
Fundamental rights of slum dwellers in India

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Slums are the result of large scale rural to urban migration and economic growth. Poor management of public services in cities, corruption, and inefficiency are main reason of misery and deteriorating living condition of slum dwellers, beside population growth which is making the situation worse. Basic requirements, such as water, sanitation provisions and health services, are inadequate. Hence, rapid urbanization in weak economic conditions breaches their fundamental right to house and to other public services and utilities.

1. INTRODUCTION

The growth of urban centers in third world countries has been accompanied by high pace of social and economic development resulting into the extraordinary increase in city and town population. With this growth, the cost of housing and infrastructure is increasing on the one hand, and the lack of affordable housing facility on the other hand which often force the urban poor to rely on or create their own informal infrastructure, giving way to dramatic growth of slums in urban centers. The higher economic vitality of cities, and the possibilities of employment compared with the countryside pull the people to come and stay resulting into mushrooming of slums in these urban centers because they are most required unskilled labors to urban industries. Thus as the world's population grows, more and more people move into the cities in search of a better life, causing more poverty and creating bigger slums in cities. It is an unhappy reality for our country and many others across the world¹. Over one billion people in whole world live in slums today and the numbers are climbing. If nothing is done to prevent this growth of slums, the estimated number of slum dwellers will increase to about two billion by the year 2030. The situation of India is not different from the rest of the world. India is a third world country that suffers from poverty, malnutrition, diseases, unhealthy conditions, and more in its slums². Due to the dramatic rise of slums after independence in 1947, its population has tripled. India alone is responsible for more deaths of children than any other country in the world. Every year, hundreds of thousands of men, women, and children die around the world and India alone is responsible for 25% of the deaths. In India the total number of slum dweller is about 65 million, of which Maharashtra alone accounts

¹ UN-HABITAT, report, April 2007

² Census of India, rural-urban distribution in Provisional Population Totals, Paper 2, 2011, vol. 1, India Series 1

for 11 million. Next come Andhra Pradesh, with a slum population of 10 million, followed by West Bengal and Uttar Pradesh, with over 6 million each³. The figures are indeed staggering.

The Government of India has not been able to solve this problem. Within India, some of the basic characteristics of slum housing are high levels of pollution, lack of clean water, constant migration to slums, no sewage or waste disposal facilities, unsanitary living conditions, high child mortality rate and poor medical facility, low education quality and high school dropout rate, room-crowding and deplorable housing conditions and lack of other basic needs etc. Beside it, unsocial activities and crime rate is high in such areas. Hence, slums are a major urban drawback and a huge hurdle in the country's development. However, in the year 2000, at International level, the United Nations Development Program (UNDP) in collaboration with 189 nations around the world created a number of goals with an aim to achieve all by 2015⁴. That Millennium Development Goals (MDG) focused on eight areas of improvement: ending poverty and hunger, universal education, gender equality, child health, maternal health, combating HIV/AIDS, environmental sustainability and global partnerships. The environmental sustainability area aims, to significantly improve the lives of at least 100 million slum dwellers by 2020⁵.

2. SLUM DWELLERS AND THE CONSTITUTION

The right to housing is not a fundamental right but the whole cast and tenor of the Constitution, from the Preamble to the Directive Principles, makes it obligatory on the state to make that provision. However it is not a right that can be exercised in continuity but till the state provides alternative accommodation for them. Slum dwellers are also citizens with the same democratic rights as all other residents like right to environmental health and basic living conditions. These rights are often limited by a government's ability to realize them. JUSTICE Krishna lyre believes that the right of pavement dwellers to stay on pavements can be defended, in the circumstances of today, under the Constitution⁶. In the context of Articles 14, 19 and 21 of the Constitution, he said the idea of reasonableness must include the concept of social justice. The Preamble also establishes the egalitarian essence of the Constitution and must be an aid in interpreting Constitutional enactments. The Supreme Court, which has the power to overrule itself, now has the precedent of a High Court judgment saying that the Fundamental Rights and Directive Principles do not stand in a superior or subordinate relationship to each other but are "coordinate," of equal status. However, India is also a signatory to the Istanbul declaration of 1996 which made it clear that "Adequate shelter and services are a basic human right which places an

³ <http://www.pwc.in/assets/pdfs/publications/urban-child/urban-child-india-report.pdf>

⁴ <http://www.un.org/millenniumgoals/mdgnews.shtml>

⁵ http://www.un.org/millenniumgoals/pdf/Goal_7_fs.pdf

⁶ <http://timesofindia.indiatimes.com/city/kolkata/ngo-initiative-makes-youngsters-spend-night-with-pavement-dwellers/articleshow/57061308.cms>

obligation on governments to ensure their attainment by all people". Earlier in 1956, at International Covenant on Economic, Social and Cultural Rights, this principle was adopted as "Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

