, health, social security, voting rights, privacy, and education. Homeless people may not be eligible to vote, enjoy social services or obtain healthcare without evidence of citizenship. Schools may refuse to register slum children as there is no official status in their settlements. Insufficient housing may affect the right to health; for example, if houses and settlements have minimal or no clean drinking water and sanitation, their inhabitants can become critically ill.

Though India does not explicitly recognise an independent human right to adequate housing in domestic laws or policies, the judiciary (both the High Court and the Supreme Court) have time and again interpreted Article 21 and other parts of the Constitution to include the human right to adequate housing within their ambit. In *Olga Tellis v. Bombay Municipal Corporation (1985),* the Supreme Court had held that the right to life under Article 21 includes the right to livelihood and housing, which in turn, entitles the right-holder to a right to notice and hearing before evictions, and access to rehabilitation. Further, the Delhi high court in *Ajay Maken v. Union of India (2019),* strongly recognized and upheld the human right to adequate housing and relied extensively on ***international law*** to emphasize the obligation of the government to protect and fulfil the right. The Court acknowledged that forced evictions violate multiple human rights.

Despite the development of rich jurisprudence (both nationally and globally) in favour of the right to adequate housing, the Supreme Court's current order in *M.C. Mehta v. Union of India, 2020*, seems to be motivated by what Kant calls "aesthetic judgment" i.e., a judgment based on a feeling. According to Ghertner (2008), courts do not have a sound legal basis for declaring slums as illegal rather if a slum appears to be polluting based on a judge's subjective view of "clean" then it is declared as polluting, nuisance and hence illegal. Such orders also undermine the very nature of slums as "distinct places" and reduce them to an "abstract space" without having any physical distinctiveness, social life and a sense of attachment and community to it. To quote Ghertner (2008), in its pursuit of making Delhi a "world-class city" spaces that appear polluting or unattractive (e.g., slums) which unfavourably represent Delhi in its "world-class" pursuits are being aggressively cleared even in the absence of accurate information while

developments that have the "world-class" look, (e.g., Delhi Commonwealth Games Village) despite violating laws and bye-laws are granted amnesty and heralded as monuments of modernity.

Amita Baviskar in her book "Uncivil City" wonders if Indian cities can embrace mutual recognition of shared humanity as a normal practice and not as a miracle, where civility i.e., the practice of respecting each other while acknowledging the differences is the rule and not the exception. However, it has been observed over the years (since the 1990s) that the judiciary along with public-spirited citizens in the guise of "public interest" have combined to produce orders and judgements that have harmed the idea of civility and prioritised environmental justice over social justice.

The "Public Interest" Discourse

From the late 1990s to 2000, the Supreme Court of India acting on the Public Interest Litigation[4] filed by M.C. Mehta, an environment activist-lawyer, directed the closure of thousands of industrial units from residential areas of Delhi and ordered their relocation. While on one hand the middle class and the media hailed the judgement as one which had addressed the issues of water and air pollution in Delhi and justified it as being in the "public interest", the workers who relied on the factories for their livelihood lost their only means of survival. Presumed environmental benefits in the name of clean air and water were obtained at the cost of the livelihoods of some of the most vulnerable citizens of Delhi. The question that needs to be asked then is how did the elite succeed in getting the court to pronounce a judgement which gave priority to the environmental hazards over and above the welfare of the factory workers? This question also begs attention for the fact that in 1993-94, while 64% of Delhi's air pollution came from motor vehicles, only 12% emerged from industrial sources (Baviskar 2020).

The roots of the success of the middle class in getting such judgement passed in their favour can be traced to the consolidation of the middle class as a decisive hegemonic power which occurred in the aftermath of Independence (Despande 1997). They saw themselves as protectors of the public interest by speaking for nature and having lost their faith in a corrupt and ineffective bureaucracy, they used their cultural capital to directly approach the judiciary to fight issues which they seemed were in the public interest. The presentation of the middle class's public interest as an issue which has wider acceptance from the citizens can be questioned by the very fact that although pollution levels in Delhi (after the shifting of factories) reduced temporarily, they were soon offset by the spurt in the number of private motor vehicles. According to Amita Baviskar, the court acted in the context of economic liberalisation which provided an opportunity for the lands on which factories were situated to become more valuable and hence profitable to be sold off for the upcoming lucrative projects of globalised trade and commerce.

4 PIL as it is known in India, is a form of litigation that is filed to safeguard or enforce Public Interest.

The middle class which championed itself as the protector of the so-called public interest, were the ones who themselves contributed to the rise in air pollution by driving cars and comforting in their air-conditioned houses. They continue to pollute the Yamuna by discharging untreated domestic sewage from their multi-storeyed apartments. It then appears that the public interest was never served and that the real public interests be it ensuring the livelihoods of the factory labourers or the residents of the Yamuna Pushta Bastis, never appeared to be within the reach of the poor as they find it difficult to gather considerable cultural capital to fight the might of the elite environmentalists who operate from a position of class bias and ignorance for the concerns of the urban working class. In such a scenario the poor feels powerless, and this powerlessness gives rise to the "culture of silence" around slum evictions. According to Paulo Freire powerlessness is the strongest form of oppression because it allows people to oppress themselves and others thereby creating a culture of silence.

Conclusion

The goal of this paper has been to critically analyse the current order of the Supreme Court in the wider context of the human rights framework which recognizes adequate housing as universal and autonomous, but also an indivisible, interdependent, and interrelated human right. The paper further highlights how the order of the Supreme Court for the removal of about 48,000 slum dwellings that too without delineating any plan of action for rehabilitation, seems to be based on an understanding of slum settlements as informal places (and hence illegal and liable to be removed) differentiated from the so-called formal places where the urban elites live. This is even though informal urbanization is as much practised by wealthy urbanites and suburbanites as it is by slum dwellers. The paper talks about the 'Right To The City" (RTTC) of the slum dwellers. In his book Right to the City, published in 1968, the French social scientist Henri Lefebvre gave this idea. The idea gives us a prism to look at urban governance issues from a different viewpoint. This includes the right to reclaim public spaces, public engagement in the city and most critically, the right to housing and basic facilities. In *Ajay Maken v. Union of India, 2019*, Justice S. Muralidhar quoted Nelson Mandela:

> **"A simple vote, without food, shelter and health care is to use first-generation rights as a smokescreen to obscure the deep underlying forces which dehumanise people. It is to create an appearance of equality and justice, while by implication socio-economic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society".**

The Court further recognized the 'Right To The City" (RTTC) of the slum dwellers and stated that RTTC acknowledges that those living in JJ

clusters in jhuggis/slums continue to contribute to the social and economic life of a city and comprise a wide range of service providers including sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers who are indispensable to a healthy urban life. Prioritising the housing needs of such a population should be imperative for a state committed to social welfare and its obligations flowing from the Universal Declaration of Human Rights and other international conventions and agreements and the Indian Constitution.

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