Article 14 of the constitution declares that all people shall be equally protected by the laws of the country. It means that the state will treat people in the same circumstances alike⁷. Article 19 provides right to various freedoms which include every citizen's right to move freely throughout the country and to reside and settle in any part of India subject to reasonable restrictions by the State⁸. And article 21 protects the right to life and personal liberty. According to this, no citizen can be denied his life and liberty except by law. Articles 38, 41, 46 and 47 cast on the State the duty to promote a social order with economic justice at its core, to secure the right to work and education of all the people, to take care of cases of undeserved want, to undertake "with special care", to promote the economic interests of the weaker sections of the people, to raise the standard of living of the people as a primary duty. Thus when confronted by the claims of those who do not have even one square meter of earth to stand on, the egalitarian justice of the Constitution will refuse to accept the basis of classification whereby persons without title to land are evicted. Public authority has public responsibility and it must be the first charge on its resources to provide for the basic needs of everyone first and after that for community facilities. Thus it is imperative for State on one hand to legislate a national slum policy that respects the right to shelter of the urbanized poor living in slum. While on the other hand, it should come with effective policies regarding education, public healthcare and social security for these marginalized people.

Slum dwellers being the main vote banks of politicians, the latter cannot overlook them anymore. This is perhaps the context within which the government of India is bringing out a new National Slum Policy. The earlier one i.e. the National Housing Policy (1988) could not achieve much though it aimed at creating conditions for enabling the urban poor to own the squatted land and develop a structure on it. Serious distortions in the land market, low affordability, red-tap, over congestion in slum settlements and multiple ownership of squatted land have been some of the important problems in finding realistic solution to the housing poverty. Though there have been some success stories of tackling slum housing mainly through the interventions of NGOs and self-help groups supported through external funding, though such efforts remain too few in relation to the enormity of the problem. However these NGOs have exerted adequate pressure on policy-makers

⁷ https://en.wikipedia.org/wiki/Fundamental_rights_in_India#cite_note-State-4

⁸ <http://www.elections.in/political-corner/article-19-of-indian-constitution/#sthash.167TCqKA.dpuf>

to change their attitude towards the urban poor.

The 74th Amendment of the Indian Constitution⁹ has empowered the urban local bodies and the people in terms of decision-making, planning interventions and resource mobilization, lack of minimum wages and gender discrimination, occupational vulnerability, and increased marginalization. Another important development was a shift to democratic governments - including elected mayors and city politicians - within nations and cities, where previously these had been appointed by higher levels of government. The government should promote actively the urban agglomerates, new industrial townships, new cities, etc. As the government of India develops a program to support slum upgrading through the Rajiv Awas Yojana is worth reflecting on what has been done in this area. It is doing much to help the slums. Programs such as ASHA have been set to help children to get education. However, it is not being reached to all children. In addition, health care that is supposed to reach the slums has not yet reached, because the wealthy residents of India are receiving it. Here the government has to take action to make it reach the slums. Besides it, the government should focus on banking participation, financial inclusiveness and sustainability especially for vulnerable populations such as women and children. There is a greater need to devolution of more funds from central and state government and from own resources to slum dwellers to secure their fundamental right to live with basic dignity and in decent conditions.

3. JUDICIAL ACTIVISM FOR SLUM DWELLERS

The emergence of public interest litigation (PIL) in post-Emergency era of the late 1970s and early 1980s created a strong image of the Supreme Court as being pro-poor and exploited. It is playing a major role to make justice accessible and fundamental rights more real to the exploited and oppressed sections of society. It did justice in various cases like in the Asiad case which deals with minimum wages for construction workers of Asiad, in the Bandhua Mukti Morcha case involving the release of bonded labors, in the Sunil Batra case which led to the Prisoner's rights, etc. At times, it has provided relief to various slum habitants from the harsh and arbitrary actions of the executive with the grant of stay to the demolition of slums on the ground of the lack of a rehabilitation plan. It has decided with a pro-poor judicial orientation, the foundation of which consists in a broad and wide interpretation of the right to life guaranteed under Article 21 of our Constitution. It pays special heed to slum-dwellers as an economically deprived and downtrodden population of our society. However few advocate of development consider slum as nuisance or hurdle in growth of that area.

The primary statutes in the Indian legal system which specify nuisance are section 133 of the Code of Criminal Procedure, 1973 and section 91 of the Code of Civil Procedure, 1908, both of which

⁹ 64th and 65th Amendment bills were brought in 1989 which were then passed as 73rd and 74th Amendments in 1992

derive their definitions of nuisance from British common law. The nuisances referred in section 133 includes obstructions to a public place or way, trades or activities hazardous to the surrounding community, flammable substances, objects that could fall and cause injury, unfenced excavations or wells, or unconfined and dangerous animals. On slum-related nuisance in 1980, our apex court in *Ratlam Municipal Council vs. Vardichand* case set a precedent for upholding the statutory duties of municipal authorities to ensure public health, particularly that of slum residents. It is of course absurd to say that any settlement is "illegal" because it is not "clean" enough. There is no justification provided for clearing slums; there is no mention of implicit or explicit of any of the statutes governing displacement: neither the Public Premises Act, 1971, nor the Land Acquisition Act, 1894¹⁰. The statutory laws for dealing with the cleanliness of urban space are distinct from those for displacing a population.

Another prevalent interpretation of Article 21 regarding slum-dwellers was also established almost 20 years earlier in *Olga Tellis vs. Bombay Municipal Corporation* which emphasized the right of the working poor to occupy public land to fulfill their livelihood requirements and the right to elevate the quality of life of slum-dwellers. The preamble, the directives principles of state policy in the Constitution and the Labor legislations aim at a society which comprises of the principle of a more equitable distribution of material wealth among its people. Thus our judiciary is moving forward with this direction provided in our constitution like equal pay for equal work and abolition of contract labor for permanent work among other issues.

4. PRO-ACTIVE ROLE OF NGOS

Today, the provisions of basic utility services in slum area are the major challenge for the government. In such scenario, the NGOs with the government intervention can upgrade these squatter settlements through community organizations and mobilization which include organizing women for social and economic activities; improving the physical environment with new or upgraded footpaths, access roads, drains, latrines, tube wells, etc; increasing family income by facilitating credit and savings; increasing awareness of health and sanitation issues; encouraging community participation; and reducing the incidence of diseases like diarrhea, respiratory problems, and scabies. NGOs are reluctant to work for better housing for the slum dwellers, probably because of tight government regulations and controls on urban land and distribution systems. Government shall prioritize on low-income housing projects to be implemented on a long-term lease and payment basis¹¹.

A small number of international NGOs are developing the technical and financial capacity of local

¹⁰Supreme Court in *Bangalore city cooperative housing society vs State of Karnataka and others* (Civil Appeal Nos. 7425-7426 of 2002) Feb 02, 2012 [G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

¹¹ . National Commission to Review the Working of the Constitution, "A consultation paper on Decentralization and Municipalities" (New Delhi, 2001) available at <http://lawmin.nic.in/ncrwc/finalreport/v2b2-7.htm>

NGO to raise community awareness about sustainable projects like water or sanitation facilities as such facilities are their basic fundamental and human rights which are granted to all by virtue of being a human. However, most local NGOs depend on foreign donations. Even the government's slum-improvement programs largely rely on aid from organizations such as the UNICEF, UNFPA, DANIDA, EU, and the World Bank¹². Thus they can play a very important role to uplift and empower these downtrodden and deprived peoples with changing their attitude toward life.

5. CONCLUSION

The slums have become a dumping ground for the surplus population living with almost no human rights and working in unskilled, unprotected and low-wage informal service industries and trade which is a direct result of liberalization. Its formation is closely linked to economic cycles, to trends in national income distribution, and in more recent years, to national economic development policies. The U.N. report finds that the cyclical nature of capitalism, increased demand for skilled instead of unskilled labor and the negative effects of globalization in particular, global economic booms and busts that ratchet up inequality and distribute wealth unevenly have contributed to the enormous growth of slums. However, there can be no single uniform model for urban planning which can be used globally. Slum rehabilitation and upgrading are vital, but each city has certain distinctive political, cultural, environmental and economic factors which determine the extent to which such rehabilitation is feasible. Hence, proper assessment has to be made and prospects evaluated before the problem can be addressed. Slum dwellers need to make aware of the need for improvement in living conditions, and they must readily involve themselves with every phase of the rehabilitation. Governments need to pay more attention to slums and make concerted attempts to address this problem proactively. It is indeed time for urgent action. Practical and innovative approaches need to be put into practice to integrate slums within the cities. The development of the slums cannot be done without the proper cooperation of slum dwellers. The long-term solution to the slum problem largely depends on community awareness and some cost-sharing by slum dwellers for the provision of utilities. We have to increase awareness in respects of proper education, family planning, human rights, girl's education, health care, HIV etc. The government should encourage and support NGOs that work to empower communities through providing training, awareness, and technical support. It has to make provision of tenancy rights to slum dwellers in order to ensure that their housing is not evicted upon by government agencies. Besides this, a proper housing facility including the low-cost residences with availability of clean water and proper sanitation and waste management for slum dwellers which is their fundamental right provided under article 21 of Indian constitution, can ensure their safety and hygiene. Such area should be connected properly with transport facilities. They should be part of financially inclusive growth with proper availability of credit facility. There should a better coordination

¹² <http://www.unmillenniumproject.org/documents/Slumdwellers-chapters1-4.pdf>

among different ministries, agencies, NGOs and the slum beneficiaries with a common platform for sharing ideas, inputs and experiences and implementing policies.

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